



Town of Barnstable

Zoning Board of Appeals

Minutes

February 2, 2011

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday February 2, 2011 at 7:00 PM at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. A quorum was met. Also present were Jo Anne Miller Buntich – Director, Growth Management, Elizabeth Jenkins – Planner, Carol Puckett – Administrative Assistant,

Laura Shufelt - Chair	Present
William Newton - Clerk	Absent
Michael Hersey	Present
Craig Larson	Present
Alex Rodolakis	Present
Brian Florence	Present
George Zevitas	Present
Scott Harvey	Present

***In attendance were: Arden Cadrin, Ray Lang, Chief Crosby, Kathy & Terry Maloney, Peter Kohler
Laura Shufelt opens the hearing at 7:02 PM. She calls the EAC appeal and indicates that is an update***

**7:00 PM Appeal No. 2009-025 – Continued EAC Disposal, Inc.
Modification of Variance No. 1996-14**

Opened April 1, 2009, continued, May 20, 2009, August 5, 2009, September 23, 2009, November 4, 2009 December 9, 2009, February 10, 2010, moved to February 24, 2010, April 14, 2010, May 26, 2010, July 14, 2010, August 11, 2010, September 15, 2010, October 27, 2010 and to December 1, 2010.

Continued for an update on Consulting Services.

Board Members Assigned: William H. Newton, George T. Zevitas, Brian Florence, Alex M. Rodolakis, Laura F. Shufelt

Decision Due: June 18, 2011

EAC Disposal, Inc., d/b/a Cape Resources Company has applied for a Modification of Variance No. 1996-14. The modification is sought to allow for revisions to the site that include a new wood processor and staging area, alteration to interior site circulation, and additions and alterations to screening berms and landscape. The property is addressed 280 Old Falmouth Road, Marstons Mills, MA as shown on Assessor's Map 100 as parcel 008. The lot is in a Residence F Zoning District

Laura Shufelt indicates that the members previously assigned were: William H. Newton, George T. Zevitas, Brian Florence, Alex M. Rodolakis, Laura F. Shufelt. She indicates that William Newton is not here tonight and that this is just an update.

Attorney Charles Sabatt indicates there was a public meeting on December 15th, and present with him were Will Conrad and Brian Yergatian. He indicates that himself, Will Conrad and Brian Yergatian had another meeting within their group and have a final draft of their plan and better management practices plan and are prepared to submit it to the consultant. He would suggest that they be reschedule for early March so that they can submit. Laura Shufelt asks if the consultant requires 30 days to review. They discuss having it continued to March 9th.

Motion is made by Brian Florence to continue this to March 9, 2011 at 7:00. PM

Alex Rodolakis seconds

Vote:

All in favor

CONTINUED TO MARCH 9, 2011 AT 7:00 PM

At 7:16 PM, Laura Shufelt calls the JDJ appeal and reads it into the record:

7:15 PM Comp Permit 2003-090- New

JDJ Housing Development LLC, - Dakota Partners, Inc - The Village Green

JDJ Housing Development, LLC and Dakota Partners, Inc., have requested a modification of Comprehensive Permit 2003-090 issued for the development of the Village Green, a 148 unit rental apartment development with 37 units committed to affordable housing on 14.32 acres. The Applicant seeks to change the total number of units from 148 to 120 units and to change the number of affordable units from 37 units committed to low and moderate-income households to 30 units committed to low and moderate-income households and to change units committed to workforce housing from 14 units to 8 units to be committed to households earning between 81% and 120% of the area's median income. The proposal will decrease the number of apartment buildings from five to four and a separate building for management and common space, decrease the number of units and increase the size of the living area within all of the units which thus increases the size of the building footprints and gross building area. The property is addressed 0 Independence Drive, formerly 770 Independence Drive, Barnstable, MA, as shown on Assessor's Map 332 as Parcel 010-001, located in the Industrial Zoning District, and Wellhead and Groundwater Protection Districts.

Members assigned tonight: Michael Hersey, Craig Larson, Alex Rodolakis, Brian Florence, Laura Shufelt.

Laura Shufelt asks Assistant Town Attorney - Charlie McLaughlin to speak on issues outlined in letters submitted from the file from K.L. Benson of Cummaquid, MA who in part is asking Laura Shufelt to recuse herself and from Robert Berry of Barnstable, MA regarding the identity of the developers, financial documentation, traffic, length of time since first approval of the comprehensive permit and the suggestion of an outside audit by the Attorney General of the Commonwealth. Attorney McLaughlin indicates that both letters are unsigned and that he had reviewed the conflict of interest law which is clear and that when the chairperson was acting on this, it was in an official capacity and in their opinion that her presence and involvement is appropriate.

Laura Shufelt refers to the letter from Mr. Berry and asks Charlie McLaughlin to do a brief overview of member's duties and public comment. He talks about the Amesbury case and that the board has the authority to address local building issues, etc. but is inappropriate for a local ZBA to get into the financials and should be left to the state agencies involved. He quotes a synopsis from the Amesbury case. He refers to Page 3 of the staff report about changes after the issuance of the project. He goes back to Mr. Berry's letter,

third paragraph regarding a question of a new traffic survey. He indicates that it would be inappropriate at this time. He addresses Mr. Berry's comment about the passage of time and to rescind the permit which Charlie McLaughlin indicates it would be inappropriate for this board to do so.

George Zevitas asks how long could this possibly go on for. Attorney McLaughlin indicates that it would be up to the board's discretion based on reasoning.

Attorney Freeman will be giving a PowerPoint presentation. He introduces Roberto Arista and Mark Daigle from Dakota Partners, architect John LaFreniere, and his associate Tom Alesworth. He indicates that from the staff report was a suggestion of a letter of standing which he has submitted. He met with the housing committee and a memo addressed to Laura Shufelt in support. Also, he met with JoAnne Buntich, staff, and Chief Crosby and indicates they are willing to do the following:

- **They have been requested and have agreed to no longer seek the removal of the elevators and has modified plans which Roberto Arista hands to the Board.**
- **Also, the phasing request. He is withdrawing subdivision approval.**

He gives an overview of the number of units, number of buildings.

Roberto Arista, one of the principals from Dakota Partners shows the "Reduction in Project Size" slide. Next is "Change in Unit Mix and Sizes" slide. They are eliminating the 4 studio units and enlarging the other units in general. They have worked with the Growth Management Department to improve the landscape plan. There will be someone everyday staffed in the community building. Fenced-in area behind the community room, bike racks, walking paths throughout, they have added a walkway. They have also talked to the transit company about putting a shelter on site. He indicates there will be historic looking light posts and have reduced the impermeable area by a large margin. They have met with the Fire Chief to make sure the new apparatus will make the turn. The new buildings will be energy star and a green project. The roadway will all be constructed in phase 1.

John LaFreniere, the architect, talks about the increase of the footprint. He goes over the "Typical 1st Floor Plan" and explains the "Sample Unity Comparison" slide. Next is Modified Building Elevations.

Roberto Arista indicates that there will be an air conditioner per room and not per unit. Attorney Freeman addresses the phasing plan and that they will agree to a condition that the phasing is approved and that it says that the commencement of construction phase two begin no later than 3 years after the issuance of the last occupancy permit of the phase 1 units. They have discussed with staff who are agreeable.

Attorney Freeman then comments briefly on changes regarding::

- **Condition #6 is to reflect the mix and types of units would be. He is asking that it be stated that there will be a minimum of 25% affordable units but beyond that might be a larger number. They are obligated to have at least 25% and will have them in perpetuity and need the flexibility.**
- **Condition 2, 3, 4, 5 (there will no longer be a ground lease) and #7 should be deleted as it reflects the old unit mix. Also, Condition #11 to be changed as they will have more spaces so that will be modified. Conditions #17, 21 & 28 are okay to change. Condition#34 does not officially needed to be changed and are happy to do that and #37 is just more housekeeping.**

Alex Rodolakis asks how big the elevator is compared to the previous one. John LaFreniere indicates it is typical for the capacity of the building. Alex asks about the egresses and coverage over the entrances leading into each building. Mr. LaFreniere indicates there will be a covering over the entrances.

Attorney Freeman refers to Condition #45 regarding the growth ordinance in town about # of permits granted per year and asks for a waiver or condition pertaining to this.

Alex Rodolakis asks for clarification on the number of affordable units. Attorney Freeman indicates that there has to be an apportionate distribution of affordables throughout all buildings. Alex asks about the location in reference to where the affordable units are physically in each building (not all near the elevators, etc). Attorney Freeman indicates he would not have a problem working with staff regarding the placement of the units.

Brian Florence asks about the mix of large and small units. Attorney Freeman indicates that they will be acceptable to a condition regarding placement and the size of the affordable units as it relates to one or two bedroom.

Craig Larson asks who monitors the affordability. JoAnne Buntich indicates that Arden Cadrin – Special Projects Coordinator also keeps track of who monitors these projects. Attorney Freeman indicates that the agencies do it themselves. Laura Shufelt explains about the leases.

Michael Hersey asks what 3 year phasing is. Attorney Freeman indicates that they are expecting to start the second phase within a year of completion of phase 1. Michael Hersey asks what would happen if there was a lapse and about large construction equipment traversing over the properties. Roberto Arista comments that he hasn't looked at a detailed construction plan but they would fence it off after phase one. He would be happy to provide a plan. Brian Florence explains that it has to be done according to building codes which are enforceable. .

Craig Larson asks if they would be able to come in after phase 1 and ask for a modification. Attorney Freeman indicates that they would have to come before the board for that.

Roberto Arista indicates that there is an incentive for a developer to do phase two. They clarify that the community building is in phase one.

Alex Rodolakis asks about the parking and if the shelter for the WAVE transit could be a condition. Attorney Freeman indicates that they made the suggestion. Roberto Arista indicates that they more than meet the zoning for parking and based on past projects they are not finding that they would need more spaces than this.

Laura Shufelt suggests having Arden Cadrin from the Growth Management Department do a survey regarding parking and see how it compares. Roberto Arista indicates that they would be happy to work with GMD regarding the parking. JoAnne Buntich believes there is adequate parking and will do the research if the board so desires.

Laura Shufelt then opens it up for public comment.

Chief Crosby from Barnstable Fire Department indicates that he had sent a letter to ZBA regarding site plan for parking and has since met with the developers twice. He received answers today about the 11 issues regarding public safety. He reads the letter. His concern is that their request for grass pavers for them to drive over is fine except for years like this weather-wise and that they will not be able to make the corner. He indicates that the developer would maintain it and that if paved, would affect the impervious percentage. He indicates if maintained it would have to be done year round. Chief Crosby reads the rest of his letter. He wants to make sure that the issues are addressed.

Brian Florence asks if they can get a list of the 11 points Chief Crosby brought up. Roberto Arista indicates that he can get a copy to the board.

Attorney Freeman suggests writing a consolidated decision with staff.

Laura Shufelt indicates there is a letter from the Housing Committee about the elevators going back in, a letter from the Cape Cod Commission as well as the letters as previously mentioned at the beginning of the appeal. Also, a letter from Ann Canedy which she reads and a letter from Richard Largay which she briefly reads.

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

Bud Bergstrom comments that he had written before a number of letters about Laura Shufelt recusing herself. Laura Shufelt indicates that this has been addressed in previous hearings and that his comments should be specific to what is before the board. He questions bike racks, sidewalks (who will want to walk down Independence Drive) and the lack of studio apartments. He comments that balconies have been eliminated and what happens if only one building is developed and they walk away and what about bankruptcies. He asks if transportation issues have been addressed with the transit company.

Ray Lang from the Planning Board indicates that he had received a letter from the ZBA and asks if it would be too late to respond to the board. Laura Shufelt indicates that it would not be too late.

Laura Shufelt asks Attorney Freeman about affordable and workforce units. She asks that the workforce units be made affordable units. Attorney Freeman indicates that his clients might have to take it under advisement if they have another opportunity to meet with the board again.

Michael Hersey would like to see a condition to prevent parking in the green area between the buildings. Mr. Arista does not have a problem with a condition pertaining to that.

Laura Shufelt asks about a management company. Roberto Arista indicates they are considering Wynn Management Company from Boston.

They discuss change of management or chance of bankruptcy.

Motion Is made by Michael Hersey to continue to February 16th at 7:10 PM

Seconded by Brian Florence.

**VOTE:
All in favor**

CONTINUED TO FEBRUARY 16, 2011 at 7:10 PM

Laura Shufelt calls a recess.

Back in session at 9:15 PM. She then calls the Iyanough Road Trust appeal.

7:30 PM Appeal No. 2011-001 – Continued

Iyanough Road Trust

Members assigned: William Newton, Craig Larson, Alex Rodolakis, Brian Florence, Laura Shufelt
Decision Due: If close of hearing = February 2, 2011, then decision due = May 3, 2011

Continued to clarify with Site Plan Review, the parking issues.

Iyanough Road Trust has applied for two special permits to allow for the alteration and expansion of a nonconforming building and a nonconforming use. The first permit is sought pursuant to Section 240-93 B - Alterations or Expansions in a Pre-existing Nonconforming Building or Structure to allow for the construction of a 2000 sq. ft. addition not in conformity to the required yard setbacks and to retain certain nonconformities in the site. The addition is for added storage space and to accommodate the store's recycling facility. The second permit is sought pursuant to Section 240-94 B - Expansion of a Pre-existing Nonconforming Use or in the alternative, a conditional use special permit pursuant to Section 240-25.C(1) Conditional Uses in the Highway Business District to allow the retail sales of liquor. The property is the Parker's Liquor Store at 1156 Iyanough Road (Route 132), Hyannis, MA. It is shown on Assessor's Map 274 as parcel 006. The property is zoned Highway Business and B Business.

Members assigned tonight: Craig Larson, Alex Rodolakis, Brian Florence, Scott Harvey, Laura Shufelt

Attorney Michael Ford is representing the applicant. He indicates that from the last time the board met, they requested that they go back to Site Plan Review to relocate the spaces, the relationship between the spaces and the proposed future construction of the interconnect to Stop and Shop. They did go back to Site Plan Review and proposed to remove those 4 spaces which he points out on the easel. He indicates that there is an amended condition and they have added a note to the plan about the spaces to the rear and the Stop & Shop spaces. They would stripe the spaces so they would be on the ground until the improvements are made by Stop & Shop. He suggests that if the permits for Stop & Shop expire, that a better condition would be that they be required to go back to Site Plan Review and finalize their plan showing what parking and landscaping would be built on a permanent basis on the back. Attorney Ford indicates that on condition #4 it would be changed to "the applicant shall be responsible for filing within one year from that timeframe, a revised site plan showing final parking and landscaping improvement for review and approval by the Site Plan Review Committee".

Elizabeth Jenkins adds that the applicant shall be responsible for the completion of the improvement and just not for filing of the site plan. Attorney Ford accepts the amendment.

Laura Shufelt asks about the interior flow from the redemption center to the retail part of the store. Attorney Ford indicates that the intent was to keep it just for recycling and redemption functions. Laura asks if there will be a side door. Attorney Ford isn't sure if there will be an ability for interior access to the retail section. Laura looks at the plan and sees it looks that there is a door and indicates that she is okay with that.

Attorney Ford indicates he is okay with the rest of the conditions.

Craig Larson comments that he is not comfortable with the condition regarding the color. The board discusses.

Craig Larson makes findings:

In Appeal No. 2011-001A - §240-25 (C)(1) Conditional Use in the HB District, the petitioner, Iyanough Road Trust, (Parker's Liquor Store), 1156 Iyanough Road (Route 132), Hyannis, MA as shown on Assessor's Map 274 as Parcel 006 located in the Highway Business and Business Zoning Districts:

In this application, the applicant is seeking to expand the existing Parker's Liquor Store on Route 132. According to the plan submitted, the proposal is to:

- **remove four existing storage trailers located on the property and demolish a 600 sq.ft. bottle return area that abuts the building,**
- **add a new 2,000 sq.ft. addition to the building to be used for additional storage and recycling, and,**

to make phased adjustments to on-site parking and circulation

The property is a 40,022 sq.ft. lot developed with a one-story commercial building of 6,096 sq.ft. According to the Assessor's record the building dates to 1961. The subject lot was created by Land Court Plan 24921-1 in 2007 and is shown on that plan as Lot 20.

The property is zoned both HB and B; the zoning line is shown on the submitted plan. The existing structure is located on the portion of the lot zoned HB. It property is within the Groundwater Protection Overlay District and an approved Zone II.

A special permit pursuant to § 240-25(C)(1) allows for a retail sales, including sales of liquor, in the HB District.

- *It is the findings of this board that the application falls within a category specifically accepted in the ordinance for a grant of a special permit.*
- *That a site plan has been reviewed and found approvable by the Site Plan Review Committee.*
- *And, after an 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.*
- *Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.*
- *The retail sale of liquor has been occurring at this location for a number of years with little change to the building or operation.*

The applicant is not proposing an increase in retail sales floor area, thus additional traffic impacts from the use will be limited

Vote:

AYE: *Brian Florence, Alex Rodolakis, Craig Larson, Scott Harvey, Laura Shufelt*

NAY: *None*

Craig Larson makes a motion to grant with the following conditions:

Appeal No. 2011-001A - §240-25 (C)(1) Conditional Use in the HB District

1. *This conditional use special permit is issued to Iyanough Road Trust for the continued use of the parcel addressed as 1156 Iyanough Road, Hyannis, MA for retail sales, specifically for a package store and customary accessory uses including storage, bottle return and recycling.*
2. *All commercial use on the property shall take place within a fully enclosed building.*
3. *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 prior to issuance of any demolition or building permit. The relief authorized herein must be executed within two years of the date this special permit is filed with the Town Clerk's Office*

They discuss and add Condition #2 to be:

The retail sales are prohibited within the 2000 foot square addition.

Brian Florence seconds.

Vote:

AYE: *Brian Florence, Alex Rodolakis, Craig Larson, Scott Harvey, Laura Shufelt*

NAY: *None*

Craig Larson makes a motion that in Appeal No. 2011-001B - § 240-93(B) Alterations/Expansions Preexisting Nonconforming Building/Structure, the petitioner is Iyanough Road Trust, 1156 Iyanough Road, Hyannis, MA as shown on Assessor's Map 274 as Parcel 006 located in the Highway Business and Business Zoning Districts:

He moves that in this appeal the background is the same as in Appeal 2011-001A:

- **The proposed repairs, alterations, expansion is not substantially more detrimental to the surrounding neighborhood**
- **The existing site was developed in 1961 and lacks adequate improvements, such as landscaping and curbing, proper and safe vehicle circulation and parking arrangements, and connection to public sanitary sewer.**
- **Trailers used for business purposes are a prohibited use pursuant to § 240-10 (C).**
- **A timeline for completion of all site improvements is necessary to ensure an adequate number of parking stalls will be available to serve the use and that landscaping and curbing required by the Site Plan Review Committee will be installed.**
- **The property is located in the Groundwater Protection Overlay District and an approved Zone II wellhead protection area and public sanitary sewer is available to serve the site.**

Vote:

AYE: Brian Florence, Alex Rodolakis, Craig Larson, Scott Harvey, Laura Shufelt

NAY: None

Craig Larson makes a motion to grant with the following conditions:

1. **This special permit is issued to Iyanough Road Trust for the alteration and expansion of the preexisting nonconforming building located at 1156 Iyanough Road, Hyannis, MA.**
2. **The subject parcel shall be redeveloped as shown on plans entitled Liquor Store #1156 Iyanough Road Barnstable, MA, Three Sheets, specifically sheets C-2 Proposed Bottle Storage Expansion – Layout and Materials Plan, dated January 25, 2011 and sheet C-3, Grading Plan dated September 22, 2010, prepared by Vanasse Hangen Brustlin, Inc.**
3. **All site work shall be completed in compliance with conditions of Site Plan Review, as stated in the letter issued January 25, 2011. Said conditions include the replacement of the parking spaces within the Iyanough Road right-of-way with a landscaped island and striping twelve parking stalls at the rear of the property prior to issuance of a Certificate of Occupancy.**
4. **If site improvements shown on the plan labeled 'Improvements to be installed in conjunction with construction of interconnect to Stop & Shop' have not been commenced prior to June 12, 2020, or upon expiration of DRI #JR20035, whichever is later, **the applicant shall be responsible for filing within one year from that timeframe a revised site plan showing final parking and landscaping improvement for review and approval by the Site Plan Review Committee and the applicant shall be responsible for the completion of the improvement within a one-year timeframe.****
5. **The structures located on the 1156 Iyanough Road property shall be connected to the Town sanitary sewer system prior to a Certificate of Occupancy for the building addition. The Applicant shall be responsible for obtaining required permits from the Department of Public Works.**
6. **The four storage trailers on the property shall be removed and the 600 square foot bottle return area shall be demolished by the Applicant prior to issuance of a Certificate of Occupancy for the building addition.**
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 herein must be executed within two years of the date this special permit is filed with the Town Clerk's Office.**

Brian Florence seconds.

Vote:

AYE: *Brian Florence, Alex Rodolakis, Craig Larson, Scott Harvey, Laura Shufelt*

NAY: *None*

GRANTED WITH CONDTIONS

Attorney Ford requests to withdraw without prejudice, the request for the Special Permit for the Expansion of the Pre-existing Nonconforming Use.

Brian Florence makes a motion to withdraw without prejudice.

Alex Rodolakis seconds.

Vote:

AYE: *Brian Florence, Alex Rodolakis, Craig Larson, Scott Harvey, Laura Shufelt*

NAY: *None*

WITHDRAWN WITHOUT PREJUDICE

Brian Florence makes a motion to adjourn.

Seconded.

Meeting Adjourned at 9:42 pm.