



## Town of Barnstable Zoning Board of Appeals Minutes

Wednesday, March 27, 2013

2<sup>nd</sup> Floor Hearing Room – 367 Main Street, Hyannis, MA

Laura Shufelt - Chair	Present
William Newton – Vice Chair	Present (arrives during executive session but does not participate)
Craig Larson	Present
Alex Rodolakis	Present
Brian Florence	Absent
George Zevitas	Present
David Hirsch	Present

Also present were Elizabeth Jenkins – Principal Planner and Carol Puckett – Administrative Assistant

**Laura Shufelt opens the hearing at 7:02 PM. The members present introduce themselves.**

**Laura reads a statement in respect to the executive session: "Next on the agenda is a possible executive session on the pending lawsuit of Catherine Foley Dupuy v. the Barnstable ZBA. The case is at a pre-trial stage and discovery is complete. Several matters have arisen which have a bearing on the town's case and the need for a trial. Discussion of those issues in open session could have a detrimental effect on the town's defense and on the prospects for avoiding a trial on the merits. I would therefore entertain a motion to convene in executive session to discuss strategy with respect to the pending lawsuit and to return in open session following the executive session."**

**Laura Shufelt asks for a motion from those members present to go into executive session.**

**Motion is made by George Zevitas and seconded by Craig Larson to go into executive session.**

**Roll Call Vote:**

**Craig Larson = AYE**

**George Zevitas = AYE**

**David Hirsch = AYE**

**Laura Shufelt = AYE**

**William Newton and Alex Rodolakis were not present during roll call vote. Alex Rodolakis arrived as we were entering the Town Council Conference Room for the executive session in which he was present. William Newton was not present at the executive session.**

**After the conclusion of the Executive Session, the members reseal themselves at the dais and introduce themselves again.**

### Approval of Minutes

Minutes of February 27, 2013

**Motion is made by William Newton and seconded by George Zevitas to approve as submitted.**

**Vote:**

**All in favor**

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## Old Business

**William Newton reads the following appeal into the record:**

**7:00 PM            Appeal No. 2013-002    - Cont'd                            AT&T Mobility**

**The Applicant has submitted a request to continue this public hearing to June 26, 2012.**

AT&T Mobility, as Lessee, has petitioned for a modification of Special Permit No. 1998-043 to add two panel antennas, four remote radio heads, and two surge arrestors within the petitioner's 80 foot lease area on the tower and add one panel antenna, two remote radio heads and one surge arrestor within the 66 foot lease area on the tower. The subject property is located at 49 Ocean Street, Hyannis, MA as shown on Assessor's Map 326 as Parcel 025. It is located in the Hyannis Village Business Zoning District.

Opened: February 13, 2013, continued to March 27, 2013

Members assigned on February 13, 2013: Craig Larson, Alex Rodolakis, Brian Florence, George Zevitas, William Newton

**William Newton indicates that a letter has been received from applicant's representative, Gerry Squires, asking for a continuance. (Exhibit A – 2013-002)**

**Elizabeth Jenkins indicates that the extension is only through June 13 and recommends that this be continued to June 12<sup>th</sup>**

**Motion is made by Alex Rodolakis and seconded by George Zevitas to extend and continue the appeal.**

**Abstained: Laura Shufelt**

**Vote:**

**All in favor**

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## **CONTINUED TO JUNE 12, 2013 AT 7:00 PM**

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**Laura Cronin reads the following appeal into the record:**

**7:00 PM            Appeal No. 2013-011    - Cont'd                            Nirvana Barnstable, LLC**

Nirvana Barnstable, LLC, as prospective lessee, has petitioned to transfer and modify Special Permits 2008-066 & 2008-067, issued for a conditional use in the VB-A District and reduction of parking requirements. The Petitioner is purchasing a coffee shop/food service establishment and will continue the existing business at the same location. Pursuant to the conditions of the permits, permission is requested to transfer the permits to the Petitioner. The Petitioner also requests to delete the condition that the permits are non-transferable to a new owner without permission from the Zoning Board of Appeals. The subject property is located at 3206 Main Street/Rte 6A (first floor front), Barnstable, MA as shown on Assessor's Map 300 as Parcel 008. It is located in the Village Business A Zoning District.

Opened March 13, 2013. No members assigned.

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

**Richard Shechtman is here as one of the owners and is representing Nirvana Barnstable, LLC., which is here to ask for a transfer of the existing permits to Nirvana Barnstable, LLC. He is also asking for modification of the existing granted special permit to change the condition about future transferring of the permit.**

**Board member, Craig Larson, clarifies that there will be no physical change to the existing business. Mr. Shechtman indicates that the only thing that will change are the owners and the hours which have been approved by licensing and will be until 6:00 PM instead of 4:00 PM and that the seating has not changed.**

**George Zevitas asks if the owners/occupants of the general store located adjacent to the business have any concerns. Mr. Shechtman indicates that he has spoken with them and that they have been supportive.**



**Elizabeth Jenkins indicates that in reviewing the minutes from the previous hearings, that there were concerns about the business being transferred to a chain-type business which was one of the reasons for the condition pertaining to future owners needing to come back before the ZBA. However, Ms. Jenkins indicates that there has been a change to the ordinance in the Village Business A zoning district preventing chain stores and corporate branding in the VBA but that the town attorney suggested another condition subject to those corporate branding requirements in the future.**

**Mr. Shechtman indicates that he is asking to remove this condition as it poses a hardship of sorts relating to delays in the closing of the purchase of the property, adds considerable expense and acts as a disincentive. George Zevitas asks for clarification of what the expense was which Mr. Shechtman explains.**

**William Newton is concerned about future expansion. Elizabeth Jenkins clarifies that future transfer is the only condition being changed and that all other conditions remain in effect.**

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

**Craig Larson makes findings:**

Nirvana Barnstable, LLC, as prospective lessee, has petitioned to transfer and modify Special Permits 2008-066 & 2008-067, issued for a conditional use in the VB-A District and reduction of parking requirements. The Petitioner is purchasing a coffee shop/food service establishment and will continue the existing business at the same location. Pursuant to the conditions of the permits, permission is requested to transfer the permits to the Petitioner. The Petitioner also requests to delete the condition that the permits are non-transferable to a new owner without permission from the Zoning Board of Appeals. The subject property is located at 3206 Main Street/Rte 6A (first floor front), Barnstable, MA as shown on Assessor's Map 300 as Parcel 008. It is located in the Village Business A Zoning District

**Findings**

1. Nirvana Barnstable, LLC, as lessee of a portion of the first floor of the premises addressed 3206 Main Street (Route 6A), Barnstable, MA seeks to transfer and modify Special Permit Nos. 2008-066 and 2008-067, issued pursuant to Sections 240-21(C)(1) and 240-57.
2. An approved site plan is on file for this property. No changes to the business or the site are proposed.
3. 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.
4. The continued use of the property for a coffee shop/food service establishment does not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.

**George would like to discuss Part B. Craig Larson comments that this business has been operating for 5 years, has been good neighbors and would be a detriment if they couldn't transfer and that coming before the board is not inexpensive.**

**Vote:**

**All in favor**

**William Newton comments that the parking could change and if any parking changed he would have concerns. The board discusses parking issues should there be a change of parking on 6A.**

**Craig Larson makes a motion to grant the relief being requested with the following conditions:**

**Conditions**

1. Condition No. 1 of Special Permit No. 2008-066 and Condition No. 2 of Special Permit No. 2008-067 are hereby modified to delete the requirement that the permit is non-transferable to a new owner without permission from the Board.
2. All other conditions of Special Permit Nos. 2008-066 and 2008-067 shall remain in full force and effect, including the requirement that the permits are non-transferable to another location.



3. The uses permitted by the Special Permits shall be subject to the Use Limitations and Corporate Branding provisions of Section 240-24(E).

**Seconded by William Newton**

**Elizabeth Jenkins states that there are additional conditions on Page 2 (Exhibit A – 2013-011) as printed.**

**Vote:**

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

**NAY: None**

## **GRANTED WITH CONDITIONS**

**7:00 PM      Appeal No. 2013-009      - Cont'd**

**Ohmharsh Corp.**

OHHMARSH Corp, as lessee, has petitioned for a Special Permit in accordance with Section 240-25(C)(1) HB Business District. The petitioner is requesting a Conditional Use Special Permit for an existing convenience store, which is seeking to expand their retail sales to include beer and wine. The use is presently not allowed in the HB District without a Special Permit. The subject property is located at 489 Bearse's Way, Hyannis, MA as shown on Assessor's Map 292 as Parcel 077. It is in the Highway Business Zoning District.

Opened March 13, 2013. No members assigned.

**Representative: Attorney Steven DeYoung**

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

**Attorney DeYoung gives summary of relief being requested and the status of the businesses within the plaza. He indicates that there may be concerns about the sale of beer, malt and wine at this location which abuts a residential neighborhood. He notes that he is aware of a letter from a neighbor in opposition. He states that Luke's Liquors on Barnstable Road and the Willow Street convenience store both abut residential neighborhoods. They are asking this board to consider a change in the merchandise to be sold at this location before them tonight. In reading the staff report conditions, Attorney DeYoung states that they are reasonable, fair and appropriate and are in agreement with them. He indicates that there was a concern about window signage as stated in the staff report which they have addressed by removal of some. He hands pictures to the chair (Exhibit A - 2013-009 = 8 pictures). He states that there is a collection of approximately 100 signatures from patrons of the establishment who are in support of this proposal. In reference to the requirements of this proposal, he states that this would not have a substantial adverse effect to public safety, health or welfare to the neighborhood and would be a convenience to the patrons.**

**Craig Larson asks Elizabeth Jenkins how other establishments handle the licensing of selling liquor versus hours of operation for their business as the liquor license hours are different from the hours of operation.**

**Ms. Jenkins states that she has talked with the Director of Licensing regarding the typical hours of operation for package stores which he stated were limited to 8:00 AM to 11:00 PM weekdays and 12:00 PM to 11:00 PM on Sundays. Craig questions how the liquor would be prevented from being sold beyond those hours where the store would be operating. Attorney DeYoung indicates that it is policed by the personnel and that the liquor display/sales area will be up front at the counter.**

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

**Linda Roll (sp) from Precinct 8 speaks and asks the board not to grant this proposal as this is a troubled area historically with over 200 police calls last year alone. She has a letter from Debra Dagwan which she reads part of (Exhibit 2013-009 B) who is also in opposition.**



*Attorney DeYoung states that alcohol is being served at Kobi and Bobby Byrnes at this plaza and that the alcohol will be sold and taken off the applicant's premises and doesn't believe that this will add any substantial or more detriment to the health, safety and welfare of this neighborhood. He states that they are not asking for this board to issue a license, what they are asking for is to approve the applicant's ability to request that license.*

*Laura Shufelt states that an email has also been submitted from Clifton D. Berner of #5 & #7 Hiram Road, in opposition, which she reads (Exhibit B - 2013-009).*

*The board discusses the neighborhood and if this is an appropriate added use.*

*Attorney Deyoung asks if it would be appropriate to ask to withdraw*

*A motion is made by George Zevitas to allow the applicant to withdraw if he so chooses.*

*Elizabeth Jenkins says that the board could do withdraw with prejudice which would put the repetitive petition requirements into effect.*

*Attorney DeYoung clarifies that he would like to withdraw without prejudice.*

*A motion is made by Craig Larson and seconded by George Zevitas to grant a withdrawal without prejudice.*

**Vote:**

**All in favor**

## **WITHDRAWN WITHOUT PREJUDICE**

**7:01 PM**

**Appeal No. 2013-010 - Cont'd**

**Kenney**

Doreen M. Kenney has applied for a variance from Section 240-7(D) Lot Shape Factor. The relief is requested to allow the division of approximately 2.03 acres of land into two, one acre lots. One of the lots will conform to zoning and the other will require relief from the lot shape factor only. A maximum shape factor of 22 is allowed and a shape factor of 25.73 is proposed. The subject property is located at 114 Old Jail Lane, Barnstable, MA as shown on Assessor's Map 278 as Parcel 022. It is located in the Residence F-2 Zoning District.

Opened March 13, 2013. No members assigned.

**Representative: Kiernan Healey**

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

**Kiernan Healey – Land Surveyor from BSC speaks and states that also with him tonight is Mike Cashman, builder and friend of the family.**

**Mr. Healey gives summary of relief being requested. He indicates that the neighbors have concerns about the drainage which he shows on a plan which he had submitted earlier this afternoon to staff. He shows the drainage area and states that there is an agreement with the abutting neighbors regarding the drainage from lot 2 and that a portion of that lot would be restricted from being graded or disturbed and to be left in its natural state. (Exhibit A 2013-010)**

**Laura Shufelt asks Mr. Healey to address the three prong test for a variance. Mr. Healey indicates that the proposed lot has a unique shape and is sloped, secondly, the literal enforcement would create a hardship as they would not be able to create the two lots as proposed. Also, he doesn't believe that there would be a detriment to the neighborhood as other lots in the area are smaller.**

**William Newton asks what the topography is. Mr. Kiernan explains that the property goes up when you first go in and then slopes down.**



**George Zevitas asks when the property was acquired. Mr. Healey indicates that it is in 2001.**

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

**Paul Richards at 94 Old Jail Lane and abuts the property to the north. He sent an email. (Exhibit B 2013-010) They have owned their property for a couple of years and explains that there has been some noise with dogs and late night parties. Current tenants are now okay but there are issues with broken windows and broken mailbox. He is concerned that the project will get started but won't get completed and that there will be more noise and traffic.**

**Priscilla Ellis and lives on the north end of Old Jail Lane states that the proposed lots are at a higher elevation and has dug trenches to avert the water runoff from those lots. The soil conditions over there are mostly clay and the water remains until it dissipates. She has talked to the builder and did a walk-through with him. She doesn't want to suffer anymore damages from water and points out where her shed is. They have had to build a French trench.**

**Craig Larson asks her to point out her house on the map and asks if she agreed to the area as previously shown by Mr. Healey on the map. She thought it was going to be more along the back fence. Craig clarifies that she would be happier with a bigger restricted area.**

**Catherine Richards of 94 Old Jail Lane speaks and is concerned about the neighborhood character and that more lots are being chopped up.**

**Mr. Healey rebuts and states that he is also a licensed soil evaluator and that the soil in this area is poor. He indicates that one of the requirements they would agree to is that any roof drainage would go into dry wells. Also, as for the character, the location of any building would be 200 feet away from Old Jail Lane and will not be visible from the street.**

**Laura Shufelt asks about utilities for the proposed new lot. Mr. Healey believes that there would need to be a conversation with the electric company to see what would be involved with moving the utilities. Also, if by chance it becomes cost prohibited they could use an alternative access to get to that front area. He says one of the guy wires is the issue. Also, the current house is on well water and if they want to utilize public water they need to run the main in the street all the way across in the front of the property and tie in both properties in order to serve both properties which would be expensive. Laura asks if they sited it for both septic and well. Mr. Healey indicates that they have preliminary plans and doesn't think they will have a problem with meeting the septic or well part.**

**William Newton asks if he would be willing to negotiate with the neighbor about the area of drainage concern. Mr. Healey indicates that the previous agreement was for 7000 square feet which he thought was a substantial sum but will gladly talk with the neighbor again.**

**Craig Larson asks what the intentions of the applicants are. Mr. Healey says he believes that he thinks they want to sell to get cash to improve the first lot.**

**Mike Cashman, the builder and a friend of the family speaks and indicates that the house is in need of repair and will be their first project if this proposal is approved. Mr. Cashman indicates that he had also met with the neighbors with Mr. Healey and doesn't see a problem with increasing the restricted area slightly more on the map.**

**The board discusses the water runoff. Laura indicates that they could request for an engineer to look over the water runoff problem.**

**The board discusses.**

*Mr. Healey asks for a continuance in order to consult with the owners. They discuss continuance dates. Laura Shufelt suggests May 8<sup>th</sup>.*

*A motion is made by George Zevitas and seconded by William Newton to continue to May 8, 2013 at 7:00 PM*

**Vote:**

*All in favor*

**CONTINUED TO MAY 8, 2013 AT 7:00 PM**

#### New Business

At 9:06, Laura reads the Wilson appeal into the record:

7:05 PM

Appeal No. 2013-012 - New

Wilson

The Applicant has submitted a request to continue this public hearing to April 24, 2013.

Catherine Wilson has appealed a decision of the Building Commissioner issued February 12, 2013, pursuant to Section 240-125(B)(1)(a) Appeals from an Administrative Official. The Building Commissioner ordered the appellant's property to be restored to a single-family dwelling upon finding that a family apartment in the basement had been vacated. The Appellant claims the apartment is not subject to the family apartment regulations (§240-47.1(5)), but rather to the conditions of Special Permit 1998-119 and Section 3-1.1(3)(D) of the Zoning Ordinance as it existed in October 1998. The Appellant seeks to keep the apartment in tact and allow for use of the bedroom for occasional guests. The subject property is located at 400 Mariner Circle, Cotuit, MA as shown on Assessor's Map 024 as Parcel 086. It is in a Residence F Zoning District.

*Laura Shufelt states that a letter has been received by the appellant's representative, Arlene Wilson, asking for a continuance.*

*A motion is made by Laura Shufelt and seconded by William Newton to continue this to April 24, 2013 at 7:00 PM*

**Vote:**

*All in favor*

**CONTINUED TO APRIL 24, 2013 AT 7:00 PM**

#### Correspondence

None

#### Other Business

Reminder that all Board members are required to complete the State Ethics Commission's conflict of interest law online training program by **April 5, 2013**. The training programs can be completed on any work, home or publicly available computer with internet access. The link to access the program is: [www.muniprog.eth.state.ma.us](http://www.muniprog.eth.state.ma.us). Please provide support staff with copies of the completion certificate.

*Laura Shufelt indicates that she is not seeking reappointment to the board.*

*Elizabeth Jenkins indicates that Town Council approved the ordinance which would prohibit use variances.*



**Laura Shufelt states that she also previously signed an ordinance regarding communication towers which would allow those requests to be administratively approved instead of having to come before the board.**

### Upcoming Meetings

**Next scheduled meetings for April are for April 10<sup>th</sup> and 24<sup>th</sup>.**

**At this point there is not business for April 10<sup>th</sup>.**

**Motion is made by Craig Larson and seconded by William Newton to adjourn.**

**Vote:**

**All in favor**

**Meeting adjourned at 9:12 PM**

### EXHIBITIS

**Exhibit A - 2013-002 - See ZBA File 2013-002**

**Exhibit A - 2013-011 - See ZBA File 2013-11**

**Exhibit A - 2013-009 - See ZBA File 2013-009 (8 pictures).**

**Exhibit B - 2013-009 - See ZBA File 2013-009**

**Exhibit A - 2013-010 - See ZBA File 2013-010)**

**Exhibit B - 2013-010 - See ZBA File 2013-010**