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**Town of Barnstable**  
**Zoning Board of Appeals**  
**Minutes**  
**February 16, 2011**

***A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday February 16, 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

***Also in attendance were: Ann Canedy, Bud Burgstrom, Joseph Berlandi.***

***Laura Shufelt opens the hearing at 7:01 PM. She reads a summary of the appeals being heard tonight.***

- **Approval of minutes from January 19, 2011**

***Motion is made by Brian Florence seconded by Michael Hersey to approve the minutes as presented.***

***Vote:***

***All in favor***

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

**7:00 PM Appeal No. 2011-002 – New**

**Franze**

Anthony E. Franze has applied for a Variance to Sections 240-47.1(A) 1 and 240-47.1 (A) 3. Family Apartments. The applicant is seeking the variance for a family apartment of more than 1200 square feet to be located in an existing detached accessory structure which will also contain a 220 square foot garage located on the property when the zoning ordinance only permits family apartments to be within or attached to the principal dwelling and not to exceed 800 square feet. The property is addressed 2310 Main Street (Route 6A), West Barnstable, MA and is shown on Assessor's Map 237 as parcel 017-001. It is in a Residence F-2 Zoning District.

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

***Anthony Franze is here representing himself. He indicates that he is taking the current existing garage and turning it into an apartment for his family. He indicates that there will be a 220 foot garage for parking. The apartment is for his mother and father.***

**Michael Hersey asks if it is going into the same footprint. Mr. Franze indicates that he is adding 100 square feet in the rear of the building. Laura Shufelt asks Mr. Franze to point out the area. Mr. Franze is asked in what direction the garage door faces and replies that it faces Route 6A.**

**William Newton asks for clarification on the age of the garage. Mr. Franze indicates that it is approximately 50 years old. William Newton clarifies that there will be a total of 4 bedrooms once the apartment is complete. Elizabeth Jenkins indicates that the permit needs to be addressed with the Building Division to rectify that there only be a total of 4 bedrooms.**

**Michael Hersey asks about elevations. They talk about the elevations and how it was approved by Old Kings Highway.**

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

**Laura Shufelt asks if Mr. Franze understands the reasons for requesting a variance. Mr. Franze explains how he meets the 3 prong test and that the aesthetics are the same, parking is currently there and that he will be deleting some of the parking and installing shrubs. Laura asks if there will be sufficient parking. Mr. Franze answers yes.**

**Craig Larson makes findings:**

*Anthony E. Franze has applied for a Variance to Sections 240-47.1(A)(1) and 240-47.1 (A)(3) Family Apartments. The applicant is seeking a variance for a family apartment of more than 1,200 square feet to be located in an existing detached accessory structure, which will also contain a 220 square foot garage, located on the property when the zoning ordinance only permits family apartments to be within or attached to the principal dwelling and not to exceed 800 square feet. The property is addressed 2310 Main Street (Route 6A), West Barnstable, MA and is shown on Assessor's Map 237 as parcel 017-001. It is in a Residence F-2 Zoning District.*

- 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.**

**Vote:**

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

**NAY: None**

**Motion is made by Craig Larson: to grant the variance with the following conditions:**

- 1. This permit is issued to Anthony Franze, pursuant to Section 240-47.1 A(1) and A(3), to allow a 1,205 square foot family apartment and a 220 square foot garage in an existing detached accessory structure.**
- 2. 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.**
- 3. The family apartment shall be located within the existing detached accessory structure and shall be maintained as a one bedroom unit of 1,205 square feet with a 220 square foot garage.**
- 4. Prior to occupancy, the apartment unit shall be fully compliant with all requirements of the Health Division and the Building Division and shall be in conformance with all applicable zoning, building, fire, and health codes. The applicant shall demonstrate compliance with Title 5 and local Board of Health requirements and shall obtain any necessary permits to upgrade the septic system required by the Health Division.**

5. **All parking for the primary dwelling and family apartment shall be located on-site.**
6. **Occupancy of the dwelling and the family apartment unit is restricted to family members only and not to exceed two persons. 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. **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.**

8. **In plans dated 10-23-10 as submitted to the Board and as approved by Old King's Highway Laura Shufelt wants to change #6 to read: "Occupancy of the family apartment shall not exceed two persons"**

**Seconded by Michael Hersey.**

**Vote:**

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

**NAY: None**

## **GRANTED WITH CONDITIONS**

**At 7:26 PM, Laura Shufelt calls the JDJ Housing Development LLC, - Dakota Partners, Inc., - The Village Green appeal and reads it into the record:**

**7:10 PM Comp Permit 2003-090 – Cont'd**

**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.

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

Decision Due: August 1, 2011

**Laura Shufelt asks Town Attorney Ruth Weil to speak on the procedure. Attorney Weil indicates there is a limited scope both by statute, regulation, and recent Supreme Judicial Court case known as the Amesbury Case. In terms of the scope of the hearing, under 760 CMR 56.11 they are limited to the proposed modifications. She indicates that from letters received regarding this there is a desire to open up the entire permit which is not legally permissible as it is a narrow scope dictated by what the request modifications are. Secondly, is the financial viability of the project and this, what Amesbury speaks to, it is not appropriate to raise financial issues. There is a financial review by the subsidizing agency prior to final approval and there is more protection.**

**Laura indicates that Attorney Freeman and staff have consulted together about a decision.**

**Attorney Freeman introduces Marc Daigle and Roberto Arista who are with him tonight. He indicates that from the last hearing that were to draft a decision with staff and also address the parking question. He indicates that he looked into similar projects in Barnstable and Bourne developed by Housing Assistance Corporation. He spoke with staff to ensure that it was adequate. He indicates that Village Green meets or exceeds the parking.**

**Laura asks about the workforce housing units. Attorney Freeman indicates that his client agrees to her suggestion and that they are proposing that there will be a minimum of 40 affordable units and no workforce housing units.**

**Alex Rodolakis asks about the entrances on the side. Roberto Arista indicates that they are going to have the architect look at it and improve the look.**

**Attorney Freeman agrees with JoAnne Buntich that there will be a due reference to that in the finalized decision.**

**They discuss the air conditioners. Attorney Freeman indicates that they will go under the windows and are not obtrusive.**

**Laura Shufelt indicates that several letters have been received which she reads portions of them into the record. She reads part of the letter from the Planning Board. She reads part of a letter from COHDD, Ann Canedy, and email from Kathleen Benson and Robert Berry.**

**Attorney Freeman indicates that there is an error on the letter from the Planning Board as the net footprint is reduced.**

**Laura Shufelt opens it up to public comment.**

**Councilor Ann Canedy speaks. She indicates that is located in Barnstable Village and she is in opposition as are people she is representing. She indicates that even with the reduction it will be the largest development of this type on Cape Cod. The median is about 26 units per development cape-wide and the next one in size is Holly Hill with 44 units. Architecturally, she is looking forward to the architects suggestions as she believes it is not attractive, not Cape Cod architecture, there are no balconies and no lawn. She wants for her village, an attractive, integrated affordable housing and wants to be proud and does not want these people to be isolated. She thinks that they could return some patios and balconies and take away some cement and thinks there are things they can still do to make this attractive.**

**Bud Burgstrom from Cummaquid talks about the air conditioning. He would like to ask what is happening in the common areas, hallways, etc., regarding air conditioning. He thinks children riding bikes along Independence Drive will be dangerous and thinks a sidewalk needs to be constructed and might they talk to the Town about extending the bike paths. They need play areas. He questions the lighting plans. He believes the balconies need to be added back onto the buildings. He likes Kimber Woods aesthetics and the believes the parking there is in part of the YMCA**

**Joe Berlandi is representing the Cummaquid Heights Association. He disagrees with Town Counsel about what they should comment on. He believes they have a right to speak. He asks the board to reconsider the changes and this hearing should be re-opened and the developer should re-apply for this project.**

**Alex Rodolakis asks if the common area will be air conditioned. Roberto Arista indicates yes. Alex Rodolakis asks about the community space. Attorney Freeman believes it is in the draft conditions. Alex**

**Rodolakis asks about picnic and sitting benches. Roberto Arista indicates that they are still discussing that with Growth Management.**

**Joanne Buntich wants to clarify what the Board's concern is regarding the community space. She indicates that all the plans will be finalized by March 9<sup>th</sup>.**

**Attorney Freeman indicates that the only thing needing tweaking is the landscaping plan.**

**Elizabeth Jenkins would amend finding #7 indicating that the impervious surface coverage has been decreased by 8.25% by the approved plan**

**Attorney Freeman wants a finding that the modification is consistent with local needs as Finding # 17.**

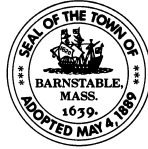
**Alex Rodolakis makes the findings from the Comprehensive Permit, Village Green dated February 16, 2011 as amended per Elizabeth Jenkins and Attorney Freeman as stated above.**

**Vote:**

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

**NAY: Brian Florence**

**Alex Rodolakis makes a motion based on those findings to approve 2003-090 with the proposed conditions 1 through 20 on the February 16th decision:**



**Town of Barnstable  
Zoning Board of Appeals  
Decision and Notice**

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**Comprehensive Permit 2003-090 - The Village Green  
2011 Modification Request - MGL, Chapter 40B**

**Applicant:** JDJ Housing Development, LLC and Dakota Partners, Inc.  
**Property Address:** 0 Independence Drive, Barnstable, MA  
**Assessor's Map/Parcel:** Map 332, Parcel 010-001  
**Zoning:** IND Industrial District  
Wellhead & Groundwater Protection Overlay Districts  
**Decision Date:** February 16, 2011  
**Modification Granted:** Reduction in the number of rental housing units from 148 to 120, including a minimum of 40 units committed in perpetuity to being low and moderate income units; decrease in the number of apartment buildings from five to four; modifications to unit mix, gross square footage of buildings, building facades, and on-site parking. Construction of the development may occur in two phases. Modifications to reflect purchase of property by Dakota Partners, Inc. Change in financing subsidy program to Massachusetts Housing Partnership Fund. Modification of waiver to the Growth Management Ordinance.

## Decision:

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Based upon the findings, a motion was duly made and seconded to grant JDJ Housing Development, LLC and Dakota Partners, Inc. a modification to Comprehensive Permit 2003-090 as originally issued, and as modified on May 25, 2005, November 2, 2005 and July 22, 2009 to allow 120 units of rental housing, including a minimum of 40 units committed in perpetuity to being low and moderate income units; an increase in building gross floor area and building footprint; a modification of unit mix and provision of affordable units; modification to the site layout and building design; a change in site control; a change in project financing; and phased construction of the development, subject to all of the following:

1. All findings and conditions of the approved Comprehensive Permit remain in full force and effect and are modified only as specifically stated herein.
2. Condition No. 1 of the approved Comprehensive Permit is modified to read:

Development of the site shall be in substantial conformance to the following plans presented to the Board, entitled Village Green Apartments, Independence Drive, Barnstable, Massachusetts, drawn and stamped by LaFreniere Architects, Level Design Group, LLC, and William Flemming Associates, Inc., consisting of the following sheets:

- a. "Village Green Apartments Cover Sheet", dated January 28, 2011.
- b. "Grading Plan" – Sheet C-2.0, dated June 1, 2006 and last revised February 11, 2011.
- c. "Utilities Plan" – Sheet C-2.1, dated June 1, 2006 and last revised February 11, 2011.
- d. "Layout and Materials Plan" – Sheet C-3.0, dated June 1, 2006 and last revised February 11, 2011.
- e. "Landscape Plan" – Sheet L-1.0, dated January 28, 2011, subject to final approval by the Director of the Growth Management Department.
- f. "Enlarged Landscape Plan" – Sheet L-2.0, dated January 28, 2011.
- g. "Site Lighting Plan" – Sheet SL-1.0, dated January 28, 2011.
- h. "Typical Basement and First Floor Plan" – Sheet A1.1, dated January 28, 2011.
- i. "Typical Second and Third Floor Plan" – Sheet A1.2, dated January 28, 2011.
- j. "Typical Roof Plan/Roof Details" – Sheet A1.3, dated January 28, 2011.
- k. "Exterior Elevations" – Sheet A3.1, dated January 28, 2011, subject to final approval by the Director of the Growth Management Department.
- l. "Wall Sections" – Sheet A4.1, dated January 28, 2011.
- m. "Proposed Community Center" – Sheet A4.1 dated August 19, 2002 and last revised on March 30, 2004.

**JoAnne Buntich indicates that to note that E & K are subject to approval.**

3. Condition No. 2 of the approved Comprehensive Permit is modified to read:

There shall be a total of 120 housing units distributed within four (4) three-story apartment buildings. Not less than forty (40) units shall be committed in perpetuity to being low or moderate income units as that term is currently defined under MGL Chapter 40B and 760 CMR (also referred to hereinafter as "affordable units"). All of the units in the development shall remain rental housing units in perpetuity.

4. Condition No. 3 of the approved Comprehensive Permit is modified to read:

The 120 units shall be divided into three types of units and committed as follows:

- a. 28 one-bedroom units (with a minimum of 9 affordable units)
- b. 84 two-bedroom units (with a minimum of 28 affordable units)
- c. 8 three-bedroom units (with a minimum of 3 affordable units)

5. Condition No. 4 of the approved Comprehensive Permit is modified to read:

The affordable and market rate units shall be distributed equally between the four buildings and throughout the development. Location of the exact units shall be presented by the Applicant, reviewed by Growth Management Department staff, and subject to final approval by the Board. The Board's review shall be an administrative review and shall not require a public hearing or notice. For every three (3) Certificates of Occupancy issued, one shall be for an affordable unit.

6. Condition No. 5 of the approved Comprehensive Permit is modified to read:

All apartment features, finishes, appliances and development and site amenities shall be equal regardless of whether a unit is a market rate unit or an affordable unit.

7. Condition No. 6 of the approved Comprehensive Permit is modified to read:

The four apartment buildings are to be three stories with a footprint not to exceed 11,123 square feet each. The gross floor area of each building shall not exceed 33,369 square feet. Each building shall have no more than:

- a. 7 one-bedroom units
- b. 21 two-bedroom units
- c. 2 three-bedroom units

With respect to the affordable housing units, there shall be not less than nine (9) affordable units in each building.

8. Condition No. 7 of the approved Comprehensive Permit is modified to read:

The size of the proposed units shall be as shown on the floor plans referenced herein.

9. Condition No. 9 of the approved Comprehensive Permit is modified to read:

The affordable units shall only be rented to income qualified individuals and households, defined as those making not more than 80% of the median income of the Metropolitan Statistical Area. All of the units shall be made available on a fair and open basis. Services and facilities shall be provided equally to all market rate and affordable units.

10. Condition No. 10 of the approved Comprehensive Permit is modified to read:

The Applicant shall provide a community center as shown on the site and architectural plans referenced herein. The footprint of this building shall be 2,040 square feet. Use of the community center shall be restricted to residents of The Village Green, appropriate community-based non-profit groups, and staff of the management company. The use of the community building by the management company shall be for purposes consistent with the management and oversight of the development. A minimum of seventy-five percent (75%) of the building shall be reserved and available for use by residents of the community.

11. Condition No. 11 of the approved Comprehensive Permit is modified to read:

The total amount of on-site parking provided shall not be less than 211 spaces. Parking shall be developed consistent with the site plan referenced herein. The management company shall designate an adequate number of parking spaces for guest parking.

12. Condition No. 15 of the approved Comprehensive Permit is modified to read:

The Applicant shall provide site and development amenities that include:

- a. Dumpsters to appropriately service waste and recycling from all tenants shall be provided on areas as designated on the plans referenced herein. The dumpsters shall conform to all requirements of the Health Division and shall be fenced and screened. Such dumpsters are for tenant use only.

- b. Passive recreational areas shall be created as shown on the landscape plan referenced herein. The existing 30,000 square foot wooded area shall be cleaned up and pruned with the intent of creating a passive recreational area for the residents.
- c. The central green space between the buildings is to be developed and maintained as a passive recreation area to be used for the enjoyment of the residents. It is not to have play equipment.
- d. A fenced play area shall be developed on the property. This area shall be improved and fenced as shown on the landscape plan referenced herein.
- e. All walks shall be appropriately paved and lit. All crosswalks shall be defined and striped. Internal site roadway signagy shall include road signs where necessary.

13. Condition No. 16 of the approved Comprehensive Permit shall be deleted in its entirety.

14. Condition No. 17 of the approved Comprehensive Permit shall be deleted in its entirety.

15. Condition No. 21 of the approved Comprehensive Permit shall be modified to read:

This Comprehensive Permit is granted with the condition that the proposed development is to be funded through the Massachusetts Housing Partnership Fund Permanent Rental Program. If the funding source changes, the Applicant shall be required to notify the Board for a modification of this Comprehensive Permit. The Applicant may utilize financing from the project from lenders and institutions who choose to act as participants with the Massachusetts Housing Partnership Fund. No building permits shall be issued for the development until the Applicant receives final funding approval from the Massachusetts Housing Partnership Fund.

16. Condition No. 37 of the approved Comprehensive Permit shall be deleted in its entirety.

17. Condition No. 38 of the approved Comprehensive Permit shall be modified to read:

This Comprehensive Permit shall not be transferable to a person or other entity other than the Applicant without prior written approval of this Board. This permit is now issued to JDJ Housing Development, LLC and Dakota Partners, Inc. Provided, however, in the event that the Applicant utilizes the Low Income Housing Tax Credit program for the project, then this permit may be transferred without the approval of this Board to another entity such as but not limited to a Limited Liability Company which is affiliated with Dakota Partners, Inc., provided that the subsidizing agency issues written confirmation that the transferee meets the requirements of 760 CMR 56.04(1)(a) and (b) and notice of such transfer shall be provided to this Board as provided in 760 CMR 56.05(12)(b).

18. Condition No. 45 of the approved Comprehensive Permit shall be modified to read:

With respect to Chapter 240, Article XI, Section 240-110 through 240-122, inclusive, of the Ordinances of the Town of Barnstable (“Growth Management Ordinance”), the Board grants the Applicant a waiver from the Growth Management Ordinance. This wavier is conditioned upon the submission of building permit application(s) which the Building Commissioner deems are complete. The permits are subject to all other requirements of the Building Division for the issuance of building permits and the Applicant shall comply with any and all requirements of this comprehensive permit decision, which shall be fulfilled and completed before any building permits may issue.

19. Conditions No. 7a and No. 7b of the second modification to Comprehensive Permit 2003-090, approved by the Board on November 2, 2005, shall be deleted in its entirety.

20. The following conditions shall be added to the comprehensive permit decision:

Construction of the development may occur in two phases, in accordance with the phasing line shown on the plans referenced herein and in accordance with the conditions of this permit.



Phase II areas disturbed during site grading, clearing and construction of Phase I shall be mulched immediately following cessation of Phase I site work.

If foundation and building permits for Phase II have not been issued within six (6) months of the issuance of the last Certificate of Occupancy in Phase I, the Applicant/Owner shall plant Phase II areas disturbed during site grading, clearing and construction of Phase I with naturalized grasses. The Applicant shall submit a landscape plan to the Growth Management Department Director for review and approval prior to planting.

Construction of Phase II shall commence no later than three years after issuance of the last Certificate of Occupancy in Phase I. "Construction" shall mean issuance of foundation and building permits. Issuance of foundation and building permits shall be followed by completion of foundation, building, landscaping, and exterior improvements, including parking lots, within eighteen (18) months.

***Seconded by Laura Shufelt***

***Laura Shufelt asks for a motion to close the public hearing.***

***Brian Florence makes a motion to close the public hearing. Seconded by Michael Hersey.***

***Vote:***

***All in favor.***

***Vote on decision:***

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

***NAY: Brian Florence***

***Brian Florence opposes because he feels whereas the modification were to include the number of units, the percentage of affordable units, mix and size, building area and footprint, project phasing and funding sources, he would be opposed to the project because although the affordable units were increased on this project, the reduction of units does not meet the needs of the community, the units mix and size does not adequately meet the community needs and the building area and footprints do not adequately address the safety issues in the area. Also, he is opposed to the phasing of the project as it does not address the housing needs of the community in a timely fashion and has no problem with the funding source.***

## **GRANTED WITH CONDITIONS**

***Laura indicates that there will be a condensed permit of JDJ Development, LLC which the Board will be voting on at the next meeting which is scheduled for March 9, 2011.***

***They discuss the election of officers and as William Newton has left they decide to wait until the next hearing to do the election.***

***Motion is made by Brian Florence and seconded by Michael Hersey to adjourn***

***Vote:***

***All in favor.***

***Meeting adjourned at 8:35 PM.***