

Town of Barnstable
Zoning Board of Appeals
Minutes
September 16, 2009

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday September 16, 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 – Regulatory Review Design Planner and Carol Puckett – Administrative Assistant.

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

Laura Shufelt opens the hearing at 7:02 PM. She gives a summary of the appeals being heard tonight.

She reads both appeals into the record:

Appeal No. 2009-041 – Continued

**Waldron/Northeast Marketing Group
 Appeal of the Building Commissioner**

Opened August 5, 2009, continued to September 16, 2009, at the request of the applicant.

Timothy J. Waldron, Trustee of Northeast Marketing Group Realty Trust has appealed the May 19, 2009 decision of the Building Commissioner that the subject property, 1330 Phinney's Lane, Hyannis, MA, does not have the zoning benefits of the Medical Services Overlay District (MSOD) as it is zoned Residence F-1. The appellant had requested the Board confirm that its property is included within the Medical Services Overlay District and that it is located within its boundaries and subject to, and benefited by, the provisions of that overlay district. The property is addressed as 1330 Phinney's Lane, Hyannis, MA. It is shown on Assessor's Map 274 as parcel 016/X02. It is in a Residence F-1 Zoning District.

Appeal No. 2009-045 – Continued

**Waldron/Northeast Marketing Group
Modification of Use Variance No. 1995-109**

Opened August 5, 2009, continued to September 16, 2009, at the request of the applicant.

Timothy J. Waldron, Trustee of Northeast Marketing Group Realty Trust has petitioned for a modification of Condition No. 2 of Use Variance No. 1995-109. The petitioner is requesting that Condition No. 2 be changed to include the use of the building for medical offices (including, without limitation, offices for physical therapy and chiropractic services) and/or dental offices as allowed for in Medical Services Overlay District (MSOD). The property is addressed as 1330 Phinney's Lane, Hyannis, MA. It is shown on Assessor's Map 274 as parcel 016/X02. It is in a Residence F-1 Zoning District.

Members assigned: James McGillen, Craig Larson, Michael Hersey, Brian Florence, Laura Shufelt

Attorney Eliza Cox is representing the applicant. Attorney Cox indicates that also here tonight are Mr. Chris Coy and Mr. Mike Degnan who are principals of the entity who own the subject property. Also, Attorney John Kenney is here representing the potential purchaser, Dr. Lucia McNabb who is also here.

Attorney Cox indicates that she would like to proceed with the use variance and if granted, they would be prepared to withdraw without prejudice the other petition.

Attorney Cox shows a PowerPoint presentation (see attached) and gives the particulars of the property in regards to location. . She indicates that Realty Executives presently occupies the building and that there will be no alteration as proposed to the exterior. She shows pictures of the property on the presentation. She then goes over the use variance: 1995-109. She shows a MSOD slide and explains its definition. She then talks about the roadway improvements sine the granting of the use variance. She then hands out proposed conditions to the Board Members.

Laura Shufelt then asks if the Board Members have any questions.

James McGillen comments that he doesn't have a problem with the petition but as to the MSOD it states in the bylaw that it overlays an industrial zoning district. He thinks that there would be a lot of bulk restriction problems that need to be varied. He is concerned about the parking for the potential 3 offices.

Attorney Cox indicates that in the proposed conditions was a limitation on full-time physicians or dentists that would be operating from this building and were proposing 6 which would allow Dr. McNabb to expand her use when she took the full office building for medical purposes.

James McGillen asks if it would 6 in one office.

Attorney Cox consults with Attorney Kenney and answers yes.

Michael Hersey asks how many full-time employees as opposed to full-time doctors to be proposed on-site. If they are talking licensed MD's would there be nurse practitioners, are they excluded from that?

Attorney Cox consults with Attorney Kenney and Dr. McNabb and states that presently Dr. McNabb operates by herself but has estimated that there would be 12 people total (up to 6 physicians, 2 medical assistants, plus 4 staff). The medical assistants would not see patients individually but prep them for the doctor.

James McGillen asks for further clarification.

Attorney Cox consults with Attorney Kenney and states that Dr. McNabb would like the ability to have up to 3 different tenants using the building and would estimate that it would be up to 15 people spread out over the 3 tenants and that the 12 would not be just in here suite, it would 15 spread out throughout the building.

James McGillen asks if they Board made a restriction limiting it to 15 people if that would be a problem.

Attorney Kenney speaks and indicates that they are just estimating and that they don't know how it is going to evolve. He indicates that Dr. McNabb would like to grow her own practice and would like to sublease out to other doctors. He indicates that they meet the criteria for parking and asks the Board to consider that.

The Board discusses.

Attorney Kenney asks the Board if it would be limited to 15 employees, doctors and staff.

James McGillen indicates that he is not suggesting any number but recommends talking with staff as to how many patients will transpire in and out of the facility on a daily basis. .

Michael Hersey asks if there were part-time real estate employees and part-time doctors, would the cap still apply?

Mr. Coy and Mr. Degnan signal yes.

Art Traczyk asks if this is broken up into 3 suites currently.

Attorney Cox indicates that presently they are not.

Art Traczyk asks if they look at this as in terms of 15 maximum employees with 5 in each suite.

Attorney Kenney is concerned that the units are not defined right now and they could have one larger suite.

They discuss parking.

Laura Shufelt asks if there is anyone here from the public who would like to speak. No one speaks.

Laura has a question about proposed condition #3 about medical/dental offices and where the definition came from.

Attorney Cox indicates that she took the reference regarding medical/dental offices from the Hyannis Village Business/GIZ area.

Laura Shufelt asks if there is a definition in the MSOD.

Attorney Cox indicates that she could not find one.

Craig Larson asks about site plan review. Attorney Cox reads the definition of the site plan review and that this had gone before Site Plan Review in 1999.

Craig Larson does findings on 2009-045.

Appeal No. 2009-045 Timothy J. Waldron, Trustee of Northeast Marketing Group Realty Trust has petitioned for a modification of Condition No. 2 of Use Variance No. 1995-109. The petitioner is requesting that Condition No. 2 be changed to include the use of the building for medical offices (including, without limitation, offices for physical therapy and chiropractic services) and/or dental offices as allowed for ~~in Medical Services Overlay District (MSOD)~~. The property is addressed as 1330 Phinney's Lane, Hyannis, MA. It is shown on Assessor's Map 274 as parcel 016/X02. It is in a Residence F-1 Zoning District.

This application is seeking to modify the existing use variance to allow for medical offices in addition to the existing use permitted by Use Variance No. 1995-109. More specifically the proposed modification of Condition No. 2 is to read:

" Use of the proposed building shall be limited to professional offices and/or licensed real estate broker's offices, medical offices (including, without limitation, offices for physical therapy and chiropractic services) and/or dental offices. At no time shall more than three separate businesses be located in - or operate from - this building."

It is the findings of this Board that this modification variance will be modified subject to these findings.

The subject premises is addressed as 1330 Phinney's Lane, Hyannis, MA. It is shown on Assessor's Map 274 as parcel 016/X02.

The property consists of 1.34 acres of land and located in a Residence F-1 Zoning District.

Since the granting of the use variance in 1999, there have been significant changes in the immediate vicinity of the subject property. These changes include: completing construction of

Attucks Lane Extension, adopting the Medical Services Overlay District, signaling the intersection of Phinney's Lane and Attucks Lane Extension, and the Route 132 Improvements, including the upgraded signalization with dedicated left turn lanes at the intersection of Route 132 and Phinney's Lane.

In Appeal No. 1995-109, the Board has already found that owing to unique conditions of the locus, that a literal enforcement of the ordinance would result in a substantial hardship because a "residential use can not be made of the property."

As a result of the changes to the area and roadways which have occurred since the use variance was originally granted, the Board finds that the modification requested by the applicant may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the purpose or intent of the Zoning Ordinance, subject to the conditions contained herein.

Seconded

Vote:

AYE: Brian Florence, Craig Larson, James McGillen, Michael Hersey, Laura Shufelt

NAY: None

Craig Larson makes a motion to grant the modification of use variance 2009-045 in favor of the findings that were presented with the conditions as presented by Attorney Eliza Cox., #1 through 4 with # 4 being amended to 6 full-time equivalent FTE. doctors or dentists and 9 support staff. He asks if that is correct. Laura believes that is what they agreed to.

Seconded

Art Traczyk asks for clarification on 6 full-time equivalent doctors or 6 doctors.

Craig Larson amends #4 on the conditions to read that the maximum of 15 employees for the entire building as presented.

They discuss.

Craig amends #4 again to read that it will be 15 employees on premise explaining that it could be 10 medical employees and 5 real estate employees.

Seconded

Vote:

AYE: Brian Florence, Craig Larson, James McGillen, Michael Hersey, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Appeal No. 2009-041 Timothy J. Waldron, Trustee of Northeast Marketing Group Realty Trust has appealed the May 19, 2009 decision of the Building Commissioner that the subject property, 1330 Phinney's Lane, Hyannis, MA, does not have the zoning benefits of the Medical Services Overlay District (MSOD) as it is zoned Residence F-1. The appellant had requested the Board confirm that its property is included within the Medical Services Overlay District and that it is located within its boundaries and subject to, and benefited by, the provisions of that overlay district. The property is addressed as 1330 Phinney's Lane, Hyannis, MA. It is shown on Assessor's Map 274 as parcel 016/X02. It is in a Residence F-1 Zoning District.

Attorney Eliza Cox then requests a withdrawal without prejudice of appeal 2009-041.

Motion is made to withdraw without prejudice.

Seconded

Vote:

AYE: Brian Florence, Craig Larson, James McGillen, Michael Hersey, Laura Shufelt

NAY: None

WITHDRAWN WITHOUT PREJUDICE

Laura Shufelt then calls the Sweeney/Mullaly appeal at 7:50 PM. She reads it into the record.

Appeal No. 2009-044 - New

**Sweeney/Mullaly
Alter/Expand Nonconforming Use**

Karen I. Mullaly-Sweeney and Michael Sweeney have applied for a Special Permit pursuant to Section 240-92(B) Nonconforming Buildings or Structures Used as Single and Two-Family Residences and Section 240-94(B) Expansion of a Nonconforming Use. The applicants are seeking relief in order to alter and expand the existing nonconforming two-family use by constructing a new cottage to rear of property and converting the existing cottage structure into a garage. The property is addressed 4364 Falmouth Road (Route 28), Cotuit, MA. It is shown on Assessor's Map 024 as parcel 025 and is zoned Residence F.

Members assigned: Craig Larson, Michael Hersey, James McGillen, Alex Rodolakis, Laura Shufelt

Karen Mullally-Sweeney and Michael Sweeney are here representing themselves. Michael Sweeney speaks and explains the history of the property. He gives a summary of the relief being requested.

James McGillen asks if there is anyway they can move the garage 3.7 feet of the property line.

Mr. Sweeney says that they were hoping to use the existing slab as the foundation of the garage but if they have to move it they will.

James McGillen asks if it would impede on the septic system.

Mr. Sweeney indicates that they are proposing to upgrade the septic system and will be moved to accommodate the cottage.

Laura Shufelt asks if there is anyone from the public who would like to speak. No one speaks.

Laura asks if they are agreeable to the conditions as outlined in the staff report.

Mr. Sweeney indicates that they are okay with them and if they have to move the proposed building 10 feet, that they will do it.

The Board discusses suggested condition #1. They agree to strike out part of #1 of the suggested conditions:

Laura Shufelt asks about the tenant and the applicants indicate that the tenant was aware of what they were proposing but will have first preference after it is complete.

Craig Larson makes findings:

Karen I. Mullaly-Sweeney and Michael Sweeney have applied for a special permit pursuant to Section 240-92(B) Nonconforming Buildings or Structures used as Single and Two-Family Residences and Section 240-94(B) Expansion of a Nonconforming Use. The applicants are seeking relief in order to alter and expand the existing nonconforming two-family use by constructing a new cottage to the rear of the property and to convert the existing cottage structure into a garage. The property is addressed 4364 Falmouth Road (Route 28), Cotuit, MA. It is shown on Assessor's Map 024 as parcel 025 and is zoned Residence F.

The subject property is a 0.98-acre lot developed with two residential structures. The principal dwelling is a 2,038 sq.ft., one-story, three-bedroom, single-family dwelling. The second dwelling is one-story, one-bedroom cottage of 624 gross sq.ft.¹ According to the Assessor's record, both structures date to 1955².

In addition to the nonconforming two-family use, the cottage structure is nonconforming to the required 15-foot side yard setback and both the principal and cottage buildings are nonconforming to the required 100-foot front yard setback off Route 28. According to the engineered plan submitted, the cottage now sits 76.8 feet off Route 29 and 6.3 feet off the westerly property line.

The applicants are seeking to alter and expand the nonconforming use of property by:

- building a new one-story, one-bedroom cottage structure of 624 gross sq.ft., located to the rear of the property in conformity to the required setbacks for the districts, and**

¹ The 624 gross building area was taken from the engineered plan submitted.

² Note – From a search of past deeds, it appears that structures existed on the lot prior to 1949.

- **demolish the existing cottage structure and rebuild a new 624 sq.ft., two-car garage in the exact nonconforming location as the existing cottage.**

That the application falls within a category specifically excepted in the ordinance for a grant of a special permit,

That after evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the zoning ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.

Seconded

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, Alex Rodolakis, Laura Shufelt

NAY: None

Craig Larson makes a motion to grant appeal 2009-044 with the following conditions:

- ~~1. The alterations and expansion of the structure shall be in accordance with plans submitted to the Board. The plot plan for the additions is titled "Plan of Land at 4364 Falmouth Road, Cotuit, Massachusetts; Prepared for Michael Sweeney, et ux;" as drawn by Baxter Nye Engineering & Surveying dated 10-20-08, Page C-1, with the exception that the proposed new garage shall be relocated no closer than 10 feet off the westerly property line and 76.8 feet off Route 28.~~**
- 2. The cottage dwelling to be rebuilt on the property shall be limited to a one-bedroom, one-story dwelling not to exceed 624 gross sq.ft. and shall be developed substantially in conformity to plans submitted entitled "One Bedroom Cottage for; Mike and Karen Sweeney" as drawn by Kenneth Sadler, Jr., consisting of four pages (A100, A200, A400, A500) with a revision date of 6/11/07**
- 3. The accessory garage to be added to the property shall not exceed one-story, 28 feet by 24 feet and shall be built substantially in conformity to plans submitted entitled "New Two Car Garage for; Mike and Karen Sweeney" as drawn by Kenneth Sadler, Jr., consisting of two pages (A100, A500) with a revision date of 6/8/07**
- 4. The property shall not be divided nor shall the cottage dwelling be sold or transferred into separate ownership.**
- 5. The total number of bedrooms on the property shall not exceed four.**
- 6. There shall only be one curb-cut on Route 28.**
- 7. All construction shall conform to all applicable building codes, fire regulations and health requirements.**
- 8. This decision must be recorded at the Barnstable County Registry of Deeds and a copy of that recorded document must be submitted to the Zoning Board of Appeals office and to the Building Division at the time a building permit application is made. The relief authorized must be initiated within two year of the granting of this permit.**

Seconded.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, Alex Rodolakis, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Laura Shufelt then calls appeal 2009-058 and reads it into the record.

Appeal No. 2009-058

**MetroPCS Massachusetts, LLC.
Modification Variance No's. 2004-044 & 2000-031**

MetroPCS Massachusetts, LLC, as lessee, has applied for a modification of Variance No's. 2004-044 and 2000-031. The modification seeks to operate additional Personal Wireless Communication on the existing communications tower and provide for the installation of additional antennas and necessary ground equipment at the base of the tower. The property is addressed 1047 Falmouth Road (Route 28), Hyannis, MA and is shown on Assessor's Map 250 as parcel 004. The property is zoned Residential D-1 and is within a Groundwater Protection Overlay District.

Members assigned: Craig Larson, Michael Hersey, James McGillen, George Zevitas, Laura Shufelt

Gerry Squires is here representing the applicant. He indicates that with him is Brian Asons who is a radio frequency engineer who can answer more technical questions. Gerry Squires then gives a background of the existing variances.

Laura Shufelt asks if this is the tower that has the osprey nest on top.

Gerry Squires indicates that he is not positive but knows that there is a certain time when they can do work on the towers and asks if they are okay with that, which they are.

Laura Shufelt asks if they saw the conditions setbacks from the cesspools etc.

Gerry Squires indicates that they would comply with those conditions.

Laura Shufelt notes that there is no one from the public here to speak either in favor or in opposition.

James McGillen does findings:

The applicant is here asking representing MetroPCS Massachusetts, LLC, as lessee, asking for relief in order to modify has Variance No's. 2004-044 and 2000-031. The modification seeks to operate additional Personal Wireless Communication on the existing communications tower and provide for the installation of additional antennas and necessary ground equipment at the base of the tower. The property is addressed 1047 Falmouth Road (Route 28), Hyannis, MA and is shown on Assessor's Map 250 as parcel 004. The property is zoned Residential D-1 and is within a Groundwater Protection Overlay District.

The petitioner seeks to add additional antennas to an existing tower and does not propose to add any additional towers or base site area at the foot of the tower. This relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, George Zevitas, Laura Shufelt

NAY: None

James McGillen makes a motion to grant the modifications subject to the following conditions:

This modification of Variances No. 2004-044 and No. 2000-031 is granted to MetroPCS Massachusetts, LLC for the co-location and operation of communication facilities on the existing tower at 1047 Falmouth Road (Route 28), Hyannis, MA subject to the following:

The installation and operation is limited to that of three flush mounted communication antennas, including installation of associated ground equipment and a GPS antenna as shown on plans submitted and approved by the Site Plan Review Committee entitled "metroPCS Unlimit Yourself HYN0016A Crown 875052 Hyannis 1047 Falmouth Road Hyannis, Massachusetts 02601 Barnstable County" consisting of 7 sheets as drawn by AEG Advanced Engineering Group, P.C. last dated 8/5/09.

Condition 8 of the variances is changed to read:

8) There shall be no more than nine (9) antennas from Sprint Spectrum, LLP, two (2) whip antennas, three (3) T-Mobile flush mounted antennas and three (3) MetroPCS flush mounted antennas mounted to the Tower.

All other conditions of Variance No. 2000-031 shall remain in full effect and the following added conditions imposed:

9) The location of any new concrete pad(s) shall maintain a 10-foot setback from all cesspools and leaching fields.

Seconded

AYE: Craig Larson, Michael Hersey, James McGillen, George Zevitas, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Motion to adjourn

Seconded

All in favor.

Open – Chairman’s Discussion
