

Town of Barnstable
Zoning Board of Appeals
Minutes
November 18, 2009

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday November 18, 2009 at 7:00 PM at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. Also present were Art Traczyk – Regulatory Review Design Planner and Carol Puckett – Administrative Assistant.

Laura Shufelt	Present
James McGillen	Absent
Michael Hersey	Present
Craig Larson	Present
William Newton	Present
Alex Rodolakis	Present
Nikolas Atsalis	Absent
Brian Florence	Present
George Zevitas	Absent

Laura Shufelt opens the hearing at 7:01 PM. She opens the Tonsberg appeal and reads it into the record. She indicates that the applicant's attorney, Roberto DiMarco, Esq., has requested a continuance of this and reads the letter into the record.

Appeal No. 2009-068 - New

**Tonsberg
Special Permit Demo/Rebuild on Nonconforming Lots**

Frederick and Roberta Tonsberg have petitioned for a Special Permit pursuant to Section 240-91.H(2), Developed Lot Protection, Demolition and Rebuilding on Nonconforming Lots. The petitioner seeks to demolish the existing dwelling located on the property and reconstruct a new dwelling not in compliance with current setback requirements for the district. The property is addressed as 2 Short Beach Road, Centerville, MA and is shown on Assessor's Map 206 as parcel 044. The property is in a Residence D-1 Zoning District.

Motion is made to continue this to February 10, 2010 at 7:00 pm

Seconded

Vote:

All in favor

She then calls the Joyce appeals and indicates that there is a letter asking for a continuance to December 2, 2009

Seconded

Vote:

All in favor

Laura Shufelt then calls the FLO TV, Inc., appeal and reads it into the record:

Appeal No. 2009-066 - New

FLO TV, Inc.
Modify Variances 2002-034 & 1989-021 for Co-Location

FLO TV, Inc. (f/k/a Mediaflo USA, Inc.), a subsidiary of Qualcomm Inc., has applied for a modification of Variance Nos. 2002-034 and 1989-021. The modification seeks to operate additional wireless communications on the existing communication tower and provide for the installation of additional antennas and necessary ground equipment at the base of the tower. The property is addressed 1731 Service Road, West Barnstable, MA and is shown on Assessor's Map 194 as parcel 010, W00 and T00. The property is in a Residence F Zoning District.

Members assigned: Michael Hersey, Craig Larson, William Newton, Brian Florence. Laura Shufelt

Representing FLO TV is Scott Curry. Mr. Curry gives a summary of relief being sought.

He indicates that what they are asking to do is co-locate on the tower and placing one UHF antennae and two TV dish antennas on the existing town with existing equipment shelter.

Art Traczyk asks him to point it out on the plan. Art explains to the audience that it is one antenna but is two dishes at elevation 25 and parallel to each other.

Laura Shufelt asks if he has been to Site Plan Review which he answers yes. She asks if he submitted a structural analysis report and he answers yes. He reads it into the record.

Laura Shufelt asks if there is anyone from the public who would like to speak either in favor or in opposition.

Mr. Dick Andres from Centerville, an abutter, indicates that it originally was for 150 feet and then 160 feet. He talks about what channels he gets on and off. He indicates that it is not suppose to interfere with his reception and asks who he needs to talk to about this and what they are going to do to improve the reception currently. He believes they should be getting numerous channels.

Scott Curry indicates that it should not interfere with Mr. Andre's reception.

Mrs. Andres speaks and wants to see what the tower would look like.

Art Traczyk points it out on the plan.

William Newton asks Mrs. Andres if there is a big problem with TV reception which she answers yes and that they are not on cable but are not getting channel 7 now.

Scott Curry indicates that he believes that the existing antennae shouldn't be interfering with TV reception as this is wavelengths for telephones

Laura Shufelt clarifies that all his antennas are for phones.

Craig Larson asks if there is any broadcasting going on the tower for television.

Scott Curry is unsure.

Craig Larson makes findings:

FLO TV, Inc. (f/k/a Mediaflo USA, Inc.), a subsidiary of Qualcomm Inc., has applied for a modification of Variance Nos. 2002-034 and 1989-021. The modification seeks to operate additional wireless communications on the existing communication tower and provide for the installation of additional antennas and necessary ground equipment at the base of the tower. The property is addressed 1731 Service Road, West Barnstable, MA and is shown on Assessor's Map 194 as parcel 010, W00 and T00. The property is in a Residence F Zoning District.

Appeal No. 2009-066 is seeking a modification of an existing variance to permit the co-location of communication antennas on an existing communication tower. The subject property is a 89,910 sq.ft. lot accessed from the Service Road in West Barnstable.

Co-location on existing towers is strongly recommended by the Cape Cod Commission Regional Policy Plan, the Local Comprehensive Plan, and is encouraged by the Growth Management Department. Co-location on existing communications towers is preferable over the building of new towers. This site has supported commercial communications for 20 years and its location and height provides coverage over most of Barnstable as well as parts of Yarmouth and Mashpee and other scattered areas on the Cape.

Motion that this modification of Variance No. 1989-021 be granted to FLO TV for the co-location and operation of communication equipment on an existing tower located at 1731 Service Road, West Barnstable, MA subject to the following conditions.

Vote on findings:

AYE: Michael Hersey, Craig Larson, William Newton, Brian Florence. Laura Shufelt

NAY: None

Based on those findings motion to grant the modification of Variance No. 1989-021 is granted to FLO TV for the co-location and operation of communication equipment on an existing tower located at 1731 Service Road, West Barnstable, MA subject to the following:

- 1. The installation and operation is limited to that of one (1) UHF antennas mounted at 74 and 67 feet, and two (2) TV Dish antennas located at 25 feet, and a GPS antenna to be located on the roof of a proposed second equipment shelter as shown on plans submitted and approved by the Site Plan Review Committee entitled "FLO TV live mobile tv" as drawn by KMB Design Group and consisting of 9 sheets dated 6-19-09, last revised dated of 9-21-09.**
- 2. All other conditions of Variance No. 1989-021 shall remain in full force and effect except as modified herein to allow for co-location of FLO TV.**

Seconded

William Newton thinks they should add, with respect to condition #7 of the original conditions which had to do with "in the event that the tower interferes with radio or TV reception in the area, NYNEX or the property owner shall remedy the problem at no expense to the individuals experiencing such interference" he is wondering if they should restate that to be sure that these people are in compliance with that or they do the best they can to determine that they are not the cause of any interference that these two people (who spoke earlier) are experiencing.

The Board discusses.

Brian Florence asks about having an engineer doing an evaluation and may not be fair to have FLO TV responsible for the interference.

Art Traczyk is concerned as he is not sure if it is existing or could be within the resident's home.

Josh Delman, who is also representing FLO TV, speaks and indicates that for the record, FLO is licensed by the FCC to provide this mobile TV service Those frequencies are analyzed and allocated so not to interfere with commercial TV's and things of that nature. If there is an existing condition that is causing that interference they can go to Crown Castle, in this case, and have them run a study that would indicate that everything is in order. It is common today that there is an annual certification of the site which they would happy to have as a condition that would be acceptable as well that everyone certifies that they are still in compliance with their license.

The Board discusses.

Josh Delman indicates that as a condition they would work with the current owner to supply certification currently and subsequent to that, an annual or biannual as well.

Art Traczyk would like an annual certification. He words the condition.

Art Traczyk reads it as: "the present applicant will work with the owner of the tower and will have an inspection to certify that there is no interference from this equipment onto private communications, private TV, and they will annually inspect the tower for conformance with all regulations especially FCC for non-interference from that nature.

Brian Florence wants to add "and a copy of that study to staff".

They discuss. Laura Shufelt indicates that this will be the second condition of this modification.

Motion to amend with the new conditions.

Vote:

AYE: Michael Hersey, Craig Larson, William Newton, Brian Florence. Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Laura Shufelt then calls the Lennon appeal and reads it into the record.

Appeal No. 2009-065 - New

**Lennon
Family Apartment Special Permit**

Edward and Kelly Lennon have petitioned for a Special Permit pursuant to Section 240.47.1.A(1) Family Apartments. The petitioners are seeking the permit to allow a family apartment of 885 sq.ft. The property is addressed 23 Old Stage Road, Centerville, MA and is shown on Assessor's Map 208 as parcel 156. It is in the Residence F Zoning District.

Members assigned: Michael Hersey, William Newton, Craig Larson, Alex Rodolakis, Laura Shufelt

Edward Lennon is here representing himself and explains that they are putting in a family apartment in the basement.

Laura Shufelt asks if when complete it will be his primary residence. Edward Lennon indicates that they will be living there and that the family apartment will be for his mother-in-law.

Laura Shufelt asks if he understands the affidavit and that if/when the family member moves out that he will have to remove the family apartment.

Edward Lennon indicates that he understands.

Craig Larson does findings:

Edward and Kelly Lennon have petitioned for a Special Permit pursuant to Section 240.47.1.A(1) Family Apartments. The petitioners are seeking the permit to allow a family apartment of 885 sq.ft. The property is addressed 23 Old Stage Road, Centerville, MA and is shown on Assessor's Map 208 as parcel 156. It is in the Residence RD-1 Zoning District.

In Appeal 2009-065, the Applicants are seeking a special permit to allow a family apartment in excess of 800 sq.ft. The apartment unit they seek is 885 sq.ft., exceeding that permitted as-of-right by 85 sq.ft. The Zoning Ordinance does provide for a larger family apartment unit (up to 1,200 sq.ft.) by special permit from the Zoning Board.

The subject property is a 0.25-acre lot fronting on Old Stage Road in Centerville. The property is improved with a two-story, 2-bedroom, single-family dwelling with a living area of 2,230 sq. ft. The structure has been dated to 1850 however it was completely remodeled in 2005.

The property is serviced by an on-site septic system and is within the Board of Health designated Zone of Contribution to Saltwater Estuaries.

The provisions of the Ordinance only permit a family apartment "as accessory to an owner-occupied single-family residence." The Board should confirm with the applicant that they are occupying the dwelling (residing therein). Without meeting that provision this permit may be premature.

The apartment unit has been described as a one-bedroom unit, however the plans submitted illustrate a studio unit as the bedroom is in combination with that area labeled as a living room.

Seconded.

Vote:

AYE: Michael Hersey, William Newton, Craig Larson, Alex Rodolakis, Laura Shufelt

NAY: None

Motion is made to grant the relief being sought with the following conditions:

- 1. This permit is issued pursuant to Section 240-47.1.A(1) to allow a family apartment of 885 sq.ft. The apartment shall comply with, and be maintained, in full compliance with all other requirements of Section 240-47.1 for a family apartment as-of-right as well as all conditions in this decision.**
- 2. The family apartment unit is to be limited to that of a studio one bedroom unit located in the basement level of an existing single-family dwelling. The unit is to be developed as per plan submitted to the file entitled: "Proposed 1 Bedroom Apartment 23 Old Stage Rd., Centerville, MA dated 8-29-09,**
- 3. The total number of bedrooms permitted on the property shall be as permitted by the Health Agent.**
- 4. All requirements of the Building Division shall be fully complied with to assure that the unit and building meets all applicable codes including building, fire, and health.**
- 5. The Building Commissioner shall verify that the dwelling is being occupied by the owner/applicant as their residence prior to the issuance of any building permit in reliance of this permit.**
- 6. All parking shall be located on-site.**
- 7. Occupancy of the dwelling and the family apartment unit is restricted to family members only and not to exceed two persons. There shall be no renting of the unit or rooms to non-family members.**

Laura Shufelt clarifies that condition #3 has to include the family apartment. Mr. Lennon indicates that he has taken that bedroom into count for the Board of Health requirement.

Seconded

Vote:

AYE: Michael Hersey, William Newton, Craig Larson, Alex Rodolakis, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Laura Shufelt then calls the Kelleher appeal and reads it into the record.

Jared J. Kelleher has applied for a Variance to Section 240.47.1.A Family Apartments. The applicant is seeking the variance for a family apartment to be located in an existing detached accessory structure located on the property. The location of the structure does not conform to the required yard setback, and the area of the apartment exceeds that permitted as-of-right by 160 sq.ft. The property is addressed 30 Ty-Dee Lane, Cotuit, MA. It is shown on Assessor's Map 023 as parcel 028. It is in the Residence F Zoning District.

Members assigned: Michael Hersey, William Newton, Brian Florence, Alex Rodolakis, Laura Shufelt,

Jared Kelleher is here representing himself and gives a summary of relief being sought.

William Newton indicates that it is a dirt road and asks if the family apartment already exists and is told yes. William Newton asks if it has its own septic and is told yes by Mr. Kelleher.

Brian Florence asks about the detached structure and if it is occupied now and since when and if there was an occupancy permit issued for it..

Jared Kelleher indicates that it is occupied, has been since 2004 but does not have an occupancy permit.

Mr. Florence asks Jared Keller if he knows about the family apartment rules and regulations to which he answers yes.

Brian Florence does findings:

Jared J. Kelleher has applied for a Variance to Section 240.47.1.A Family Apartments. The applicant is seeking the variance for a family apartment to be located in an existing detached accessory structure located on the property. The location of the structure does not conform to the required yard setback, and the area of the apartment exceeds that permitted as-of-right by 160 sq.ft. The property is addressed 30 Ty-Dee Lane, Cotuit, MA. It is shown on Assessor's Map 023 as parcel 028. It is in the Residence F Zoning District.

The second building and use exists on the property today and to compel the owners to now create an apartment within the home or as an addition would be impractical. There is also a topographical feature as in temrs of structures as there are two detached buildings on the property that have existed for 39 years. Both of which have a history of being used as habitable structures. The literal enforcement of the family apartment provisions would imply a substantial hardship as the applicant would have to duplicate an apartment unit as an attached structure. The detached building has existed and has been used for some 29 years and as you have heard tonight has its own septic system.

Vote:

AYE: Michael Hersey, William Newton, Brian Florence, Laura Shufelt

NAY: Alex Rodolakis

Brian Florence makes a motion in the matter of Jared J. Kelleher that they vote to approve the family apartment and would further propose that the conditions as written on the staff report on Page 4 with one exception be included in the motion and that is:

- 5. The occupancy of the family apartment unit is restricted one family member only and there shall be no renting of the apartment unit to non-family members and no renting of rooms, lodging permitted for the life of this variance.**

He would strike the first sentence that the occupancy permit is restricted to one family member only

Laura Shufelt clarifies that Brian Florence wants it to be two persons instead of one.

The Board discusses and agrees to not restrict to one, but instead to two people.

Vote:

AYE: *Michael Hersey, William Newton, Brian Florence, Laura Shufelt*

NAY: *Alex Rodolakis*

GRANTED WITH CONDITONS.

Motion to adjourn

Seconded

Meeting adjourned at 7:45 pm.
