



**Town of Barnstable**  
**Zoning Board of Appeals**  
**Minutes**  
**March 10, 2010**

***A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday March 10, 2010 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	Present
Brian Florence	Absent
George Zevitas	Present

***Laura Shufelt opens the hearing at 7:02 PM. She reads a summary of the appeals to be heard tonight. She then calls the Olsen appeal and reads the appeal into the record.***

**Appeal No. 2010-002 - Continued**

**Olsen  
Bulk Variance for an Undersized Lot**

Opened January 13, 2010, continued to March 10, 2010  
No Members Assigned – No Testimony Taken

Christopher J. & Carol J. Olsen have applied for a Variance to Section 240-14.E - Bulk Regulations and to Section 240-36 - Resource Protection Overlay District to allow for the construction of a single-family dwelling on a lot with 0.92-acres of upland when zoning now requires a minimum lot area of 2-acres of upland. The property is addressed 26 Trudy Lane, Cotuit, MA. It is shown on Assessor's Map 021 as parcel 104. It is in a Residence F Zoning District and in the Resource Protection Overlay District

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

**Attorney John Kenney is here representing the Olsen's. He indicates that he had previously represented the original applicant's, the Cadzow's. The original variance has expired and the Cadzow's want to sell this lot to the Olsen's. He gives the background of the lot and a history of the zoning changes up to today. He indicates that over the history of it being a vacant lot, it became a dumping ground and was subsequently cleaned up. He indicates that in 1983 the zoning change made it a nonconforming unbuildable lot and there is no other land that can be acquired to make this a conforming lot. All neighboring lots have been built upon. He indicates that as in the hearing of 2003, the cedar swamp that juts into Lot #8 is a topographical condition that directly affects this lot and relates to a variance condition. The lot is similar in size to other lots and would not be a detriment to the neighborhood. There is no more land to add to it for it to become conforming and that the conditions so stated in the previous relief granted in 2003 are the same. He indicates that it would be used for a single family residential dwelling. He gives a summary of the house specifics of what the Olsen's want to build.**

**William Newton wants to verify if it meets all the requirements of Title V.**

**Attorney Kenney indicates that it does conform and that they could build a 4 bedroom but only want a 3 bedroom house.**

**Laura Shufelt asks if there is anyone from the public who would like to speak either in favor or in opposition. No one speaks.**

**William Newton makes findings:**

**With respect to the variance request for minimum lot size at 26 Trudy Lane:**

- 1. The lot was created as a buildable lot and that it was being taxed as a buildable lot.**
- 2. All the neighboring lots are developed and there is no surplus land available to add to the lot to make it conform to the two-acre requirement.**
- 3. The lot is similar in area to neighboring lots and it can be developed in conformance to all other zoning requirements**
- 4. The variance conditions were found it terms of topography as a portion of the lot was encumbered with wetlands and that fact created the hardship.**
- 5. That the proposed dwelling can be located on the lot to conform to all other zoning requirements.**
- 6. The improvements are all located outside of 100 feet to wetlands and therefore should be possible without an Order of Conditions from the Conservation Commission.**
- 7. The proposed on-site septic appears to conform to all Board of Health Regulations and Title 5.**

**Vote:**

**AYE: George Zevitas, Craig Larson, Michael Hersey, William Newton**

**Laura Shufelt wants to amend the findings to remove the finding about it being taxed as a buildable lot and that it be omitted.**

*They Board discusses and agree to omit that finding.*

**Vote:**

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

**NAY:** *None*

**William Newton makes a motion to grant the variance for Bulk Regulation in Section 240-14.E and 240-36 for the lot at 26 Trudy Lane in Cotuit, Massachusetts subject to the following conditions:**

- 1. This variance is granted only to the minimum lot area requirements of Section 240-14.E, Bulk Regulations and Section 240-36, Resource Protection Overlay District. All other zoning regulations shall apply.**
- 2. The lot shall be developed in substantial conformance with the plans submitted to the Board entitled "Plans for Christopher and Carol Olsen 26 Trudy Lane, Cotuit, MA 02635", dated October 2009 and consisting of 8 sheets.**
- 3. Construction shall comply with all applicable Building Division and Conservation Commission requirements and shall comply with Board of Health Title 5 requirements without variance.**
- 4. All mechanical equipment associated with the dwelling, including; air conditioners, electric generators, etc., shall be located so as to conform to the required setbacks for the district and screened from neighboring homes and the public right-of-way.**

**Seconded.**

**Vote:**

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

**NAY:** *None*

## **GRANTED WITH CONDITIONS**

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**Laura then calls the Gregory appeal and indicates that there is a letter from Attorney Albert Schulz requesting that this be continued to April 14, 2010 at 7:00 PM**

**Appeal No. 2010-003 - Continued**

**Gregory  
Expand Nonconforming Structure & Accessory Uses**

Opened January 27, 2010, continued to March 10, 2010  
No Members Assigned – No Testimony Taken

Nathaniel A. Gregory has petitioned for a Special Permit pursuant to Section 240-93 B – Alteration or Expansion of a Pre-existing Nonconforming Structure and a Special Permit pursuant to Section 240-44 A – Accessory Uses. According to the application submitted,

the petitioner seeks the "construction of a pier to replace a prior pier" on an accessory lot located across the road from the principal lot on which the single-family dwelling it serves is located. The principal residential lot is addressed 428 Wianno Avenue, Osterville, MA and is shown on Assessor's Map 163 as Parcel 024. The accessory lot is addressed 320 East Bay Road, Osterville, MA and is shown on Assessor's Map 163 as Parcel 020. Both lots are in a Residential F-1 Zoning District.

***Laura Shufelt makes a motion to continue this to April 14, 2010 at 7:00 PM***

***Vote:  
All in favor***

**CONTINUED TO APRIL 14, 2010 at 7:00 PM**

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***Laura Shufelt then calls the Curley appeals and reads them into the record.***

**Appeal No. 2010-004 - Continued**

**Curley  
Variance Bulk Regulations, Yard Setbacks**

Opened January 27, 2010, continued to March 10, 2010. This appeal was continued to allow for a second bulk variance application to correct the infringement of the existing garage.

James P. Curley and Stacey A. Curley have applied for a Variance to Section 240.11 (E) – Bulk Regulations – Yard Setbacks. The applicants seek to construct an addition to the existing dwelling that will have a 19.3-foot setback off Maple Road where zoning requires a 30-foot setback. The property is addressed 287 Fuller Road, Centerville, MA and is shown on Assessor's Map 189 as parcel 084. It is in a Residence D-1 Zoning District.

***Members assigned tonight: George Zevitas, Alex Rodolakis, Craig Larson, Laura Shufelt***

***Laura Shufelt informs Mr. Curley that there are only 4 members that can hear this and asks him if he would like to go forward.***

***Mr. Curley chooses to go forward with 4 members.***

***The board discusses and then decides to open the garage variance before deciding the addition variance.***

***Laura Shufelt then calls 2010-006 and reads it into the record:***

James P. Curley and Stacey A. Curley have applied for a Variance to Section 240.11 (E) – Bulk Regulations – Yard Setbacks. The applicants are seeking relief from the front yard setback for an existing garage that has a 26.3-foot setback off Fuller Road where zoning requires a 30-foot setback. The property is addressed 287 Fuller Road, Centerville, MA and is shown on Assessor's Map 189 as parcel 084. It is in a Residence D-1 Zoning District

***Members assigned: George Zevitas, Alex Rodolakis, Craig Larson, Michael Hersey, Laura Shufelt***

***Mr. Curley speaks and indicates that they didn't know there was a mistake with the setbacks of the garage and that they wouldn't have found it out if they didn't get a new site plan. He indicates that if they have to move the garage it would be a financial hardship and that it would not be a detriment where it is currently as they have not had any complaints in 6 years. He indicates that he also has a***

*neighbor here to support them in this request. . Also, if they had to move the garage back, besides the other hardships, that his yard dips down.*

*No questions from the Board to the applicant.*

*Craig Larson makes findings:*

*In Appeal 2010-006, James P. Curley and Stacey A. Curley have applied for a Variance to Section 240.11 (E) – Bulk Regulations – Yard Setbacks. The applicants are seeking relief from the front yard setback for an existing garage that has a 26.3-foot setback off Fuller Road where zoning requires a 30-foot setback. The property is addressed 287 Fuller Road, Centerville, MA and is shown on Assessor’s Map 189 as parcel 084. It is in a Residence D-1 Zoning District*

- 1. The garage has existed in this location for over 6 years without any objection or complaint being filed; therefore, it could be assumed that there is no substantial detriment to the public good.*
- 2. And, the 3.7-foot infringement into the required 30-foot front yard setback does not substantially derogate from the intent or purpose of the bulk regulations.*
- 3. And owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable 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 or by-law.*

*Vote:*

*AYE: George Zevitas, Alex Rodolakis, Craig Larson, Michael Hersey, Laura Shufelt*

*Nay: None*

*Craig Larson makes a motion that this Board approve 2010-006 with the following conditions:*

- 1. This variance is granted to allow for an existing detached garage built in 2004 to remain as an infringement into the required 30-foot front yard setback off Fuller Road by 3.7 feet.*
- 2. There shall be no further expansion of the garage structure without permission from the Board.*
- 3. Use of the garage is limited to that as accessory to the dwelling. No area of the garage structure shall be converted to a sleeping area.*
- 4. Within one year from the issuance of this variance it shall be recorded at the Barnstable Registry of Deeds and proof of the recorded submitted to the Zoning Board of Appeals Office and the Building Division. No building permit shall be issued to the property until proof of the recording is submitted.*

*Seconded.*

*Vote:*

*AYE: George Zevitas, Alex Rodolakis, Craig Larson, Michael Hersey, Laura Shufelt*

*Nay: None*

## **GRANTED WITH CONDITIONS**

*Laura Shufelt then goes onto the request for the addition.*

*Mr. Curley gives reasons for why this needs to be placed where proposed. They would have to move the driveway and to move would not be economically feasible and that this would not be a detriment to the neighborhood. Topographically, there is no other place to move it. He indicates that they have also submitted 4 letters in support from neighbors.*

*Laura Shufelt indicates that she is going to re-open the last appeal for the garage as she did not ask for public comment. She reads the appeal into the record again.*

*She re-assigns: George Zevitas, Alex Rodolakis, Michael Hersey, Laura Shufelt*

*She then asks if there is anyone here from the public who would like to speak either in favor in opposition. No one speaks.*

*Laura indicates that based on the previously voted findings and conditions the Board would grant the variance for the garage.*

*Laura then goes back to 2010-004 and asks for any public comment.*

*Mr. Finbarr Phelan of 187 Old Stage Road, who is an abutter, is in support of the Curley's request for a variance.*

*Craig Larson makes findings:*

*James P. Curley and Stacey A. Curley have applied for a Variance to Section 240.11 (E) – Bulk Regulations – Yard Setbacks. The applicants seek to construct an addition to the existing dwelling that will have a 19.3-foot setback off Maple Road where zoning requires a 30-foot setback. The property is addressed 287 Fuller Road, Centerville, MA and is shown on Assessor's Map 189 as parcel 084. It is in a Residence D-1 Zoning District.*

*This application, seeks a bulk variance to expand the existing dwelling with an addition that measures 36 feet by 14 feet. The proposed location of the addition infringes into the required 30-foot front yard setback off Maple Street by 10.7 feet.*

*According to information submitted, the addition is to accommodate a master bedroom and bath. No elevations were submitted with the application, and the Board should confirm the height, number of stories, and the total gross area to be added.*

*According to the Assessor's record, the existing dwelling is a four-bedroom 1.5 story dwelling with a living area of 1,296 sq.ft. that dates to 1953. The property also has a 900 sq.ft. detached garage and an accessory shed.*

*Maple Street is a developed way with a right of way the measures 40-feet wide*

- 1. Owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located; mainly the frontage on two streets**
- 2. A literal enforcement of the provisions of the Zoning Ordinance would involve substantial hardship, financial or otherwise to the petitioner, and**
- 3. 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**

**Vote:**

**AYE: George Zevitas, Alex Rodolakis, Craig Larson, Michael Hersey, Laura Shufelt**

**Nay: None**

**Craig Larson makes a motion that this Board grant Appeal 2010-004 subject to the following conditions:**

- 1. This variance is granted to allow for an addition to the existing dwelling that will infringe into the required 30-foot front yard setback off Maple Street by 10.7 feet. The addition shall be located as per a proposed site plan submitted and entitled Variance Plan as drawn by hs&t group, inc., dated 12-10-09.**
- 2. The addition is limited to no more than 1.5-stories.**
- 3. The on-site septic system shall conform to all requirements of Title 5.**

**Seconded**

**Vote:**

**AYE: George Zevitas, Alex Rodolakis, Craig Larson, Michael Hersey, Laura Shufelt**

**Nay: None**

## **GRANTED WITH CONDITIONS**

**Laura Shufelt then calls Appeal 2005-054 & 2008-055 – Shallow Pond Nominee & Sixty North Street Realty Trust request for time extension and reads it into the record:**

**Special Permits Nos. 2008-054 & 2008-055**

**Requests for a One-Year Extension  
Shallow Pond Nominee/Sixty North Street Realty Trust**

By a letter dated February 11, 2010, Attorney Peter L. Freeman has requested a one-year extension of Special Permits Nos. 2008-054 and 2008-055, issued to Shallow Pond Nominee Trust and Sixty North Street Realty Trust. The Conditional Use Permit (No. 2008-054) authorized a proposed bank development to include drive through banking. The other Special Permit (No. 2008-055) allowed for a reduction in the required on-site parking from 59 to 52 spaces.

The subject property is addressed 1555 and 1573 Iyannough Road (Route 132), Hyannis, MA. It is shown on Assessor's Map 253 as parcels 016, 019-B00 and 019-T00. It is zoned Highway Business.

The existing 2008 permits have been retroactively extended to October 8, 2010 as provided for in Section 240-125.C(3)(b). This request is made pursuant to Section 240-125.C(3)(a) of the Zoning Ordinance that provides for an additional one year extension of a special permit (to October 8, 2011 "upon a showing of good cause").

***Laura Shufelt indicates that Mr. Freeman had sent a memo detailing his assertions for good cause relating to financial/economic difficulties.***

***William Newton moves to grant the one year extension for Special Permits 2008-054 & 055 and that they be granted pursuant to what is allowed within the zoning bylaw provisions and in support of that they find that to this point in time the market remains soft and the credit crisis continues and it is proven virtually impossible to proceed with financing such as the building proposal going forward..***

***Seconded***

***Vote:***

***All in favor.***

## **EXTENSION GRANTED**

***Minutes to be approved for November 18, 2009, December 2, 2009, December 9, 2009, December 30, 2009, January 13, 2010 and January 27, 2010.***

***Motion to approve the minutes***

***Seconded.***

***Vote:***

***All in favor***

***Laura Shufelt then indicates that Councilor Rugo and Barry are the new ZBA liaisons. Also, she indicates that the members should've received a memo for the Citizen Planner to be held in Worcester and believes the town will pay tuition but not travel cost.***

***Motion to adjourn***

***Seconded***

***Meeting adjourned at 8:40.***