



Town of Barnstable
Zoning Board of Appeals
Minutes
August 25, 2010

The following hearings will be held at Barnstable Town Hall, 367 Main Street, Hyannis, MA, Hearing Room, 2nd Floor.
Meeting notice previously filed with Town Clerk

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

Laura Shufelt opens the hearing at 7:08 PM. She reads a summary of the appeals being heard tonight. She then calls the Sullivan appeal and reads it into the record:

7:00 PM Appeal No. 2010-024 - Continued Sullivan
Variance to Developed Lot Protection

Opened, August 11, 2010 continued to August 25, 2010.

No Members assigned. No testimony taken.

Hard copy of Exhibit 4, Proposed House Plans enclosed.

Decision Due: October 1, 2010

John D. & Kathleen R. Sullivan have applied for a Variance to Section 240-91.H (1)(b [1] Developed Lot Protection or in the alternative, a Variance to Section 240-11.E – Bulk Regulations – Minimum Lot Area. The applicants are proposing to demolish and construct a new, three bedroom single-family dwelling which exceeds the 20% lot coverage permitted when demolishing and rebuilding on an undersized residential lot. The property is addressed 564 Old Craigville Road, Centerville, MA and is shown on Assessor's Map 226 as parcel 177. It is in a Residence B Zoning District.

Laura Shufelt indicates that a request has been made by the applicants to continue this to 7:35 PM tonight as to wait for their attorney.

Vote:

All in favor.

Laura Shufelt then calls the Gregory appeals and reads the special permit into the record.

7:00 PM Appeal No. 2010-003 - Continued

**Gregory
Expand Nonconforming and/or Accessory**

Use

Opened January 27, 2010, continued; March 10, 2010, April 14, 2010, May 12, 2010, June 9, 2010, July 14, 2010 and to August 25, 2010.

Continued to allow for the Board's review of information submitted and for alternative relief of a variance to be filed and noticed (see Appeal No. 2010-028 below).

Members Previously Assigned: William H. Newton, Brian Florence, Alex M. Rodolakis, James F. McGillen, Laura F. Shufelt - Associate Present: George T. Zevitas

Decision Due: September 20, 2010

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.

7:00 P.M. Appeal No. 2010-028 - New

**Gregory
Variance for an Accessory Uses**

Nathaniel A. Gregory has applied for a Variance to Section 240-44.A, Accessory Uses. The applicant seeks the use of a lot addressed 320 East Bay Road, Osterville, MA for the construction of a pier to be accessory to the principal single-family use of a lot addressed 428 Wianno Avenue, Osterville, MA. The principal residential lot, addressed 428 Wianno Avenue, Osterville, MA, is shown on Assessor's Map 163 as Parcel 024 and the accessory lot, addressed 320 East Bay Road, Osterville, MA, is shown on Assessor's Map 163 as Parcel 020. Both lots are in a Residential F-1 Zoning District.

Laura Shufelt indicates that there is correspondence submitted from Attorney Albert Schulz requesting that both appeals be continued to September 29th at 7:00 PM

Laura Shufelt makes a motion to continue this until to September 28, 2010. James McGillen seconds.

Vote:

All in favor.

CONTINUED TO SEPTEMBER 29, 2010 at 7:00 PM

Laura Shufelt then calls the Madaus appeal and reads it into the record:

7:10 P.M. Appeal No. 2010-027 - New

**Madaus
Special Permit to Demolish and Rebuild**

Susan C. Madaus has applied for a Special Permit pursuant to Section 240-91.H (3) Developed Lot Protection. The applicant is proposing to demolish and reconstruct a larger, four-bedroom single-family dwelling on the undersized 7,500 sq.ft. residential lot. The property is addressed 97 Breakwater Shores Drive, Hyannis, MA and is shown on Assessor's Map 306 as parcel 157. It is in a Residence B Zoning District.

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

Alison Alessi, architect for the project, is here representing the applicant

Laura Shufelt informs the architect, Alison Alessi of A&E Architects, that since there is only a 4 member board present that she has the option of not going forward as an unanimous vote of the board is needed in order to grant the special permit.

Alison Alessi asks if the 5th member can review the tapes at another time.

Laura Shufelt informs Ms. Alessi that in special permits they don't typically continue unless for a lack of information and that it would be her option.

Alison Alessi decides to continue with the 4 member board.

Ms Alessi indicates that the applicants want to demolish the house which is located on a 7500 square foot lot. The proposal is to construct a 2000 square foot house which would achieve energy zero through double insulation methods attaining R40 and will have photovoltaics to supplement the energy. She indicates that the first floor will contain 1160 square feet and have 860 square feet on the second floor. She indicates that they were able to meet all of the requirements of FAR and Gross Floor Area ratios. She indicates that the FAR proposed is at 0.27, the height is two stories or 26 feet to top of plate. She indicates that the proposed structure is within scale of the neighborhood and that they are not changing the use and that her firm deals with energy efficiency. Ms. Alessi indicates that upon analyzing the foundation, they found it constructed of concrete block and not viable and does not believe that they can meet the current wind requirement of the 7th edition of the building code. She indicates that the existing house is kitty-corner to the street which doesn't provide for any view and the proposed site plan is for it to be more parallel. The basement will be below grand and used primarily for storage. The design is in with keeping of the neighborhood with cedar shingles as do other houses in the neighborhood.

James McGillen asks Ms. Alessi if she has read the suggested conditions and if they had any objections. Ms Alessi has no objections.

Laura Shufelt indicates that in the file are two letters from neighbors: one from Robert Carpenter and another from Lawrence Babine both supporting the proposal.

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

Craig Larson asks about the changes from the last staff report. Ms. Alessi indicates that they took out all the windows in the basement and brought the grade up so that it wouldn't be counted as habitable space. She has submitted a new site plan showing the retaining wall which is about 3 or 4 feet high and will be filled away from the street. There is a stone wall to the abutting property and to the south. They are bringing in two feet of fill to make it at grade 22. They also brought down the siding down so that only 8 inches of concrete is exposed.

James McGillen makes findings:

Susan C. Madaus has applied for a Special Permit pursuant to Section 240-91.H (3) Developed Lot Protection. The applicant is proposing to demolish and reconstruct a larger, four-bedroom single-family dwelling on the undersized 7,500 sq.ft. residential lot. The property is addressed 97 Breakwater Shores Drive, Hyannis, MA and is shown on Assessor's Map 306 as parcel 157. It is in a Residence B Zoning District.

The gross area and footprint, stories/height requirements of our zoning bylaws are all met and the proposed demo/rebuild would not exceed the maximum rebuild required on a 7500 square foot lot. The special permit requested is in harmony with the general purposes of the zoning ordinances and find that the special permit should be granted:

Vote:

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

NAY: None

James McGillen makes a motion to approve the special permit be granted with the following conditions:

1. Redevelopment of the lot shall be as proposed in plans submitted.
 - The site plan is entitled: "Site Plan showing existing & proposed house 97 Breakwater Shores Drive, Hyannis, MA prepared for Martin & Susan Madaus" dated July 21, 2010, last revised .(as revised on 08-25-10 as drawn by East Cape Engineering, Inc.
 - The house plans are entitled: "A New Residence for Susan & Martin Madaus 97 Breakwater Shores Drive, Hyannis, MA 02601", dated 08-23-10 as drawn by A& E Architects)
2. The dwelling to be built is limited to that shown on the above plans. The dwelling shall not exceed four bedrooms as defined by the Board of Health and shall be connected to public water and Town sewers.
3. Construction shall comply with all applicable fire and Building Division requirements.
4. During all stages in the demolition and reconstruction of the dwelling, all equipment and materials associated with the demolition/reconstruction shall be required to be located on-site with the exception that another neighboring property may be used only if permission is granted by the property owner.
5. At no time shall storage of construction materials or items be permitted in the right-of-way of Breakwater Shores Drive except as may be needed for roadway improvements, landscaping purposes or for utilities and then only on a temporary basis.
6. All mechanical equipment associated with the dwelling (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.
7. This decision must be recorded at the Barnstable 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 before any demolition or building permit is issued. The relief authorized must be executed within two years of the grant of this permit.

Seconded by Craig Larson

Vote:

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

NAY: None

GRANTED WITH CONDITIONS

At 7:30, Laura Shufelt then calls the Vinagre appeal and reads it into the record.

**7:15 PM Appeal No. 2010-018 – Continued Vinagre
Variance for a Detached Family Apartment**

Opened, May 12, 2010, continued; June 9, 2010, July 14, 2010 August 11, 2010 and to August 25, 2010.

No Members previously assigned. No testimony previously taken.

Decision Due: October 7, 2010

Norberto H. Vinagre has applied for a Variance to Section 240-47.1. Family Apartments. The applicant seeks a variance to allow for an existing apartment unit that is located in a detached structure to be utilized as a family apartment. The subject property is shown on Assessor's Map 209 as Parcel 071 and addressed 122 Old Stage Road, Centerville, MA. It is in a Residential D-1 and a Residential C Zoning Districts

Laura Shufelt explains that there are only 4 members and it must be approved by all four members or to be continued.

Mr. Vinagre chooses to go forward.

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

Norberto Vinagre is here representing himself.

Mr. Vinagre indicates that he is here requesting the variance for the structure in which to house his mother. He indicates that the structure wasn't in compliance and one of the motives for him purchasing it was for that purpose.

James McGillen comments that there was concern about the condition of the property and viewed the property today and thought it looked okay and asks Mr. Vinagre if he understands the regulations on the family apartment.

Mr. Vinagre indicates that he understands the rules and regulations.

Craig Larson asks that since the last hearing if the property was conveyed to him. Mr. Vinagre indicates yes and that he is in the process of renovating the premises. He indicates that the third structure was also occupied and asks if it could be used for the overflow of guests as it is quite small.

Craig Larson asks Mr. Vinagre if he has read the conditions as outlined in the staff report and explains that the third structure could only be for a shed or storage. Mr. Vinagre indicates that he has looked at the staff report and has no objections to it.

Laura Shufelt indicates that there are letters in the file, one from the de Onis family on Old Stage Road indicating that the property had not been kept up and wants to make sure that this will be for family and not for a rental unit. She reads another letter in the file from Shirley & Peter Fisher describing the deterioration and decline of the upkeep and indicating that they do not want to see it as rentals.

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

Mr. de Onis speaks and informs the Board that he doesn't object to what is requested tonight but was concerned about the condition of the property. George Zevitas asks Mr. de Onis if he objects to the shed. Mr. de Onis has no objection to the third structure becoming a shed or clubhouse for Mr. Vinagre's son.

Craig Larson does findings:

Norberto H. Vinagre has applied for a Variance to Section 240-47.1. Family Apartments. The applicant seeks a variance to allow for an existing apartment unit that is located in a detached structure to be utilized as a family apartment. The subject property is shown on Assessor's Map 209 as Parcel 071 and addressed 122 Old Stage Road, Centerville, MA. It is in a Residential D-1 and a Residential C Zoning Districts.

The subject property is a 0.65-acre lot developed with three structures described as:

- A two-bedroom, one-story ranch style dwelling of 888 sq.ft. living area that dates to 1870.
- A one-bedroom, one-story cottage structure of 494 sq.ft. living area that dates to 1970.
- A one-bedroom, one-story second cottage structure of 168 sq.ft. living area that dates to 1955.

The Building Division recognizes the only legal use of the property is that of a one single family dwelling. The use of the two cottage structures as independent living units is illegal and a number of citations have been issued over the last several years to the present owner.

According to the application submitted, Norberto H. Vinagre, has purchased the property and will reside in the ranch dwelling and retain one of the cottage living units and utilize it as a family apartment to be occupied by his mother.¹ The second cottage is to be changed into accessory use only and not used as an independent living unit.

Section 240-47.1 of the Zoning Ordinance allows for a family apartment as accessory to the principal dwelling.

With the principal unit at 888 sq.ft., and the apartment unit at 494 sq.ft., the apartment unit exceeds that 50% limitation in the area authorized for a family apartment by 50 feet.

The proposed building for the family apartment has existed on the property since 1970. To require the petitioner to conform by causing the apartment to be attached to the primary dwelling would require more building and development of the property when it is not necessary.

The petitioner has committed to bringing the property into conformance with zoning upon his purchase of the property.

Staff of the Building Division is in support of the grant of the variance.

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, and
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner,
3. 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.

James McGillen seconds

Vote:

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

NAY: None

Craig Larson makes a motion to approve the appeal with 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 one bedroom unit of 494 sq.ft. in the existing cottage structure located on the property.
3. All requirements of the Building Division shall be fully complied with to assure that the use of the property is in full conformance with zoning and all applicable codes, including building, fire, and health.
4. Only one single-family dwelling and its accessory uses shall be permitted on the property.
5. All parking shall be on-site.
6. Occupancy of the family apartment unit is restricted to one family member only. 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.
7. Prior to the execution of this variance, the petitioner shall be required to document to the satisfaction of the Building Commissioner that:
 - he owns the property and occupies the single-family dwelling located on the lot, and
 - that the use of the property has been restored to that of one single-family dwelling and its accessory uses as permitted in the zoning district it is located.

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 by James McGillen

Vote:

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

NAY: None

GRANTED WITH CONDITIONS

Laura Shufelt then calls the JDJ Housing appeal.

7:30 P.M. Comprehensive Permit No. 2003-90

**JDJ Housing Development, LLC
The Village Green - Modification Request**

Opened, August 11, 2010 continued to August 25, 2010.

No Members previously assigned. No testimony taken.

Staff Report and Application Materials previously distributed to the Board.

Decision Due: February 18, 2011

JDJ Housing Development, LLC and Dakota Partners, Inc., have requested a modification of Comprehensive Permit No. 2003-090 as previously modified for the development of The Village Green. The modification request seeks to make changes to the approved plans for the development including: changes in the unit types and area, increase in building footprints and gross building area, interior layout and exterior changes in the proposed structures, integration of the community club house into one of the apartment buildings, adjustments to the site plan to accommodate the building changes, and to modify the distribution of affordable units and workforce housing units amongst the buildings and also to allow the option to change the subsidy program to include the state and federal Low Income Housing Tax Credit Program. The subject property is addressed 0 Independence Drive, Barnstable, MA, and is shown on Assessor's Map 332 as parcel 010-001. The property is zoned IND - Industrial and GP - Groundwater Protection Overlay Zoning Districts.

Attorney Peter Freeman is representing the applicants and is here asking for another continuance.

Laura Shufelt makes a motion to continue this.

Seconded

Vote:

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

NAY: None

CONTINUED TO SEPTEMBER 15, 2010 AT 7:15 PM

Laura Shufelt then calls a 15 minute recess.

Back in session at 8:10 PM. Laura Shufelt then recalls the Sullivan appeal:

7:00 PM

Appeal No. 2010-024

- Continued

Sullivan

Variance to Developed Lot Protection

Opened, August 11, 2010 continued to August 25, 2010.

No Members previously assigned. No testimony taken.

Decision Due: October 1, 2010

John D. & Kathleen R. Sullivan have applied for a Variance to Section 240-91.H (1)(b [1] Developed Lot Protection or in the alternative, a Variance to Section 240-11.E – Bulk Regulations – Minimum Lot Area. The applicants are proposing to demolish and construct a new, three bedroom single-family dwelling which exceeds the 20% lot coverage permitted when demolishing and rebuilding on an undersized residential lot. The property is addressed 564 Old Craigville Road, Centerville, MA and is shown on Assessor's Map 226 as parcel 177. It is in a Residence B Zoning District.

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

Attorney John Kenney is representing the applicants.

Laura Shufelt informs him that there is only a four member board tonight. Attorney Kenney agrees to go forward.

Attorney Kenney indicates that also with him tonight are the Sullivans, the builder Jim Malone and Sandra Doorey, a neighbor.

He indicates that the Sullivan's acquired the property in 1984. It is now nonconforming and the proposed new structure will meet all of the current setbacks but does not meet lot coverage. The lot coverage is 25.6%.

Attorney Kenney shows photos and submits them to the Board.

Attorney Kenney indicates that the applicants want to demolish and rebuild a new structure and that the original structure dates back to 1957. He indicates that currently the hallways are narrow and Mr. Sullivan has a medical condition. He indicates that because of the narrow hallways and doorways it doesn't meet the future needs of Mr. Sullivan and would be a financial hardship. He indicates that Mr. Sullivan needs a one story home without stairs. Attorney Kenney indicates that they have also executed a driveway and yard easement agreement with the abutter Mrs. Doorey. He submits the easement document for the record. He then gives a summary of the relief being requested.

Mr. McGillen asks Attorney Kenney if he has read the conditions and is okay with them. Attorney Kenney does not object to any of the conditions. They talk about the updated plans to be submitted tonight.

Laura Shufelt asks if they are okay with them keeping it one floor. Attorney Kenney indicates that they are okay with not allowing a second floor.

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

James McGillen makes findings:

John D. & Kathleen R. Sullivan have applied for a Variance to Section 240-91.H (1)(b [1] Developed Lot Protection or in the alternative, a Variance to Section 240-11.E – Bulk Regulations – Minimum Lot Area.. The applicants are proposing to demolish and construct a new, three bedroom single-family dwelling which exceeds the 20% lot coverage permitted as-of-right when demolishing and rebuilding for an undersized residential lot. The property is addressed 564 Old Craigville Beach Road, Centerville, MA and is shown on Assessor's Map 226 as parcel 177. It is in a Residence B zoning district.

The subject property is a 10,950 sq.ft. lot located at the intersection of Old Craigville Road and Circuit Avenue in West Hyannisport. According to the Assessor's record, development of the lot dates to 1957 and today consists of a one-story, two-bedroom, single family dwelling of 1,038 sq.ft. gross area. The applicant has owned the property since 1984.

The sewer permit has been granted by the Town of Barnstable. The placement of the proposed dwelling satisfies all other zoning and regulatory measures and setbacks.

Plans have been submitted and reviewed by the Board of Health

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.

A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and otherwise as in access due to disability.

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, Craig Larson, James McGillen, Laura Shufelt

NAY: None

James McGillen makes a motion to grant the variance under the conditions herein set forth with the following conditions:

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This variance is granted to Section 240-91 H(1)(b) [1] to allow for the reconstruction of a single-family dwelling with a structural footprint not to exceed 25.6% of the undersized nonconforming lot of 10,950 sq.ft. subject to all of the following conditions.

1. The location and area of the building shall be substantially in conformity to the land surveyor plan submitted entitled "Site Plan of Land for 564 Old Craigville Beach Rd., West Hyannisport, MA prepared for John & Kathleen Sullivan" dated 05-19-2010 as drawn by Weller & Associates entitled "SP-2"..
2. The dwelling to be built shall also conform to the house plans submitted entitled:"John and Kathleen Sullivan and dated 08-25-10 by Laura Shufelt, Chair of Zoning Board of Appeals.
3. The dwelling shall not exceed three bedrooms as defined by the Board of Health and connected to public water.
4. Construction shall comply with all applicable Building Division rules and regulations.
5. During all stages in the demolition and reconstruction of the dwelling, all vehicles, equipment and materials associated with the demolition/reconstruction shall be required to be located on-site with the exception that another neighboring property may be used only if permission is granted by the property owner.
6. At no time will any parking, storage of construction materials or items be permitted in the right-of-way of Old Craigville Road except as may be needed for roadway improvements, landscaping purposes or for utilities and then only on a temporary basis.
7. All mechanical equipment associated with the dwelling (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.
8. This decision must be recorded at the Barnstable 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 before any demolition or building permit is issued. The relief authorized must be executed within one year of the date this variance is filed with the Town Clerk's Office.

Seconded by: Craig Larson

Laura Shufelt wants to add that there will be no increase in living area without further approval of this board

Seconded by James McGillen

Vote:

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

NAY: None

Vote on total motion:

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

NAY: None

GRANTED WITH CONDITIONS

Attorney Kenney requests to withdraw the second variance request to Section 240-11.E without prejudice

Motion is made by James McGillen and seconded by Laura Shufelt to withdraw without prejudice.

Vote:

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

NAY: None

Motion is and seconded to adjourn.

Vote:
All in favor.