



Town of Barnstable Zoning Board of Appeals Minutes January 9, 2013

Laura Shufelt - Chair	Present
William Newton – Vice Chair	Present
Craig Larson	Present
Alex Rodolakis	Present
Brian Florence	Present
George Zevitas	Present

As a quorum has been met, Laura Shufelt opens the hearing at 7:03 PM.

Introduction of Board Members

Craig Larson, Brian Florence, George Zevitas, William Newton and Laura Shufelt introduce themselves

Approval of Minutes from December 12, 2012

Motion is made by Brian Florence and seconded by Craig Larson to approve the minutes as submitted.

Vote:

AYE: Craig Larson, Brian Florence, George Zevitas, William Newton, Laura Shufelt

NAY: None

Alex Rodolakis arrives.

At 7:04 PM, Laura calls the Ruggerio appeal and reads it into the record:

7:00 PM Appeal No. 2012-049 – Cont'd

Daniel & Mindi Ruggiero

Daniel and Mindi Ruggiero have petitioned for a Special Permit pursuant to Section 240-91(H)(3) Demolition and Rebuilding on Nonconforming Lots. The Petitioners are proposing to raze an existing dwelling on a 7,500 square foot lot and rebuild a new 2,106 sq.ft dwelling in conformance with the setback requirements. The subject property is located at 93 Circuit Avenue, Hyannis, MA as shown on Assessor's Map 324 as Parcel 052. It is in the Residence B Zoning District. Opened September 26, 2012 - no members assigned. Continued to November 14, 2012 – no members assigned. Continued to January 9, 2013.

Members assigned tonight: George Zevitas, Brian Florence, Craig Larson, William Newton, Laura Shufelt

Representative: Bran Grady from GAF Engineering Inc., is here representing the applicants. He explains what the relief being sought is and explains that because of a growing family and the needed extra room, the Ruggerio's have decided to demolish and rebuild. He explains that the relief being sought is in accordance with a new plan submitted dated December 20, 2012 which the board should have. He explains that one of the things they have done is to clean-up one of the nonconformities relating to flood zone requirements but that they also meet all other lot requirements. He explains that the new house will only have a four foot crawl space, a slab at grade, that the first floor will be five feet above that with flood vents or open areas to allow for flood waters to flow

freely. He indicates that the mechanicals will be located in the attic area. Also, they do have approval from the Conservation Commission. The plan before the board is the plan that ConComm approved.

Questions from the board

William Newton asks about off street parking. Mr. Grady indicates that they are not calling for any changes in the parking area as there is an existing graveled parking area. Mr. Newton asks how wide the lot is. Mr. Grady indicates it is 75 feet wide, could accommodate 4 cars and that graveled parking area takes up a good portion of that so, 40 to 50 feet wide.

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 has concerns that it is intensifying the lot coverage in using almost all of the land available. She is also concerned about the off-street parking.

William Newton asks if there is any room in the side yard for parking for guests. Mr. Grady says that there is an area, if it were to be required, they could look at. He indicates that they would need to discuss this area with ConComm as there are issues with hardscape within the 50 foot buffer zone to the wetlands. He reiterates that they meet all the requirements for the lot coverage, setbacks, etc., and has provided photographs showing dwellings in the immediate area which they feel are comparable.

Craig Larson indicates that he would be in support of this as the decks and porches add to the charm of the house and since this house will sit 4.5 feet higher than the present house, it would distract from it looking large and eliminating the porches would make the house look stark. He also notes that there isn't anyone here from the neighborhood that is opposing it. Craig confirms with Mr. Grady that it is in a flood zone and that the newer house will still stand after a flood where the existing one wouldn't.

Laura Shufelt would prefer an off-street driveway and that the porches add more coverage but thinks that things could be reduced in size to make it more conforming to the size of the small lot. The board discusses putting a condition that all parking be on the lot. Mr. Grady indicates that if that is what the board wants they could go back to ConComm but if not approved what would happen. The board discusses the project going back to ConComm regarding the parking and whether he should get approval from this board now with a condition stating that he must get approval from ConComm or continue this pending ConComm's decision.

Elizabeth Jenkins clarifies with the board that they would like to see parking for two cars on-site. Mr. Grady indicates that his preference would be to continue this.

A motion is made by Laura Shufelt and seconded by William Newton to continue this to February 27, 2013 at 7:00 PM.

Vote:

All in favor

CONTINUED TO FEBRUARY 27, 2013 at 7:00 PM.

At 7:27, Laura Shufelt calls the Haseotes appeals and reads them into the record:

Kristen Williams Haseotes and George Haseotes have petitioned for a Special Permit pursuant to Section 240-131.4(D)(2) Change, Expansion or Alteration of Uses and Structures and Section 240-131.4(E) Special Permit for Dimensional Relief. The Petitioners are proposing to completely demolish the existing dwelling at 158 Long Beach Road and reconstruct a new dwelling. The new dwelling will be elevated above the floodplain. The subject property is located at 158 Long Beach Road, Centerville, MA, as shown on Assessor's Map 205 as Parcel 009. It is in the Craigville Beach District and the Long Beach/Short Beach Neighborhood Overlay District.

Opened November 14, 2012, Continued to December 12, 2012 and to January 9, 2013. No members assigned. Decision due 2/12/2013.

7:15 PM Appeal No. 2012-056 – Cont'd

Haseotes

Kristen Williams Haseotes and George Haseotes have petitioned for a Special Permit pursuant to Section 240-131.4(D)(2) Change, Expansion or Alteration of Uses and Structures and Section 240-131.4(E) Special Permit for Dimensional Relief. The Petitioners are proposing to completely demolish the existing dwelling at 168 Long Beach Road and reconstruct a new dwelling. The new dwelling will be elevated above the floodplain. The subject property is located at 168 Long Beach Road, Centerville, MA, as shown on Assessor's Map 205 as Parcel 008. It is in the Craigville Beach District and the Long Beach/Short Beach Neighborhood Overlay District.

Opened November 14, 2012, Continued to December 12, 2012 and to January 9, 2013. No members assigned. Decision due 2/12/2013

Laura Shufelt indicates that a letter has been received today from Attorney Michael Schulz asking to withdraw without prejudice.

A motion is made by Laura Shufelt and seconded by William Newton to withdraw without prejudice

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

At 7:29, Laura calls the MetroPCS appeal and reads it into the record:

7:10 PM Appeal No. 2012-060 – Cont'd

MetroPCS Massachusetts LLC

MetroPCS Massachusetts LLC, as lessee, has applied for a modification of Variance No. 2002-116. The Applicant seeks to install two dish antennas approximately two feet in diameter on an existing monopole communications tower. The variance conditions prohibit 'dish type communication devices' from being installed on the tower. The subject property is located at 215 Old Falmouth Road, Marstons Mills, MA as shown on Assessor's Map 100 as Parcel 071. It is in a Residence F Zoning District.

Continued from December 12, 2012 to January 9, 2013. No members assigned.

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

Representative: Michael Johnsen is here representing the applicant. He indicates that in 2002, Industrial Communications and Sprint were given a variance to construct a monopole at this location. One of the restrictions of that variance was that there would be no dish antennas be allowed to placed on the antenna and no antennas to exceed 180 feet. Since that time, MetroPCS received approval in 2009 and as part of their modernization, they need to upgrade by adding the requested equipment. He indicates that they would not be increasing the panel antennas, footprint, addition of equipment cabinets and that that they would not be adding any height to the existing antennas. Mr. Johnsen also indicates that there would not be any change to the site plan access, security measures in effect, traffic or congestion and would not adversely affect the neighborhood or surrounding homes and would be in compliance with FCC regulations. He indicates that MetroPCS needs to make these additions in order to maintain a competitive balance with other carriers in Barnstable regarding smart phones, emails, etc.

Board member, William Newton asks if any equipment will be removed in order to accommodate the new equipment. Mr. Johnsen is not sure. He indicates that this will be enhancing the existing site and that they are trying to have as small as a footprint as possible.

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

No one speaks.

Brian Florence makes findings:

MetroPCS Massachusetts LLC, as lessee, has applied for a modification of Variance No. 2002-116. The Applicant seeks to install two dish antennas approximately two feet in diameter on an existing monopole communications tower. The variance conditions prohibit 'dish type communication devices' from being installed on the tower. The subject property is located at 215 Old Falmouth Road, Marstons Mills, MA as shown on Assessor's Map 100 as Parcel 071. It is in a Residence F Zoning District.

- As a result of changing technology, dish antennas are now a common component of modern wireless telecommunication infrastructure. The installation of the proposed dish antennas on the existing monopole will not substantially alter the appearance of the tower.
- The proposal by MetroPCS to locate two new microwave dish antennas on the existing monopole communications tower at 215 Old Falmouth Road, Marstons Mills meets all of the requirements of Section 240-107 of the Zoning Ordinance. The installation is supported by a passing structural analysis prepared and signed by a Registered Professional Engineer.
- The proposal to hereinafter allow dish antennas on the tower does not represent a substantial detriment to the public good or the neighborhood affected and, based on an evaluation of the material submitted and the evidence presented, fulfills the spirit and intent of the zoning ordinance.

Vote:

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

NAY: None

A motion is made by Brian Florence to grant the relief being sought with the following conditions:

1. A modification of the conditions of Variance No. 2002-116 is granted to remove condition No. 3, which states "Dish type communication devices shall not be installed on the tower."
2. This modification authorizes MetroPCS Massachusetts, LLC to install and operate two new dish antennas on the existing tower at 215 Old Falmouth Road, Marstons Mills, and accessory equipment as shown on the plans submitted and approved by the Site Plan Review Committee entitled "Metro PCS HYN00017A, ICE Barnstable, 215 Old Falmouth Road" consisting of 5 sheets as drawn and stamped by AEG Advanced Engineering Group, dated 8/15/12.
3. The remainder of the conditions issued with Variance Nos. 2002-116 shall remain in full force and effect.
4. All work shall be completed in accordance with the requirements of the Site Plan Review approval and the Cape Cod Commission Type 1 DRI Minor Modification.
5. This decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of a building permit for the installation.

Seconded by Craig Larson

Vote:

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

NAY: None

GRANTED WITH CONDITIONS

At 7:40, Laura calls the Morin appeal and reads it into the record:

7:15 PM Appeal No. 2012-061 – Cont'd

Morin

Jacques N. Morin has applied for a Variance from Section 240-11.E Bulk Regulations – Minimum Lot Area, Minimum Lot Width and the Minimum 100-foot setback required from Route 28 and from Section 240-36, the two-acre minimum lot area requirement of the Resource Protection Overlay District. The applicant seeks to develop the .28 acre lot with a three-bedroom single-family dwelling set back approximately 45 feet from the front property line on Route 28. The property is addressed 1358 Falmouth Road (Route 28), Centerville, MA, and is shown on Assessor's Map 229 as Parcel 099. It is in a Residence D-1 Zoning District and the Resource Protection Overlay District.

Continued from December 12, 2012 to January 9, 2013. No members assigned.

Alex Rodolakis recuses himself.

Members assigned tonight: George Zevitas, Brian Florence, Craig Larson, William Newton, Laura Shufelt

Representative: Attorney Michael Ford is here representing Jacques Morin who is also with him tonight. Attorney Ford indicates that this lot that previously had a variance which was extended to June 19, 2008 and he had thought, given an examination of records given to him, that they were not eligible under the Permit Extension Act and as a result it lapsed and needed anew variance. However, late this afternoon he was made aware that a foundation permit did issue based upon the variance prior to its expiration date and as a result may be eligible under the Permit Extension Act and may not need a variance. He indicates that he has not had an opportunity to meet with the Building Commissioner in order to discuss this latest finding regarding to see whether this may have the benefit of the permit extension act and not require a variance and will ask the board to continue this matter to February in order to review the permit.

A motion is made by Laura Shufelt and seconded by Brian Florence to continue this to February 27, 2013 at 7:05 PM

Vote:

All in favor

Attorney Ford wants to note that Mr. Morin reached out to the abutters here tonight and has agreed, if he can get a building permit or variance and goes forward with the construction of the house, to put screening on the back of the lot and will work out the details but wanted to make that representation.

CONTINUED TO FEBRUARY 27, 2013 AT 7:05 PM

At 7:44, Laura calls the Gustafson appeal and reads it into the record:

Alex Rodolakis reseats at the dais.

Robert K. Gustafson has petitioned to transfer and modify Special Permit 2002-132. The petitioner seeks a change in the owner/holder of Special Permit 2002-132 and seeks to modify the special permit to use the first floor of the building for professional offices and to retain the residential unit on the upper floor. The property is located at 1492 Main Street, West Barnstable, MA as shown on Assessor's Map 197 as parcel 048. It is in a Residence F Zoning District.

Continued from December 12, 2012 to January 9, 2013. No members assigned.

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

Robert Gustafson is here representing himself. He indicates that he owns a financial planning firm and that his family plans on occupying the second floor of the premises. He indicates that they are looking to get a special permit for professional services and that allowing him to do that is within what people are looking for and the services will have less of an impact on the community he is not looking to change the building except for possibly aesthetically.

No questions from the board.

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

Mark Wirtanen of 1894 Main Street, West Barnstable, has a letter from Gabrielle Black which he submits to the board to be read. Laura reads the letter into the record which in summary is asking for limitation to one professional office, hours of operation and that the apartment should be used in tandem with the professional offices and not be a separate rental unit.

Mr. Wirtanen notes that the legal ad had referred to "offices" and that they were concerned that it would be multiple offices. Also, he indicates that as Ms. Black notes in her letter, he would like to see limitations as to the hours of operation.

William Newton asks Mr. Wirtanen if he was familiar with other businesses that had operated at the premises previously. Mr. Wirtanen indicates that he thought the hours of the previous businesses were reasonable, i.e., Monday through Friday from approximately 9 to 5.

Mr. Gustafson indicates that he is okay with 9 to 6 Monday through Friday. They discuss the one business use. Craig Larson indicates that they would like to limit it to one business and not have an insurance agency and then another entity like H&R Block. William Newton asks if there would be any other employees besides himself. Mr. Gustafson indicates that it would be one business, one entity and that there would only be one employee and himself but that in the future he might need an office manager.

Craig Larson asks if the condition pertaining to hours of operation were changed, would the applicant be amicable to the rest of the conditions. Mr. Gustafson indicates that he is fine with the amendment and the conditions.

The board discusses business entity and clarify with the applicant that it would be for one entity which currently happens to be Robert Gustafson.

Craig Larson makes findings:

Robert K. Gustafson has petitioned to transfer and modify Special Permit 2002-132. The petitioner seeks a change in the owner/holder of Special Permit 2002-132 and seeks to modify the special permit to use the first floor of the building for professional offices and to retain the residential unit on the upper floor. The property is located at 1492 Main Street, West Barnstable, MA as shown on Assessor's Map 197 as parcel 048. It is in a Residence F Zoning District.

1. The existing use is a legal pre-existing nonconforming use of the property:

The Board has authorized first-floor commercial use and second-floor residential use through various special permits, most recently Special Permit 2002-132.

2. The proposed nonconforming use is no more detrimental to the neighborhood.
3. The applicant has received all necessary approvals from the Board of Health.

The proposed professional office use will be less intense than the previous retail use, as the general public is not expected to visit the site with the same frequency. The use will not generate more vehicle trips or parking demand. The professional office use will not generate noise, dust or odor. The number of employees, tenants, and hours of operation is not proposed to increase. The professional office use will occur within the same square footage as the retail use. The number of non-conforming uses on the site will not increase.

- a. Is on the same lot as occupied by the nonconforming use on the date it became nonconforming. and
 - b. Is not expanded beyond the zoning district in existence on the date it became nonconforming.
- 4 The application falls within a category specifically excepted in the ordinance for a grant of a special permit.
 - 5 A site plan has been reviewed and found approvable, subject only to the issuance of a special permit:
There is an approved site plan on file for the property. The Applicant is not proposing any changes to the exterior of the property or an increase in commercial square footage that would necessitate further site plan review.
 - 6 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.

Vote:

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

NAY: None

Craig Larson makes a motion to grant the relief being requested with the following conditions and condition #10 as amended in red:

1. This modification of Special Permit 2012-062, to change the first-floor use of the property at 1492 Main Street (Rte. 6A), West Barnstable, from retail to professional office is granted to Robert K. Gustafson.
2. There shall be no outdoor lighting except as permitted by the Old Kings Highway Regional Historic District Commission.
3. There shall be no outside display of merchandise.
4. The second floor shall not be used for any business purposes and shall only be utilized as a residence by the owner of the property.
5. Use of the first floor shall be limited to 1,536 square feet of professional office space.
6. This special permit is issued only to the Applicant and shall not be transferable to a subsequent property owner without permission from the Zoning Board of Appeals.
7. The locus shall comply with all applicable sign regulations of the Zoning Ordinance.
8. There shall be no expansion of the building on this site without further relief from the Zoning Board of Appeals.
9. The Barnstable Committee of the Old Kings Highway Regional Historic Commission must approve any changes to the exterior of the building and to the signage on this site.
10. Hours of operation for the professional office use are limited to the hours between 9:00 AM. to 6:00 P.M., Monday through Friday, not Saturday or Sunday and no holidays

11. Violation of any of these conditions shall be reason for a show cause hearing before the Board as to why this special permit should not be revoked.
12. This decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division.

Seconded by William Newton

Vote:

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

NAY: None

GRANTED WITH CONDITIONS

Open: Chair's Discussion

▪ Election of Officers

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 indicates that she might not be seeking reappointment and that her term is up in June of 2013. They discuss.

William Newton makes a motion to have the Clerk as the Chair. They discuss further. William Newton then takes his previous motion back and makes a new motion to nominate Laura Shufelt for Chair until the end of June. Alex Rodolakis seconds.

Vote:

AYE: George Zevitas, Craig Larson, Alex Rodolakis, William Newton

NAY: None

ABSTAIN: Laura Shufelt

Staff clarifies that all positions will remain the same which is Chair = Laura Shufelt, Vice-Chair = William Newton, Clerk = Craig Larson.

Motion is made by Alex Rodolakis and seconded by William Newton to adjourn.

Meeting adjourned at 8:07 PM.