



Town of Barnstable
Zoning Board of Appeals
Minutes
March 9, 2011

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday March 9, 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 – Principal Planner and Carol Puckett – Administrative Assistant

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

Laura Shufelt opens the hearing at 7:00 PM.

Election of Officers Meeting Notice

In accordance with MGL Chapter 40A Section 12, Section 240-125 of the Zoning Ordinance and the Zoning Board of Appeals, Rules and Regulations, notice is hereby given that the Zoning Board will hold its annual election from its membership for Chairman, Vice-Chairman and Clerk.

Laura Shufelt asks if there are any nominations.

Motion is made by Crag Larson to nominate Laura Shufelt as Chair. Michael Hersey seconds

Vote:

All in favor.

Craig Larson makes a motion to nominate William Newton as Vice-Chair. Michael Hersey seconds.

Vote:

All in favor

Motion is made by William Newton to nominate Craig Larson as Clerk. Michael Hersey seconds.

Vote:

All in favor.

Approval of Minutes from February 2, 2011. Craig Larson indicates that the color reference in appeal (Parker's Liquor Store), 1156 Iyannough Road was deleted. Brian Florence makes a motion to accept minutes as amended. Seconded by Michael Hersey.

**Vote:
All in favor.**

Laura Shufelt then call EAC appeal

**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, December 1, 2010 and February 2, 2011..

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

**Members assigned tonight: William Newton, George Zevitas, Brian Florence, Alex Rodolakis, Laura Shufelt
Craig Larson recuses himself.**

Attorney Sabatt indicates that he has a copy of the consultant's report.

Laura Shufelt indicates that the consultant is here to give a PowerPoint presentation.

Attorney Sabatt indicates that he doesn't believe they ever made their own presentation and wants to point out certain aspects and gives a summary. He indicates that this service that EAC provides is necessary and there are no other facilities mid-Cape that process yard waste material. There is one facility in Falmouth and maybe one or two in Dennis but no other in the mid-cape. The consultant noted that there are 202 compost facilities of which 171 are municipal and 31 are private. In 1996 there was a crucial motivation for the ZBA at that time to negotiate and resolve what was a contention because they recognized this operation had a purpose in the community. This is an essential service and provides an important product for the public at large. He illustrates on the plan he has submitted that they have attempted to move all of the processing southerly on the site. No grinding or processing north of the brush area. They have located the drive in and drive out and tried to distant that from the neighbors. There will be machinery that will be operating for loading and unloading but not for processing. A machine will come up once every three years into one of the piles and either move or deposit to it. They are asking for an expansion northerly of the yellow hatched work area. They found it necessary to move material northerly. The only activity here will be the occasional moving of material once every 3 years. The other major change is in lieu of the internal southerly berm which they are envisioning a brush storage area which will vary in height in the course of a year. In the busier season it will be higher, in the off season it will be lower and less activity. In the northerly berm, they intend to heighten and expand in order to increase the suppression of noise, dust and odor and one of the implied limitations as outlined in the previous variance is that it is limited to a height of 90 but ask for a small increase in the height. The

higher it is, the more it will trap noise and dust. They are also proposing fencing along the easterly line. They have maintained the vegetated buffer, they propose the same hours of operation. He indicates that the new grinder is much quieter, self insulating and feels that the noise will be less. The other machine identified by the consultant is operated on very few days throughout the year and during the year operates fewer than 10 total days per year. They might propose to limit the number of days it would operate and would be okay with limiting to work days only and no weekends. Attorney Sabatt indicates that Nate Weeks from GHD Engineering is here as well as the on-site manager, Will Conrad.

William Newton asks if the property to the immediate west is owned by EAC and if there was any thought to shifting to this adjoining property. Attorney Sabatt indicates that there has been a discussion regarding that but that it would be expensive as the topography would need to be reworked and would require a variance but would be a possibility.

Laura Shufelt asks where the machinery is parked. Attorney Sabatt points out where it would occur and that it would occur in the area between primary and secondary processing. Laura asks if the trucks are on-site. Attorney Sabatt indicates that they are there at all times.

Brian Florence asks what provisions are in place in those specific spots regarding inspections. Attorney Sabatt indicates that it requires yearly inspection by the Building Division a possibility of an annual engineering review if necessary to provide this board with certification. Brian Florence asks about hardscaping. Attorney Sabatt will have to discuss with client.

Nate Weeks from GHD engineering is asked by Brian Florence about citations for standards and if there has been any thought or plan to bring them the information. Mr. Weeks indicates he did not know that it was requested. Mass DEP was referenced and there are no regulations for this type of operation.

Charlie McLaughlin wants to see, and needs for Tom Perry and his enforcement actions, a registered land survey that will emanate at the end of the process that they are involved in.

Greg McCarron, the consultant from SCS Engineers, gives a presentation. He goes over SCS Scope slide and Site Description slide. Next he recommends that compost method be upgraded. For an operation like this close to residential he thinks they should be doing more than minimal technology. They should be doing aerated piles or be turned periodically in order to aerate and promote decomposition on the method used. He recommends that the gravel access road be paved to cut down on dust. Last comment on site plan comments, they suggest that inside the building it will reduce noise and dust.

BMP Plan slide

He recommends that the new method be in the BMP along with monitoring procedures. He has not reviewed the daily log.

MassDEP Guidelines

The site is registered with DEP which requires there are 3 documents: Leaf and waste document, Centralized Composting, Shredded Brush documents. There are over 200 facilities such as this operating in Massachusetts.

Proposed Dust Monitoring

Purchase of a hand held, real-time dust monitor and will be monitoring continuously and could coordinate with weather data. The alarm will have an audible alarm. He shows a photo of a "Thermo" unit of a cost of approximately \$4000.

Proposed Odor Monitoring

Suggests a procedure, on site and on the perimeter and then if a complaint comes in they could get out as quickly as possible with the olfactometer and take readings. He shows a picture of a "Nasal Ranger".

Proposed Noise Monitoring

Could be rented. Take a base reading and make comparison.

Variance Review

He recommends grinding and chipping within a building.

Brian Florence asks if there is a standard for using a chipper/grinder in a building. Greg McCarron indicates that DEP standards are standards that EAC had agreed to when they registered with them. Mr. McCarron indicates that this is commercial and in close proximity to residence. Mr. McCarron indicates that DEP is a key document. They discuss moving the noise making machinery to the southwest. Mr. McCarron indicates that it would be good to move away from the receptors.

Alex Rodolakis asks how big this operation is in comparison to other facilities. Mr. McCarron is not sure but says they should be using more than minimal technology because of the proximity to a residential area.

William Newton asks if there is room for this operation to grow at this site. Mr. Mc Carron indicates that they have to file an annual report which could be looked at and that they could handle more compost in a responsible way. William Newton asks Mr. McCarron if he would recommend an annual review. Mr. McCarron says they are required to file one with DEP.

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

Peter Kohler speaks and indicates that he read the BMP and SCS report and agrees with the recommendation of the machine being in a building. He indicates that the "colorizer" brings the mulch down from larger chunks to smaller chunks as well as coloring it. He asks about acceptable range for noise levels. He would like to add that they not accept manure. He agrees with no grinding on weekends. He thinks that when there is a fire that someone come out and monitor it. Maybe a quarterly review by the Building Division.

Mr. Terry Maloney who is direct abutter to north and east thanks the board. He believes that the monitoring devices be tried if not out of balance with the business.

Kathy Maloney thanks everyone and thinks that they should adopt ways to quantify things like noise and dust and agrees that grinding should stay in the building.

Attorney Sabatt wants the opportunity to meet with planning and the consultant to increase the consensus they have and address the issues regarding the grinding in a building.

Brian Florence would like to see a concept of a physical barrier where the residents live. Brian asks if there is opposition to the monitoring devices. Attorney Sabatt will talk to client. Brian asks about the annual review. Attorney Sabatt is looking at a month.

They discuss dates for a continuance..

Motion to continue to April 13, 2011 at 7:00 PM .by Laura Shufelt.

Seconded by William Newton.

CONTINUED TO APRIL 13, 2011 at 7:00 PM

Laura Shufelt calls a 5 minute recess.

Back in session at 8:42 PM.

Laura Shufelt then calls the JDJ Housing Development LLC., appeal:

**7:05 PM Comp Permit 2003-090 – Cont’d
Dakota
Green**

**JDJ Housing Development LLC, -
Partners, Inc - The Village**

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.

Board Members Assigned: Michael Hersey, Craig Larson, Alex Rodolakis, Brian Florence, Laura Shufelt.

Opened February 2, 2011, Continued to February 16, 2011. Hearing closed February 16, 2011.

Note: Continuation of Comprehensive Permit 2003-090 - Vote on Consolidated Decision

This item is a follow-up to the Board’s February 16, 2011 vote to approve a modification to Comprehensive Permit 2003-090, issued to JDJ Housing Development, LLC and Dakota Partners, Inc. for the development of the Village Green Apartments. A Consolidated Decision, integrating the original permit with all modifications to date, has been prepared for approval by the Board

Laura Shufelt explains that this is one consolidated decision instead of separate decisions.

Attorney Peter Freeman indicates that he has reviewed it. He would suggest, as it relates to Condition #26, about a regulatory agreement be signed and recorded before the issuance of the building permit. He recommends and hands in his suggestion regarding the language of such.

Laura Shufelt asks if at the same time they will be acquiring the construction loan. Attorney Freeman indicates yes. JoAnne Buntich asks about the closing attorney and asks if Laura is comfortable with it and that the construction attorney will require them to hold it. Laura is okay with it.

Mike Hersey asks about Condition #41 and if the intention is that all the fees will date back to 2003 or would they be the current fees. Mr. Freeman indicates that he believes it would be current fees. He doesn't think that the fees would be frozen in time.

**Members assigned tonight: Michael Hersey, Craig Larson, Alex Rodolakis, Brian Florence, Laura Shufelt
Motion is made by Brian Florence to accept the consolidated decision as written with the exception of Condition #26 be changed to what Attorney Freeman has submitted.
Seconded by Michael Hersey.**

Vote:

AYE: Michael Hersey, Craig Larson, Alex Rodolakis, Brian Florence, Laura Shufelt

NAY: None

See Consolidated Comprehensive Permit 2003-090 - The Village Green

GRANTED WITH CONDITIONS

At 8:48, Laura calls the Botsini- Prime appeal and reads it into the record

7:10 PM Appeal No. 2011-004 - **New Botsini-Prime, LLC**

Botsini-Prime, LLC., has appealed the December 30, 2010 decision of the Building Commissioner. Botsini-Prime, LLC., in a letter to the Building Commissioner received December 17, 2010, had requested that the Building Commissioner revoke building permits issued to the Barnstable Municipal Airport Commission authorizing construction to begin on the Airport Expansion Project and refusing to enforce the Cape Cod Commission's Enabling Regulations and issuing permits in violation thereof. The property is located at 480 Barnstable Road, Hyannis, MA as shown on Assessor's Map 329 as parcel 003. It is in the Industrial (IND), Business (B), Highway Business (HB), and Hyannis Gateway (HG), zoning districts.

Attorney Eliza Cox is representing the applicant

Members assigned: William Newton, Michael Hersey, Craig Larson, Alex Rodolakis, Laura Shufelt

Also with Attorney Cox are the principals of Botsini-Prime, Gregory Botsivales – Manager and Harry Botsivales. She shows an aerial photo which consists of the rotary, Wendy's and the airport. She gives a brief procedural overview . She gives a PowerPoint presentation consisting of the procedural overview. (PowerPoint presentation is included in ZBA file for applicant). She summarizes that the building permits should be revoked.

William Newton comments on the letter from the Director of the Cape Cod Commission to Mr. Perry and that he is not sure that the appeal belongs here.

The Board discusses and believes it should be discussed with legal and maybe have the Building Commissioner, Mr. Perry, attend.

William Newton recommends also having the Executive Director of the Cape Cod Commission come also. Craig Larson comments that the question is if Mr. Perry acted prudently with the information given to him.

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

Board discusses whether this board has jurisdiction.

Jo Anne Buntich recommends asking the Town Attorney.

Motion is made by Michael Hersey to seek advice on whether this board has jurisdiction to hear this appeal.

Laura Shufelt seconds.

Attorney Cox comments that the July 1st letter was written before the second appeal was filed by her client and it may change the July 1st letter and is not sure what the Executive Director's take is on it.

Alex Rodolakis asks to recuse himself

Vote:

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

NAY: William Newton

Motion to continue to April 13, 2011 at 7:05

Seconded by William Newton.

Vote:

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

NAY: None

CONTINUED TO APRIL 13, 2011 AT 7:05 PM in order to seek an opinion from Town Attorney.

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

7:20 PM

Appeal No. 2011-005 - New

Mulhern d/b/a The Teen Exchange

Pamela R. Mulhern, Manager, d/b/a Teen Exchange, LLC., has petitioned for a Conditional Use Special Permit in the Highway Business (HB) zoning district. The petitioner, as lessee of Unit #5 of 1661 Falmouth Road owned by Brian Dacey as Trustee of Centerville Plaza Trust, is requesting a Conditional Use Special Permit pursuant to Section 240-25 C.(1). of the zoning ordinance to allow a consignment shop whereas a professional office use had previously existed. The property is located at 1661 Falmouth Road, Unit #5, Centerville, MA as shown on Assessor's Map 209 as parcel 087-10E. It is in a Highway Business zoning district.

Attorney David Lawler is representing the applicants, Pam Mulhern and Jennifer Powell, who are with him tonight.

Members assigned: William Newton, Michael Hersey, Craig Larson, Alex Rodolakis, Laura Shufelt

Attorney Lawler gives a brief history of the property and the relief being sought. He received a letter of support today by the plaza members which he hands to the Chair. The proposal is for a teen consignment shop. He thinks that parking would be a reduction as the staff running the business will generally be the only cars. He believes it is an excellent use for the site.

Laura Shufelt asks if there is anyone here from the public either in favor or in opposition. No one speaks.

William Newton does findings: With respect to Appeal 2011-005 – Mulhern, Teen Exchange for a special permit.:

- 1. In Appeal 2011-005, the applicant is seeking to use a 1,410 sq.ft. tenant space in the Centerville Plaza shopping center for retail use, specifically for resale and consignment of clothing.**
- 2. Parking for this particular use has been looked at, measured and refined. There is no problem with parking which is available and meets the needs of this clothing store.**
- 3. On February 4, 2011, the Building Commissioner issued an administrative site plan approval for use of the 1,140 square foot tenant space addressed 1661 Falmouth Road Unit #5 for retail use, specifically for resale and consignment of clothing**
- 4. As far as meeting the requirements of zoning, Section 240-25(C)(1) allows for retail sales in a Highway Business district provided that a special permit is obtained and meets the spirit of the zoning by-law.**
- 5. After the evaluation of all the evidence, 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.**

Vote:

AYE: William Newton, Michael Hersey, Craig Larson, Alex Rodolakis, Laura Shufelt

NAY: None

William Newton makes a motion to grant with the following conditions:

- 1. This conditional use special permit is issued to Pamela Mulhern d/b/a Teen Exchange, LLC for the use of a 1,410 square foot tenant space within the Centerville Plaza, shown on Assessor's Map 209 as parcel 087-10E, to be used for a retail store, specifically for the resale and consignment of clothing.**
- 2. The use and unit shall be required to comply with all applicable provisions of Section 240-65 for signs in the HB District, and Section 240-70 Shopping Center Signs as applicable.**
- 3. This decision must be recorded at the Barnstable County Registry of Deeds and a copy must be submitted to the Zoning Board of Appeals and Building Division office prior to issuance of a 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.**

Attorney Lawler indicates that it is the "Teen Exchange" with Pamela Ahern as Manager.

No discussion.

VOTE:

AYE: William Newton, Craig Larson, Michael Hersey, Alex Rodolakis, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Correspondence:

Laura Shufelt indicates that the ZBA received a letter from Cummaquid Heights Association, Inc., regarding Village Green after the decision was made.

Also, she indicates that she had received email from MassHousing on Settlers Landing

Motion is made by Laura Shufelt to go into executive session to discuss litigation and that they will not reconvene in open session. Michael Hersey seconds.

Vote:

AYE: Scott Harvey, George Zevitas, Alex Rodolakis, Crag Larson, William Newton, Laura Shufelt

NAY: None
