



Town of Barnstable
Zoning Board of Appeals
Minutes
October 05, 2011

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

Laura Shufelt opens the hearing at 7:08 PM.

Introduction of Board Members

Laura Shufelt asks if anyone is interested in joining the board to please contact the Town of Barnstable.

Minutes

Approval of minutes from July 13, 2011, July 27, 2011, August 10, 2011 & August 24, 2011

Motion is made by William Newton and seconded by Craig Larson to accept minutes as submitted.

Vote:

All in favor

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

7:00 PM

Appeal No. 2011-045

**John F. Cardarelli as Trustee
for 626 West Main Street Realty Trust**

John F. Cardarelli as Trustee for 626 West Main Street Realty Trust has applied for a Variance to Section 240-25(E) *HB Business District*, specifically the 60 foot minimum front yard setback requirement. The applicant is seeking to demolish an existing gas station building and replace it with a new, larger building for the operation of a retail and wholesale fish market with related offices. The new building is proposed to be located 31.2 feet from Dunn's Pond Road. The subject property is addressed 626 West Main Street, Hyannis, MA and shown on Assessor's Map 249 as Parcel 133. It is in the HB Business and Residence B Zoning Districts.

Decision Due: December 11, 2011

7:05 PM

Appeal No. 2011-046

**John F. Cardarelli as Trustee
for 644 West Main Street Realty Trust**

John F. Cardarelli as Trustee for 644 West Main Street Realty Trust has applied for a Variance to Section 240-25(E) *HB Business District*, specifically the 60 foot minimum front yard setback requirement. The applicant is seeking a Variance to maintain the structure's existing 53.7 foot setback from West Main Street on a new reconfigured lot. The lot was reconfigured by an ANR Plan, recorded at the Barnstable County

Registry of Deeds in Plan Book 630 Page 18, to bring it into conformity with the minimum lot area requirements of the district. The subject property is addressed 644 West Main Street, Hyannis, MA and shown on Assessor's Map 249 as Parcel 095. It is in the HB Business and Residence B Zoning Districts.

Decision Due: December 11, 2011

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

Attorney Mark Boudreau is representing the applicants, John and Ralph Cardarelli. He respectfully requests to continue these appeals since there is not a full board compliment and to continue this to October 12, 2011.

Motion is made by William Newton and seconded by Craig Larson to continue this to October 12, 2011 at 7:20 PM

Vote:

All in favor.

CONTINUED TO OCTOBER 12, 2011 at 7:20 PM

At 7:14 PM, Laura calls the Balise appeal and reads it into the record:

7:10 PM

Appeal No. 2011-047

Balise Automotive Realty, LP

Balise Automotive Realty, LP has applied for a Conditional Use Special Permit pursuant to Section 240-25(C)(1) to expand an existing automobile dealership located in the HB Zone. The Applicant seeks to demolish approximately 8,920 square feet of the existing dealership and construct a new building with a total gross floor area of 18,381 square feet. Site alterations are also proposed. The new building will be partially located on a lot subject to Special Permits 2010-021 and 2010-022, which allowed for use of that property as a vehicle display lot. The Applicant requests to modify those Special Permits to allow for the proposed expansion of the existing dealership and to make alterations to the site, which includes non-conforming landscape setbacks and parking buffers. The Applicant further seeks a Special Permit pursuant to Section 240-93(B) Nonconforming Buildings or Structures, as the present and proposed dealership building is nonconforming in terms of setback and on a site with nonconformities. The subject properties are addressed 322 Falmouth Road, 516 and 528 Bearses Way, and 45 and 57 Corporation Street and shown on Assessor's Map 293 as Parcels 008 through 012. The parcels are located in the B Business and HB Business Zoning Districts.

Decision Due: January 2, 2012

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

Attorney Michael Ford is representing the applicant. Also with him tonight are Matthew Eddy – PE from Baxter and Nye Engineering, two contractors from Associated Builders, Inc., Michael Ciolek, Jr. and Bob Frasco and William Daley who is representing Balise.

Attorney Ford indicates that this is Phase 2 as Phase 1 occurred last June when he appeared before the board seeking a special permit to remove what was an existing carwash at the corner of Bearses Way and Route 28 and replace with a vehicle display lot. Since then, Balise Ford has moved to a new site in downtown Hyannis in the old GM building on High School Road. As a result, they want to move the Nissan dealership to this location also. Attorney Ford indicates that the applicant would like to build a new dealership to go with the vehicle display area. Phase 3, which is not before the board tonight, has gotten approval from Site Plan is to construct a car wash further down on Bearses Way, which then intend to do once the dealership is built.

Matt Eddy points out the property on Corporation Road and Route 28 and the Bearses Way parcels, which totaled, is approximately three acres. Attorney Ford indicates that they would seek amendments to the previously granted special permit and this one would supercede the old special permit. When the applicant decided to move the dealership, they met with Growth Management, site engineer and Mr. Daley for a

redevelopment of the site and were given some direction to modify the vehicle display area. They have a plan that will leave the vehicle display better looking than what exists and this dealership will be a state-of-the-art facility for Nissan. They want to demolish approximately 9000 sf of the existing dealership building closest to Falmouth Road and then to construct new building onto that. They will end up with approximately 18,000 sf of building. It would be an increase of approximately 3700 sf. In addition to that, site circulation will be changed; new paving, new drainage, new landscaping, light improvements, and significantly, a curb cut on Route 28 nearest Corporation Street will be closed. The curb cut that was to be a limited access curb cut to the vehicle display area under the special permit previously granted would be expanded so that it would become an ingress and egress they could use as a public access. Matt Eddy hands out a Plan of Land dated 09-30-11. Attorney Ford indicates that after they came up with that Site Plan they showed it to Growth Management, made some adjustments and were asked what they would do with respect to the lot lines that exist and they indicate that they would file a permit or plan combining four out of the five lots that are before the board tonight. Attorney Ford indicates that there is both registered and unregistered land and the Land Court, who has jurisdiction over the registered portion of the property never wants its lot lines to go away according to a real estate standpoint. So, on this plan Lots A, B & C are all registered land and Land Court will require them to continue them to carry on the plan. Lots D & E are unregistered. The new law will be the perimeter of all of those parcels and what will occur will be a proposed condition that this plan be filed and be done prior to the issuance of a building permit and they do not have a problem with that. They have the plan prepared and ready to go and recorded at the Registry of Deeds on the unregistered side under the provisions of 81X which allows a land surveyor to stamp the plan and no property lines being created. Matt Eddy points out the lots as they are in the HB/B zoning districts. They have applied for several special permits and before that went to Site Plan Review which approved it with conditions. They accept those conditions. Attorney Ford goes over how this qualifies for a special permit. They do not have a problem with the suggested conditions or with the modification of the previously granted special permit. He also indicates that they are agreeable to that if the Town needs a five-foot section where they presently show landscaping for a sidewalk; they are amenable to granting an easement for that purpose. He indicates that they also do not have an objection regarding the elevations and landscaping issues regarding the High School Road site and will be working with Growth Management on that.

William Newton asks about the landscaping on the interior of the lot and where the sign would be located. Matthew Eddy points out the landscaping and sign on the plan displayed.

Alex Rodolakis asks for clarification as to the height of the existing building on the Route 28 side. Michael Ciolek, Jr., president of Associated Builders, Inc., indicates that the highest portion is approximately 21 feet at the peak and 19 feet at the eaves. The front portion of the building, which is currently a showroom portion, is approximately 12 feet for a short distance before it jumps up to the heights he just quoted. The proposed showroom elevation at the front of the building will be approximately 24 feet on the street side and will drop back down to match to match the existing roof line which is there currently.

Craig Larson asks if they control the other lot on the other side of Corporation Street which is not part of the relief being sought tonight. Attorney Ford indicates that the applicants own and utilize the lot on the east of Corporation Street which is part of their Class 1 license for vehicle display. Craig Larson asks if the landscape could continue down the road. Attorney Ford indicates that he is sure that it will be considered by the owner. Craig Larson clarifies that this lot on Corporation Street will be utilized as a public car wash and that the advertising for the car wash will be on Bearses Way.

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

Richard Fleming, an abutter who owns Anchor Auto Body at 83 Corporation Street, asks if Corporation Street is going to remain open during the construction process as approximately 35% of his clientele come down Route 28 from the rotary circle and take the right-hand turn onto Corporation Street and thinks if they have come through the mall it will cause a lot of traffic. He also asks if, during construction, if they are intending to have a police officer there to direct traffic through. Also, he is concerned about the condition of Corporation Street as it needs a lot of improvement.

Attorney Ford indicates that Corporation Street is a public way and that they are not proposing any changes to Corporation Street as is looking to be assured by the contractor that it will not be closed during construction. Also, as far as the condition of Corporation Street, he asks Matt Eddy if it will be improved. Matt Eddy indicates that they will be improving the whole length of Corporation Street including sidewalks, landscaping and road surface.

The board discusses the parking in the front of the proposed building.

Alex Rodolakis is concerned about the taking of five feet from the front of the building. They discuss. Attorney Ford indicates that they would rather not have a condition that in the event that the five feet was used with pavement, that they have to redesign the parking in front of the building. Attorney Ford suggests a slope easement and a requirement that it continue to be landscaped.

Craig Larson asks if there is any customer entrance where the service bays are. Matt Eddy indicates that there will be parking for twenty customers. Craig Larson asks where they will park. William Daley indicates that the service department can be driven into and out of, if the customer wants to buy a part, they could enter through the showroom and the customer could park in front of the showroom, side of wherever they come in. Craig Larson indicates that from the right-hand side on Corporation Street, if it could be accessed from the back of the building. Matt Eddy indicates that is where the inventory is. They discuss. Craig Larson clarifies that customers could come in from the Route 28 side. They discuss the parking on the property on the side of Corporation Street.

Laura Shufelt calls a five-minute recess.

At 8:20 PM, Laura calls the hearing back in session.

Attorney Ford indicates that they with the new high speed doors for the entrance to the service department, a customer could come in and discuss with the technician leave their car, and if you didn't and just wanted to talk about possible service you would drive out and you wouldn't have to sit on Corporation Street. He indicates that they eliminated some parking on Corporation Street and thinks that with the new high speed doors for service, they will get people off of Corporation Street and in for service or into the store itself.

Craig Larson suggests that they do something on the other lot they own regarding parking.

William Newton makes the following findings:

Balise Automotive Realty, LP has applied for a Conditional Use Special Permit pursuant to Section 240-25(C)(1) to expand an existing automobile dealership located in the HB Zone. The Applicant seeks to demolish approximately 8,920 square feet of the existing dealership and construct a new building with a total gross floor area of 18,381 square feet. Site alterations are also proposed. The new building will be partially located on a lot subject to Special Permits 2010-021 and 2010-022, which allowed for use of that property as a vehicle display lot. The Applicant requests to modify those Special Permits to allow for the proposed expansion of the existing dealership and to make alterations to the site, which includes non-conforming landscape setbacks and parking buffers. The Applicant further seeks a Special Permit pursuant to Section 240-93(B) Nonconforming Buildings or Structures, as the present and proposed dealership building is nonconforming in terms of setback and on a site with nonconformities. The subject properties are addressed 322 Falmouth Road, 516 and 528 Bearses Way, and 45 and 57 Corporation Street and shown on Assessor's Map 293 as Parcels 008 through 012. The parcels are located in the B Business and HB Business Zoning Districts.

The expanded dealership will cross over the property line between the parcels addressed 322 Falmouth Road and 516 Barse's Way. Expansion over the property line presents concerns about compliance with setback requirements and continued joint ownership of the properties. Given the current lot line configuration, construction of the building as presented on the plans would require additional relief from this Board

The corner of Bearses Way and Falmouth Road is a critical gateway into downtown Hyannis and the appearance of the surrounding area has benefited from significant public investment over the last year. The architectural elevations submitted by the applicant are limited in detail. The landscape plan does not depict the berm conditioned in the last permit and details for some planting beds are not included. The Board may wish to consider a condition that final elevations and landscape plans must be approved by the Growth Management Department prior to issuance of building permits

Findings – Part A

Section 240-25 (C)(1) Conditional Use requires the Board make findings supporting that the use will not "substantially or adversely affect the public health, safety, welfare, comfort or convenience of the community."

Section 240-125(C) Special Permit Findings requires the Board to make the general findings that support that:

- **The application falls within a category specifically accepted in the ordinance for a grant of a special permit.**

Special Permit 2011-047 (Part A) may be issued pursuant to Section 240-25 (C), which allows retail sales of vehicles sales in the HB District, provided a Special Permit is issued by the Board of Appeals. This Special Permit also modifies Permit No. 2010-021.

- **That a site plan has been reviewed by the Site Plan Review Committee and found approvable.**

A Site Plan approval letter was issued by the Building Commissioner on September 27, 2011. The proposed building expansion and site redevelopment was found approvable, subject to grant of a Special Permit by the Zoning Board of Appeals.

- **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.**

Findings – Parts B & C

The Petitioner further requests Special Permits to alter/expand a nonconforming structure that does not comply with the minimum front yard setback requirements in the HB District, on a lot with non-conforming landscape buffers.

These Special Permits may be issued pursuant to Section 240-93(B), Alteration or Expansion of a Pre-existing Nonconforming Building or Structure not used as a Single- or Two-family Dwelling and modify Permit No. 2011-022.

In addition to the findings required by Section 240-125 as cited above, Section 240-93 requires a finding as follows:

- **That the proposed repairs, alterations and/or expansion are not substantially more detrimental to the surrounding neighborhood.**

Vote:

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

NAY: None

A motion is made by William Newton to grant the relief being requested in accordance with the following conditions:

Part A:

1. This Special Permit modifies and supersedes Special Permit 2010-021.
2. This conditional use special permit is issued to Balise Automotive Realty, LP for the use of the parcel addressed as 516 Bearses Way for vehicle sales, service and display, in conjunction with the existing use located at 322 Falmouth Road and 45 and 57 Corporation Street. This permit also allows for the use of the parcel addressed 528 Bearses Way for the accessory display of vehicles for retail sales.
3. The subject parcels shall be developed as shown on plans submitted to the Board entitled "Balise Nissan – Hyannis, 322 Falmouth Road, Hyannis, MA" prepared for Balise Motor Sales, drawn and stamped by Baxter Nye Engineering & Surveying, dated September 1, 2011, last revised September 23, 2011.
4. No building permits shall be issued for the expanded structure until the need for additional relief from setback requirements has been cured, either by preparing and recording a perimeter plan in accordance with M.G.L. Chapter 81X or through additional application to this Board.

5. Vehicles can only be displayed in designated paved parking areas. Display vehicles shall not encroach on landscaped areas or drive aisles.
6. All signage shall conform to the zoning regulations.
7. Vehicle display areas shall not now or in the future be fenced-in along Route 28 and Bearses Way by chain link fencing.
8. Lighting of the lot shall conform to the Lighting Standards of the Cape Cod Commission. The height of the light fixtures shall not exceed 26 feet. All lighting shall be shielded and shall not glare onto abutting properties or onto surrounding public ways.
9. The use of any ramps, elevated platforms or mounds for the display of vehicles is prohibited.
10. The redevelopment shall be in compliance with all conditions of the Site Plan Review approval letter issued September 27, 2011 and Special Permit 2011-047 Parts B and C.

Part B Conditions – Expansion of a Preexisting Non-Conforming Site Features

1. This Special Permit modifies and supersedes Special Permit 2010-022.
2. The subject parcels, addressed 322 Falmouth Road and 516 and 528 Bearses Way, shall be developed as shown on plans submitted to the Board entitled "Balise Nissan – Hyannis, 322 Falmouth Road, Hyannis, MA" prepared for Balise Motor Sales, drawn and stamped by Baxter Nye Engineering & Surveying, dated September 1, 2011, last revised September 23, 2011.
3. No building permits shall be issued for the expanded structure until the need for additional relief from setback requirements has been cured, either by preparing and recording a perimeter plan in accordance with M.G.L. Chapter 81X or through additional application to this Board.
4. The existing and proposed 11.75-foot wide front yard landscape area abutting Route 28 and Bearses Way, located on the subject parcels stated above, shall not be used for the parking of any vehicles and shall be maintained as green space. Parked vehicles shall be prevented from parking on or overhanging into that green area by the placement of vehicle stops to delineate and protect the green buffer from the interior parking area. In addition to the concrete stops, a Cape Cod berm shall be installed at the edge of the parking lot and the grassed area abutting the berm slightly raised to further demarcate the front landscaped area.
5. Final landscape plans shall be approved by the Growth Management Department Director prior to issuance of building permits.
6. The lot shall be properly drained as per plans submitted. The engineer, as a part of the as-built plan, shall certify that the lot is properly drained as per plan and no area of standing water exists.
7. Any future alteration to the locus shall only be permitted provided the alteration made is more conforming to then applicable zoning requirements.
8. Public parking is only permitted in areas designated on the plan as "Customer Parking" or in spaces that conform to the minimal dimensional requirements for parking spaces.
9. The redevelopment shall be in compliance with all conditions of the Site Plan Review approval letter issued September 27, 2011 and Special Permit 2011-047 Parts A and C.

Part C Conditions – Expansion of a Preexisting Non-Conforming Building or Structure

1. The subject parcels, addressed 322 Falmouth Road and 516 and 528 Bearses Way, shall be developed in substantial compliance with the plans submitted to the Board entitled "Balise Nissan – Hyannis, 322 Falmouth Road, Hyannis, MA" prepared for Balise Motor Sales, drawn and stamped by Baxter Nye Engineering & Surveying, dated September 1, 2011, last revised September 23, 2011.
2. No building permits shall be issued for the expanded structure until the need for additional relief from setback requirements has been cured, either by preparing and recording a perimeter plan in accordance with M.G.L. Chapter 81X or through additional application to this Board.
3. Final building elevations shall be approved by the Growth Management Department Director prior to issuance of building permits.
4. The redevelopment shall be in compliance with all conditions of the Site Plan Review approval letter issued September 27, 2011 and Special Permit 2011-047 Parts A and B.

William Newton indicates that, additionally, under Part C to add:

5. Corporation Street shall remain open during construction.

Alex Rodolakis wants to amend Part A, #5, that the display vehicles shall not be parked at anytime in customer designated parking areas.

William Newton accepts the amendment

Attorney Ford corrects the reference to MGL and indicates that it should be MGL Chapter 41, Section 81X.

Alex Rodolakis seconds as amended.

Vote:

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

NAY: None

GRANTED WITH CONDITIONS

At 8:38, Laura Shufelt calls the 262 Bridge Street Realty Trust appeal and reads it into the record:

7:15 PM

Appeal No. 2011-044

**262 Bridge Street Realty Trust
MBRIDGE 274 LLC**

262 Bridge Street Realty Trust and MBRIDGE 274 LLC have applied for a Variance to Section 240-36(D) *Resource Protection Overlay District* (RPOD) to modify the shape of Lot 1B as shown on the plan recorded in Plan Book 546 Page 26 and Lots 2 and 3 as shown on Plan Book 546 Page 25. Relief is required as the lots do not conform to the two-acre minimum lot area requirement of the RPOD. The Applicants seek to modify the shape of the lots, but the area of each lot will not change. Further, the Applicants seek relief from Section 240-36(D) to demolish and rebuild the single-family dwelling currently located on Lot 1B. As a result of the recombination of the lots proposed above, the dwelling to be rebuilt will no longer be located on the same lot that existed prior to the adoption of the RPOD. Relief is requested for the reconstruction of the dwelling on a newly created lot less than two acres in area. The subject properties are addressed 274 Bridge Street and 262 Bridge Street, Osterville, MA and shown on Assessor's Map 093 as Parcels 021-001 and 021-002. These addresses encompass all lots that are the subject of the application, but note that all lots are not currently assigned individual addresses. All lots are in a Residential F-1 Zoning District.

Decision Due: December 11, 2011

Attorney Ford is representing the applicant and requests that this be continued to the next available date with a full compliment of the board.

Motion is made by Laura Shufelt and seconded by William Newton to continue this to November 9, 2011 at 7:00 PM

Vote:

All in favor

CONTINUED TO NOVEMBER 9, 2011 AT 7:00 PM

Motion is made by Alex Rodolakis and seconded by Laura Shufelt to adjourn.

Meeting adjourned at 8:42 PM.