



Town of Barnstable
Zoning Board of Appeals
Minutes
March 25, 2009

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday March 25, 2009 at 7:00 PM at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. A quorum was met. Also present were Art Traczyk – Principal Planner and Carol Puckett – Administrative Assistant.

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

Laura Shufelt opens the hearing at 7:03 PM. She reads a summary of the appeals being heard tonight. She indicates that the Fireman appeal is being continued and the Oyster Harbors appeal is being withdrawn. She then calls the Campbell appeal and reads it into the record

Appeal No. 2009-010 – New

**Campbell
Family Apartment Variance**

Matthew and Erica Campbell have applied for a Variance to Section 240-47.1.A Family Apartments. The applicant is seeking the variance in order to utilize an existing apartment located on the property in a detached accessory garage for a family apartment. The property is addressed 6 Cedar Street, Cotuit, MA and is shown on Assessor's Map 018 as parcel 055-001. It is in the Residence F Zoning District.

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

Attorney Michael Schulz is representing the applicants. He indicates that also with him tonight are Mr. Matthew Campbell and Mr. Campbell's father-in-law, Charles Rizzio.

Attorney Schulz gives a brief history of the property and the relief being requested. He indicates that the previous owner, Ms. Sequin, was informed at one point that the apartment was illegal, which in turn, she applied for an amnesty apartment/40B which was granted. Ms. Sequin had then sold the house to the Campbell's who had received a letter that the amnesty apartment had been revoked and that they were required to act. He indicates that Mr. Rizzio rents an apartment locally and that this made sense to have a family apartment. He indicates that the issue before the board, although they are required to meet all the requirements of the family apartment, they cannot meet the requirement that it be attached to the primary residence as the garage with the apartment is detached. He indicates that the apartment has existed for some 23 years and that it provides both an economical and practical use of the structure to allow for a family apartment since the apartment already exists. The detached garage is approximately 40 feet from the main dwelling and would be a substantial hardship financially. The relative placement of the structures on the property is a topographical feature that renders it unique to the property. He also indicates that in May of 2007 a new septic system was installed for 4 bedrooms.

Michael Hersey asks how many bedrooms there are in the primary dwelling. Attorney Schulz indicates it is three bedrooms in the main dwelling and one in the garage.

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

Justin Spence of 46 Pine Ridge Road speaks. He asks what this means for the Pine Ridge Road as far as precedent in the neighborhood and for planning as his understanding was that the original was a 40B. He indicates that in the past it wasn't used for a 40B as there was a lot of traffic and parties. He worries about Pine Ridge as a whole as this is a dirt, small road and that there is a fair amount of traffic. Their real issue is in the summertime as the level and speed of the traffic picks up. What happens is that there is a lot of pedestrian traffic, kids and cars. He asks if the Board is taking into consideration traffic and safety issues.

Laura Shufelt indicates that they take every case individually with the merits before them and in this case it is a pre-existing apartment permitted in the past and will look at it to see if it is a detriment to the neighborhood. She indicates that the overall planning issue is one of private roads and how the neighborhood was set up in the first place. She indicates that if the apartment was within the house that it could've been granted as-of-right but since it is not that is the reason they are here. She indicates that it has been there for 23 years and was permitted previously.

William Newton asks Attorney Schulz to explain how the topography is one of the conditions of the three prong test.

Attorney Schulz indicates that he believes it is the topography, the placement of the buildings on the lot itself.

William Newton does findings.

With respect to 2009-010 for Matthew and Erica Campbell that relates to a variance to Section 240-47.1A(3) Family Apartments.

- 1. The subject property is a 0.45-acre lot developed with a one-story, 1,276 sq.ft., three bedroom, single-family dwelling and a detached 1.5-story, 576 sq.ft. garage. The second floor of the garage is improved with a 544 sq.ft. studio apartment unit.**
- 2. On March 29, 2007, the prior owner of the property, Ms. Mary Jo Seguin was granted Comprehensive Permit No. 2007-027. That permit was issued under the Amnesty Section of the Town's Accessory Affordable Housing Program (Chapter 9, Article II, Section 9-14). That section allows for the issuance of a comprehensive permit and was granted back at that time.**
- 3. In July 2008, Ms. Seguin sold the property to the applicants now before the Board, Matthew and Erica Campbell. Based upon that transfer, on December 11, 2008, the Board's Hearing Officer revoked Comprehensive Permit No. 2007-027.**
- 4. There is in relationship to whether this unit meets the requirements of the zoning bylaw we find that the apartment unit at 544 sq.ft., does not exceed 50% of the square footage of the existing single-family dwelling.**
- 5. The structure authorized in 1985 could be considered as a nonconforming and therefore could not be compelled to be removed so that it exists as a 544 square foot apartment.**
- 6. The unit is to be occupied by the father of Erica Campbell. (William Newton asks if they have submitted anything that would declare that. Attorney Schulz indicates that they have not but that they will procedurally go through that with the Building Division. Attorney Schulz claims that Charles Rizzio will be the occupant but indicates that Mr. Rizzio might have a significant other with him on occasion and would like to make that clear for the record. William Newton continues and indicates that "The applicant understands that the unit shall not be sublet or subleased and an annual affidavit citing the family member occupying the apartment shall be required by the Building Division.**
- 7. Owing to the circumstances related to soil conditions, shape, or topography, he would find that with regard to shape of the unit already exists, shape relates back**

to land and structure, the unit already exists and as it has been said before, it may be considered with respect to meeting setback requirements nonconforming therefore, cannot be compelled to be removed. He thinks it is in the best interest to encourage reuse existing structures.

8. The fact that the second building and the unit exists on the property and to compel the owners to now recreate an apartment within the home or as an addition would be wasteful and impractical. In those respects there is a topographic feature of the two detached building on the property that exists that establishes uniqueness in terms of structures. Also, to compel a literal enforcement of the family apartment provisions would imply a substantial financial hardship to have to duplicate what already exists on the property.

9. The detached building with a second living unit has existed and been used for over 12 years. A new septic system suitable to serve the property.

10. The apartment was only recently installed in 2007 and is up to code, he believes.

Laura Shufelt for a vote on the findings:

Vote:

AYE: Brian Florence

Craig Larson wants to make clear that the septic system was installed in 2007 and not the apartment as stated in the findings. Also, he wants to add that it will not create a substantial detriment to the neighborhood affected.

William Newton accepts the amendment.

Michael Hersey clarifies that the father-in-law would like to leave this open for a significant other. William Newton asks if the apartment would accommodate two people.

Attorney Schulz indicates that it does.

William Newton moves that the variance be granted with the following conditions those appear for the Board's sake on page 4 of the handout material and briefly:

Variance to Section 240-47.1.A(3) to allow for a detached family apartment in an existing detached accessory building located on the property, according to the following conditions::

- 1. The family apartment shall comply with and be maintained in accordance with all conditions herein, as well as all applicable requirements of Section 240-47.1 for a family apartment, including that the family apartment use is nontransferable to future owners.**

- 2. The family apartment shall be maintained as a studio unit as shown in a plan submitted to the Board entitled "Apartment Above Detached Garage (6 Cedar Street)" and as per those submitted to the Building Division in 2007.**
- 3. The applicant shall reapply for a building permit for the unit. All requirements of the Building Division shall be fully complied with to assure that the unit and building meet all applicable codes, including building, fire, and health.**
- 4. All parking for that unit shall be on-site.**
- 5. Occupancy of the family apartment unit is restricted to two occupants one of which shall be a family member. There shall be no renting of the apartment unit to non-family members and no renting of rooms (lodging) permitted during the life of this variance.**
- 6. During the life of this variance, the buildings located on the property shall not be further expanded nor bedrooms added.**
- 7. When the family apartment is vacated or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use of the apartment shall be terminated and this variance shall become null and void. At that time, this variance shall cease and the applicant or property owner shall be responsible for the removal of the kitchen and use of the building as an independent living unit. A building permit for the removal of the unit shall also be required at that time.**

Attorney Schulz would like to change the language in #6 and be changed that no bedrooms be added but should they would like to add something small to the house that the Board consider to allow them to do this.

They discuss not limiting expanding the primary structure.

Art Traczyk comments that they did restrict in #2 to the second level because it says "as per plans" and you are also issuing a variance where you are suppose to attach the family apartment to the home. If they are going to expand that home why don't they meet the ordinance and put that apartment as an attachment to the home. Part of the variance conditions are here because it exists and you want to reuse it.

Attorney Schulz indicates that at the present time the garage is where the apartment is located and being economical and reusing what is there at this point is the practical location for it and didn't want to forgo any options in the future such as in 20 years down the road, should they be looking for more space and wanted to bump out an area of the house, which would not include a bedroom, he wanted to make sure that the language or the condition of the variance would allow for something like that and making sure that they were in compliance with the bedrooms.

Art Traczyk indicates that they could sacrifice the variance, make it null and void and remove the apartment and could expand the house to any size in compliance with zoning.

Michael Hersey comments that if they were to expand the basement they would need a permit for that which would violate the variance and lose the apartment and doesn't think that is fair. He comments what if they have more children and need more space; he doesn't think they should be precluded from that.

Art Traczyk recommends that the garage should not be expanded if they grant this variance and would be tempted to put a limitation onto the house as in some point in time you want it to comply with zoning which is one single family dwelling and a family apartment to be attached to the primary dwelling. He indicates that a family apartment is only supposed to be temporary.

William Newton amends condition #6 indicating that "during the life of this variance the apartment unit located within the garage structure shall not be further expanded or bedrooms added".

Laura Shufelt indicates that she will take a vote just on that amended condition #6.

Craig Larson agrees, Michael Hersey agrees, William Newton agrees, Brian Florence agrees. Laura Shufelt does not agree.

Vote is now taken for granting of the variance:

Vote:

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

NAY: None

GRANTED WITH CONDITIONS

Laura Shufelt then calls the Roy's request for an extension.

By letter dated and received March 24, 2009, Attorney Paul Revere, III, on behalf of Linda H. Roy, has requested a 6-month extension of Bulk Variance No. 2008-027 issued May 13, 2008 to Ms. Roy for property addressed 9 & 29 Boulder Road, Barnstable, MA. The variance was issued to permit an undersized vacant lot addressed as 9 Boulder Road, Barnstable to be separated from the developed undersized lot it has merged with at 29 Boulder Road, Barnstable. The variance was to Section 240-13.E of the Barnstable Zoning Ordinance, Bulk Regulations, Minimum Lot Area that requires a minimum lot area of one acre. The variance was granted to both of the lots as both are under that minimum area requirement. The variance was recorded at the Barnstable Registry of Deeds in Book 22986, Page 346 on June 18, 2008.

Art Traczyk indicates that with the six month extension the new expiration date will be November 12, 2009. Laura Shufelt asks Art to read what the language is for the extension of the variance: "If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such

one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefore, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section”

Art Traczyk indicates that they would need a new variance if the Board does not grant it.

Members assigned: Nik Atsalis, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

The applicant, Mrs. Roy, indicates that she had tried to sell the lot but the real estate market is slow and now wants to convey the lot to her children and just didn't want the time frame to run out.

Michael Hersey makes a motion to grant the extension.

Seconded.

Vote:

AYE: Nik Atsalis, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

NAY: None

SIX MONTH EXTENSION GRANTED

Laura Shufelt calls a 5 minute recess.

Back in session.

Laura Shufelt then calls the Fireman appeal

Appeal No. 2009-006 - Continued

**Fireman
Appeal of the Building Commissioner**

Opened February 11, 2009, continued to March 25, 2009 at request of the applicant.

No Members Assigned - No Testimony Taken

Paul and Phyllis Fireman have appealed the Building Commissioner's letter of November 19, 2008 pursuant to Section 240-125(B)(1)(a), Appeals from Administrative Official. The letter expresses the Commissioner's opinion that 92 South Bay Road, Osterville, Mass., constitutes a single lot and that the demolition of the dwelling on the property and construction of two new dwellings on that property is not allowed under the zoning ordinance. The appellant is requesting that the Zoning Board of Appeals overturn the Building Commissioner's November 19, 2008 letter and find that no zoning relief is required to allow for the construction of two dwelling on the 92 South Bay Road lot. The property is addressed as 92 South Bay Road, Osterville, MA and is shown on Assessor's Map 093 as parcel 042-001. It is in a Residential F-1 Zoning District and the Resource Protection Overlay District.

She indicates that the Attorney Eliza Cox has requested a continuance. Laura Shufelt indicates that this will be continued to May 20th at 7:00 PM

Motion is made to continue

Seconded

Laura Shufelt indicates that members sitting on this will be determined when they open the hearing at that time.

Vote:

AYE: George Zevitas, Brian Florence, Nik Atsalis, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

NAY: None

CONTINUED TO MAY 20, 2009 AT 7:00 PM

Laura Shufelt then calls the Oyster Harbor Club appeal.

Appeal 2008-008 – Continued

**Oyster Harbor Club
Expand/Alter Nonconforming Use**

Originally Opened February 27, 2008, continued; March 12, 2008, April 30, 2008, May 21, 2008, June 11, 2008 and to June 23, 2008, Moved to September 10, 2008, Re-noticed Anew due to the loss in quorum and Opened October 15, 2008, continued December 10, 2008 and to March 25, 2009. 365-day Extension Filed, Decision Due May 28, 2009.

Oyster Harbors Club, Inc. has petitioned for Special Permits pursuant to Section 240-93.B Alteration and Expansion of a Nonconforming Buildings or Structures Not Used as Single or Two-Family Dwellings; and Section 240-94.B Expansion of a Pre-existing Nonconforming Use. The petitioner seeks to remodel an existing 573 sq.ft., children's play center and to add another accessory building consisting of 1,096 sq.ft., to also be used as a children's play center. The buildings and use is accessory to the principal nonconforming use of the property as a country club. The subject property is located as shown on Assessor's Map 053 as Parcel 012 Lot 001, addressed 170 Grand Island Drive, Osterville, MA. It is in a Residence F-1 Zoning District. This appeal is being re-noticed anew for a complete rehearing of the petition.

Members assigned: George Zevitas, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

Laura Shufelt indicates that the applicant's attorney, Douglas Murphy, has submitted a letter requesting to withdraw without prejudice.

Motion is made that the request to withdrawn without prejudice be granted.

Seconded

Vote:

AYE: George Zevitas, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

NAY: None

WITHDRAWN WITHOUT PREJUDICE

Laura Shufelt then calls the Ellis appeal and reads this into the appeal.

Appeal No. 2009-011 - New

**Ellis
Family Apartment Variance**

Susan W. Ellis has applied for a Variance to Section 240-47.1.A Family Apartments. The applicant is seeking a variance for a family apartment to be located in a detached accessory garage located on the property. The property is addressed 393 and 389 Main Street, Centerville, MA and is shown on Assessor's Map 208 as parcel 121. It is in a Residence D-1 Zoning District.

Members assigned: Nik Atsalis, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

John Ellis and Susan Ellis are here representing themselves. John Ellis indicates that they had been here in October of 2008 represented by Attorney Patrick Butler seeking the use of the detached family garage as a separate dwelling unit./ On the advise of Attorney Butler they withdrew their appeal without prejudice. He indicates that there has been a change in their family dynamics since that hearing and one of his family members is now requesting a place to stay and thus they are asking for relief for a family apartment. He indicates that Susan's mother had occupied the apartment from 1986 until she passed away in 2007 and this apartment has its own water, cable, electric and title 5 septic system. He indicates that all permits and fees were accomplished before occupancy and no new construction is proposed by this application. They seek relief from the zoning ordinance that a family apartment be permitted. He indicates that he has a letter from Joseph and Betsy Butera which he submits to the Board.

Laura Shufelt asks who will be living there. Mr. Ellis indicates that he would prefer not to disclose her identity on television.

Laura Shufelt asks Mr. Ellis if he is aware that it has to be that person's primary residence and there is a yearly affidavit that must be done. Mr. Ellis indicates he is aware since he had done it for 23 years for his mother-in-law. She then asks if there is anyone here from the public who would like to speak either in favor or in opposition.

No one speaks.

Laura Shufelt reads the letter from the Butera's into the record. (See attached).

Michael Hersey clarifies that this apartment has its own title 5 septic system.

William Newton does findings.

Susan W. Ellis has applied for a Variance to Section 240-47.1.A Family Apartments

- 1. The applicant is seeking a variance for a family apartment to be located in a detached accessory garage located on the property.***
- 2. The accessory structure is a separate dwelling unit on the lot via a variance of variance from Section 240-14.A - Principal Permitted Uses. That use variance was withdrawn without prejudice upon request of the applicant's representative sometime back.***
- 3. The subject property is a 0.58-acre lot developed with a principal building and a detached accessory building. According to the Assessor's record, the principal building was constructed in the 1850's. It is a 1.5-story, three-bedroom, single-family dwelling of 1,973 sq.ft. The accessory building is a 1.5-story structure that contains an 808 sq.ft., two-bedroom dwelling unit and garage.***
- 4. In 1986, the principal dwelling was issued a septic repair permit for a four bedroom dwelling. The systems installed rely upon cesspools for leaching and are grandfathered systems not in conformity to current Title 5 or local Board of Health requirements.***
- 5. In the case of the family apartment, it was created legally by a special permit issued in 1986. There is no new construction being proposed by this application. The apartment unit at 808 sq.ft., does not exceed 50% requirement of existing square footage existing single-family dwelling. The family apartment complies with the setback requirements for the Residence D-1 Zoning District in which it is located. This apartment will be occupied by one person who is a daughter (unnamed).***
- 6. Owing to circumstances related to soil conditions, shape, or topography with respect to the shape he thinks that again as previous, the unit does exist, has been there for some time and that shape and that requirement meets the requirements of the shape factor.***
- 7. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship.***
- 8. The second building has existed on the property for over 100 years. Use of the family apartment was legally created by special permit and has existed for 23 years. The present family apartment provision does not allow detached units. This fact affects this owner of the property but generally does not affect other lots in the zoning district.***
- 9. To now compel a literal enforcement of the family apartment provisions would imply a substantial financial hardship on the applicants because the unit already exists on the property as a detached structure.***
- 10. The 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.***

11. The use continues as a family apartment it should not constitute a substantial detriment to the public good without nullifying or substantially derogating from the intent or purpose of the zoning ordinance. It has been there, it is there today, and will continue to be used as such.

Vote:

AYE: Nik Atsalis, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

NAY: None

William Newton makes a motion to grant the variance to Section 240-47.1.A Family Apartments with the following conditions as listed on Page 5 of the Staff Report and reads them:

- 1. The family 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 shall be maintained as a one bedroom plus loft as per the plan submitted to the Board in 1986 with Appeal No. 1986- 012, that originally authorized the family apartment. A copy of that plans has also been entered into this file and are so noted in the file.**
- 3. The applicant shall reapply for a building permit for the unit. All requirements of the Building Division shall be fully complied with to assure that the unit and building meet all applicable codes, including building, fire, and health, as well as the condition imposed in this decision.**
- 4. All parking shall be on-site.**
- 5. Occupancy of the family apartment unit is restricted to family member(s), and this case, a daughter, only as their primary residency. There shall be no renting of the apartment unit to non-family members and no renting of rooms (lodging) permitted during the life of this variance.**
- 6. During the life of this variance, the apartment and the garage in which it is located on the property shall not be further expanded nor bedrooms added.**
- 7. When the family apartment is vacated, or upon noncompliance with any condition or representation made including, but not limited to, occupancy or ownership, the use of the apartment shall be terminated and this variance shall become null and void. At that time, this variance shall cease and the applicant or property owner shall be responsible for the removal of the kitchen and use of the building as an independent living unit. A building permit for the removal of the unit shall also be required at that time.**

Seconded

They discuss how many family members can be in the apartment unit. Laura Shufelt asks Mr. Ellis as to how many occupants. They discuss and change it to two members.

Vote:

AYE: Nik Atsalis, Craig Larson, Michael Hersey, William Newton, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

At 8:02, Laura Shufelt calls the next appeal:

**Appeal No. 2009-022 – New
Manager**

4 Our Fathers LLC – Joseph P. Dunn,

Modification Special Permits 2003-60 & 2007-44

4 Our Fathers LLC, Joseph P. Dunn, Manager, has petitioned for a modification of Special Permit Nos. 2003-060 and 2007-044 issued to Buksport, Inc., d/b/a Keeper's Restaurant. The modification is sought to allow for the transfer of the special permits from Buksport, Inc., to 4 Our Fathers LLC as prospective new owners of the business. The subject property is addressed as 330 West Bay Road, Osterville, MA and is shown on Assessor's Map 116 as parcel 013. It is in a Marine Business A2 Zoning District.

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

Attorney Matthew Spillane is representing the applicant. He gives a brief summary of the relief being requested. He indicates that there might be a suggested condition that may not be applicable at this time as a new state-of-the-art exhaust fan was installed and thinks that this might obviate the need for it to be carried over as a condition. He indicates that the applicant had spoken with an abutter and thinks that he had addressed his concern. He indicates that Joe Dunn is going to be the manager and has an interest in the LLC and is the owner of the Island Merchant and is a strong restaurateur. He indicates that Mr. Dunn would be an asset by running this restaurant and that by having this restaurant would be an asset to this area. They are not looking to do anything further or request any changes.

Laura Shufelt asks the Board if they have any questions.

George Zevitas asks why this is to be heard before the Board. Art Traczyk explains that in the special permit it was a condition that any transfer would need to come back before the Zoning Board. Also, if they decided to grant this to this new operation, you may want to look at Condition #8 that carries that language forward and makes it applicable to this applicant.

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

Brian Florence makes findings:

In the matter of Appeal 2009-022, 4 Our Fathers LLC, Joseph P. Dunn, Manager, has petitioned for a modification of Special Permit Nos. 2003-060 and 2007-044. 4 Our Fathers LLC, Joseph P. Dunn, Manager, has established standing to be before the Board requesting transfer of special permits by virtue of a signed and valid Asset Purchase and Sales agreement between Bucksport Inc., and Joe Dunn dated February 17, 2009 and the addendum submitted with the application that it commits Mr. Dunn to assign the agreement to 4 Our Fathers, LLC.

Further, special 2003-060 and 2007-044 were issued pursuant to today's Section 240-94.B of the Zoning Ordinance, Expansion/Alteration of a Nonconforming Use. MGL Chapter 40A Section 14, Powers of the Zoning Board of Appeals, empowers the Board with the authority to modify any decision it makes. In addition, the permits issued specify that they are transferable to future owners by permission from the Board. Therefore, the Board is authorized to act on the request before them.

This application before the Board is only seeking a transfer of the prior permits issued for the restaurant use to a new corporate identity and manager. It is not seeking any other modification of the prior conditions and restrictions imposed or an intensification of the use. Therefore, the proposed modification does not represent a change from what has been occurring on the site since 2001 and to grant the modification would not represent a substantial detriment to the public good or the neighborhood affected and would not derogate from the intent of the bylaw.

The application before the Board does not propose any alteration of modification to the property and site. The new applicant is to operate the business and maintain the site as the prior applicant has and therefore there is no need for an updated site plan review.

Vote:

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

NAY: None

Brian Florence makes a motion to issue a new single special permit with Conditions #1 through #7 as stated in the Staff Report.

Seconded.

They discuss Condition #4 and agree to remove it pertaining to the baffles and sound insulation material so that the noise reduction devices be maintained. Laura Shufelt asks Attorney Spillane if he is agreeable to the language. He agrees.

Vote:

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

NAY: None

GRANTED WITH CONDITIONS

Laura Shufelt indicates that she had not had time to review the previous minutes and will do so at the next meeting.

Motion to adjourn

Seconded

Meeting adjourned at 8:17 PM.