



# Town of Barnstable Zoning Board of Appeals



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Board Members:

Craig Larson – Chair Brian Florence – Vice Chair Alex Rodolakis – Clerk George Zevitas - Member David A. Hirsch – Associate Member  
Herbert Bodensiek – Associate Member  
James Tinsley – Town Council Liaison

Staff Support

Elizabeth Jenkins – Principal Planner - [elizabeth.jenkins@town.barnstable.ma.us](mailto:elizabeth.jenkins@town.barnstable.ma.us)  
Carol Puckett – Administrative Assistant – [carol.puckett@town.barnstable.ma.us](mailto:carol.puckett@town.barnstable.ma.us)

## Minutes

**Wednesday, May 28, 2014**

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

Craig Larson - Chair	Present
Brian Florence – Vice Chair	Arrives at 7:56 PM
Alex Rodolakis – Clerk	Present
George Zevitas	Present
David Hirsch	Absent
Herbert Bodensiek	Present

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

***Craig opens the hearing at 7:08 PM. Four members are present. Craig Larson, Alex Rodolakis, George Zevitas, and Herbert Bodensiek.***

**Call to Order**

Introduction of Board Members – ***All members present introduce themselves.***

**Notice of Recording**

Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

**Old Business – Comprehensive Permits**

**7:00 PM                      Comprehensive Permit No. 2000-085                      Settler’s Landing I**

Jacques N. Morin, Trustee of the Settler’s Landing Realty Trust has requested a modification of Comprehensive Permit No. 2000-085 - Settler’s Landing I. The permit authorizes the creation of a 20 lot subdivision for 20 single-family dwellings, five of which are to be dedicated in perpetuity as affordable units marketed to qualified low- and moderate income households. The Applicant is seeking modification of the Comprehensive Permit to allow for an extension of time for completion of the subdivision.

The subject properties are located at 3, 5, 7, 17, 31, 49, 59, 71, 75, 79, 81 & 0 Settlers Lane and 310 Castlewood Circle, Hyannis, MA, as shown on Assessor’s Map 273 as Parcels 122-001 to -011, -032, and 032-001.

Continued from April 23, 2014.

Members assigned on 04-23-14: Brian Florence, Alex Rodolakis, George Zevitas, David Hirsch, Craig Larson

**Members assigned tonight: Craig Larson , Alex Rodolakis, George Zevitas, Herbert Bodensiek**  
**Craig Larson clarifies that this is in regards to the time period extension to April 4, 2018.**

**Craig indicates that although this is not a public hearing, he will take public comment. No one speaks.**

**Motion is made by Craig Larson and seconded by Alex Rodolakis to extend the time limit regarding completion of the project to April 4, 2018 as this is an insubstantial change and a letter of approval from the Housing Committee has also been submitted.**

**Seconded by Alex Rodolakis**

**Vote:**

**All in favor**

## **TIME EXTENSION GRANTED**

### **New Business – Comprehensive Permits**

**7:00 PM                      Comprehensive Permit No. 2005-100                      Bay Point, LLC & PLM Buzzy, LLC**

Bay Point, LLC and PLM Buzzy, LLC have submitted a request to extend a date as stipulated in a Second Memorandum of Understanding executed in connection with the Endorsed Disposition and Settlement Agreement between Bay Point, LLC and the Town of Barnstable and Cotuit Fire District. The Second Memorandum of Understanding stipulates a date of June 30, 2014 by which the applicant agreed to undertake and complete all construction on the existing residence shown as “Existing D.U.” on a plan partially entitled “Bay Point Townhouses Layout and Landscape Site Plan” dated and revised 05-08-09. The Applicants are requesting the June 30, 2014 date be extended to October 31, 2014. The request states the extension is being requested in accordance with 760 CMR 56.05(11) – Changes After Issuance of a Permit.

The property is subject to Comprehensive Permit No. 2005-100 – Cotuit Center Residences (Book 27606 Page 3), an Endorsed Disposition and Settlement Agreement (Book 27606 Page 32) and two Memorandums of Understanding (Book 27606 Page 58, Book 27606, Page 61). The property is located at 671 Main Street, Cotuit, MA as shown on Assessor’s Map 036 as parcel 015. It is in the Residence F Zoning District.

**Members assigned: Craig Larson, Alex Rodolakis, George Zevitas, Herbert Bodensiek**

**Craig Larson reads the following:**

**In accordance with the recommendations of the Town Attorney’s Office, the Board may wish to find that the issue of standing requires a public hearing to enable findings and a ruling to be made and to make a motion to consider the request at a public hearing. A public hearing on this application can be advertised for June 25, 2014 at 7:00 PM.**

**Motion is made by Craig Larson and seconded by George Zevitas to continue this to a public hearing on June 25, 2014 at 7:00 PM.**

**Vote:**

**All in favor**

## **CONTINUED TO JUNE 25, 2014 AT 7:00 PM**

**Craig reads the following into the record:**

**7:00 PM                      Comprehensive Permit No. 2005-013                      KTW Group, LLC**

KTW Group, LLC, has requested to change Condition Nos. 6 and 7 of Comprehensive Permit No. 2005-013 (and its subsequent modifications). The Applicants are proposing to modify Condition Nos. 6 and 7 to allow for five different home styles to be constructed in the subdivision. The proposed styles will have three-bedrooms, two stories with full basements, two full baths, and attached one- or optional two-car garages.

Comprehensive Permit No. 2005-013, issued on June 1, 2005, allows for the development of 11 single-family dwellings, including three dedicated in perpetuity as affordable units. The Comprehensive Permit was subsequently modified. The subject properties

are 4-48 Darby Way, Osterville (formerly 449-459 Old Mill Road) as shown on Assessor's Map 166 as Parcels 001/000-006 and Map 143 as Parcels 040/000-005.

**Members assigned: Craig Larson, Alex Rodolakis, George Zevitas, Herbert Bodensiek**

**Ron Welch, Damon Kendall and Charles Tardaniko, principals of KTW Group, LLC., are here representing the application before the board. Craig clarifies that all the affordables will not be changed and that the only thing changing are the house styles and that the affordables are to be indistinguishable from the market rate homes.**

**A motion is made by Craig Larson and seconded by George Zevitas that this is insubstantial and to grant this modification to the original permit.**

**Vote:**

**All in favor**

## **INSUBSTANTIAL MODIFICATION GRANTED**

### **Old Business – Appeals**

**Craig notifies Attorney Moore that presently that there are only four members present and asks if she would like to wait until the end of the hearing to see if another board member arrives or gives her the option to continue this. Attorney Moore will wait to see if another board member arrives.**

**7:00 PM Appeal No. 2014-018**

**Pacheco/Lucien**

Wayne J. Pacheco and Nancy J. Lucien have petitioned for a Special Permit pursuant to §240-94 – Expansion of a preexisting nonconforming use. The petitioners seek expansion of a preexisting nonconforming use as a lodging house to allow at least seven, up to eight lodgers. The premises have been used as a lodging house for six lodgers since 1985. The property is located at 791 Pitcher's Way, Hyannis, MA as shown on Assessor's Map 271 as Parcel 159. It is located in the Residence C-1 Zoning District. Continued from April 23, 2014 & May 14, 2014.

Members assigned 04-23-14: Brian Florence, Alex Rodolakis, George Zevitas, David Hirsch, Craig Larson

Craig states that before they open this hearing they would like to speak with the Attorney Moore. Craig states that this could be continued to the end of the hearing or June 11<sup>th</sup>. Attorney Moore. Attorney Moore indicates that they will wait until the end of the hearing to see if other members arrive.

**Members assigned tonight:: Alex Rodolakis, George Zevitas, Herbert Bodensiek, Craig Larson**

**Representative: Attorney Rebecca Moore**

### **New Business - Appeals**

**7:00 PM Appeal No. 2014-024**

**Angeli**

Michelle Angeli has applied for a variance from §240-11.E – Bulk Regulations to construct a 6' x 8' shed located one foot from the rear lot line and four feet from the side lot line, where 15 foot setbacks are required. The property is located at 3620 Main Street (Rte. 6A), Barnstable, MA as shown on Assessor's Map 317 as Parcel 019. It is in the Residence F-2 Zoning District.

**Members assigned tonight: Craig Larson, Alex Rodolakis, George Zevitas, Herbert Bodensiek**

**Representative Michelle Angeli**

**Craig reminds Ms. Angeli that there are only four (4) members here tonight which means that the vote must be unanimous and gives her the option to wait until there is a full compliment of the board. Ms. Angeli decides to go forward with the four members.**

**Ms. Angeli gives a summary of relief being requested. She spoke with her direct abutter as well as other neighbors who stated that they wouldn't have an issue with the shed's placement.**

*Craig notes that there is a letter in the file from Barbara Fleming of 417 Commerce Road who is in favor of this (Exhibit A). Craig asks if there is anyone here from the public who would like to speak either in favor or in opposition. No one speaks.*

*Craig asks for her to prove the 3 prong test. Ms. Angeli states that if the shed had to comply with the setbacks it would be on top of her steps at the rear of the structure. As for the hardship, she believes that it would be a physical hardship for her to drag the lawn mower out of the basement when it could be accommodated in a shed. Craig clarifies that it be built either on sonic tubes or blocks and not a permanent foundation. Alex suggests that it be moved two feet from the setback instead of one foot. Ms. Angeli is agreeable to the suggestion.*

**Alex Rodolakis makes findings:**

Michelle Angeli has applied for a variance from §240-11.E – Bulk Regulations to construct a 6’ x 8’ shed located one foot from the rear lot line and four feet from the side lot line, where 15 foot setbacks are required. The property is located at 3620 Main Street (Rte. 6A), Barnstable, MA as shown on Assessor’s Map 317 as Parcel 019. It is in the Residence F-2 Zoning District.

#### **Variance Findings**

The statutory requirement of MGL Chapter 40A, Section 10 for granting a variance is a three-prong test. The Board is required to find that each of the following three requirements has been met to consider granting each variance request:

- owing to circumstances related to soil conditions, shape, or topography, especially in this case, of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
- 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:**

**All in favor.**

**Motion is made by Alex Rodolakis to grant the relief being sought with the following conditions:**

#### **Conditions**

1. A variance from §240-11(E) – RF-2 Bulk Regulations, 15 foot minimum side and rear yard setbacks is granted to allow the construction of an accessory storage shed located not less than two feet from the rear lot line and not less than four feet from the side lot line at 3620 Main Street (Route 6A), Barnstable.
2. The shed shall be constructed in compliance with the plot plan entitled “Certified Plot Plan Showing Proposed Shed at 3620 Main Street, Route 6A, Barnstable, MA” dated February 4, 2014 by JM O’Reilly & Associates, Inc.
3. The shed shall be constructed in compliance with the Certificate of Exemption approved by the Barnstable Committee of the Old Kings Highway Regional Historic District Commission.
4. If the variance has not been recorded at the Barnstable County Registry of Deeds within one year from the date of issue of this variance, this variance shall expire, unless extended.
5. The shed shall not exceed 6X8

**Seconded by Craig Larson**

**Vote:**

**All in favor**

## **GRANTED WITH CONDITIONS**

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**At 7:30, Craig calls the Trout Brook appeal and reads it into the record:**

The Trout Brook Realty Trust has applied for a variance from §240-14.E – Bulk Regulations to allow the construction of a single-family dwelling 26.5 feet from the front lot line, where a 30 foot front yard setback is required. The property is located at 144 Trout Brook Road, Cotuit, MA as shown on Assessor's Map 008 as Parcel 009. It is in the Residence F Zoning District

**Members assigned: Craig Larson, Alex Rodolakis, George Zevitas, Herbert Bodensiek**  
**Representative: Adam Hostetter**

**Adam states that the previous ZBA approval never got recorded and with the extension act they were allowing building permits to be extended.**

**Craig reiterates that this is a variance and that Mr. Hostetter needs to speak to the 3 prong test. Adam states that they can't meet the 30 foot front yard setback because of the wetlands and the topography.**

**Craig Larson asks if there is anyone here from the public who would like to speak either in favor or in opposition:**

**Dan St. Pierre of 158 Trout Brook Road, a direct abutter, speaks. He called Tom McKean, Department Head of the Board of Health, concerned about the septic system and was told that it was permitted earlier this month. He asked Tom why the abutters were not notified. He states that Tom did not find any green cards in the BOH file for the permitting and stated that he would tell the applicant that he would have to reapply and hopes that ZBA will continue this until then. Craig states that if they were to grant this it would be subject to approval from the Board of Health.**

**Adam Hostetter states that someone in his office did file with the BOH, were unaware of the process and that there was a mix-up. He assures the board that they will go through the necessary process and notification, etc.**

**Barry Galas lived who had lived at 170 Trout Brook Road speaks and states that he is opposed to this application. He hands in a letter from the property owner across the street, Robert Todd (Exhibit A). He states this lot is severely sloped and will create a lot of problems. The whole road was filled back in the 70's and thinks it is fragile. The Santuit Rives is the third best herring river in the state and is concerned about the habitat during construction.**

**Richard Aliberti of 126 Troutbrook Road states that the lot was purchased for one dollar and was originally an unbuildable lot and has a lot of environmental concerns. He states that based on the slope, it is within the 200 feet of the Rivers Act.**

**Craig Larson states that there are three (3) letters in opposition in the file from Ms. Nickerson, Mr. Robert Todd, Jr. (which was handed in as Exhibit A), a letter from Ms. Nykiel and the Roscos from 171 Troutbrook Road in opposition because of the slope and Rivers act**

**Samantha Lowe from 143 Troutbrook Raod is in opposition because of the slope, the potential damage to the road, and the impact on the river.**

**Craig Larson asks Mr. Hostetter if they have to go before ConComm again. Mr. Hostetter states that they have approval from Con Comm. Craig notes for the public that there is an Order of Conditions from ConComm in the file and that this board is just here to approve the distance from the street. He thinks the board could condition this to have all vehicles be parked on site.**

**Mr. Galas asks if the Order of Conditions Mr. Larson spoke of was approved ten years ago or recently. Adam Hostetter states that it was in 2007 and still in effect today because of the permit extension act. Mr. Galas asks if this is going to be a spec house. Adam indicates that he does not plan on living there and therefore would be a spec house. Mr. Galas is concerned about how the applicant will keep equipment on the road. They discuss.**

**Richard Aliberti states that there is a denial from ConComm in 2002. Craig clarifies that they have approval in 2007. Craig clarifies that they are putting conditions on this in regards to ConComm.**

**Craig Larson makes findings:**

The Trout Brook Realty Trust has applied for a variance from §240-14.E – Bulk Regulations to allow the construction of a single-family dwelling 26.5 feet from the front lot line, where a 30 foot front yard setback is required. The property is located at 144 Trout Brook Road, Cotuit, MA as shown on Assessor’s Map 008 as Parcel 009. It is in the Residence F Zoning District.

### **Variance Findings**

- 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;
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
- 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:**

**All in favor**

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

### **Conditions**

1. A variance from §240-14(E) – RF Bulk Regulations, the 30 foot front yard minimum setback is granted to allow the construction of a single-family dwelling located 26.5 feet from the front lot line at 144 Trout Brook Road, Cotuit.
2. The dwelling shall be constructed in compliance with the plan entitled “Site Plan – Proposed Site Improvements & Septic System” dated (last revised) January 20, 2006 drawn and stamped by Peter Sullivan of Sullivan Engineering, Inc and the floor plans and elevations entitled “Project: Dan Hostetter” dated January 1, 2007, drawn by CADzooks Architectural Graphics, six sheets.
3. The development of the lot shall be in compliance with the Final Order of Conditions issued under the Massachusetts Wetlands Protection Act (SE 3-3918) and the Order of Conditions issued under Chapter 237 of the Code of the Town of Barnstable.
4. The development approved herein shall represent full buildout of the lot. Any additional accessory structures or expansion of the building footprint is prohibited.
5. If the variance has not been recorded at the Barnstable County Registry of Deeds within one year from the date of issue of this variance, this variance shall expire, unless extended by the Board.
6. All construction equipment related to the construction of this project shall be completely on property and not on the private road
7. Subject to approval by BOH for a septic system for a 3 bedroom house

**Seconded by George Zevitas**

**Vote:**

**All in favor**

## **GRANTED WITH CONDITIONS**

**At 7:50, Craig calls a ten minute recess.**

**Brian Florence arrives at 7:56 PM.**

**Back in session at 7:57**

**Back in session. Craig Larson then calls the Pacheco hearing and reads it into the record:**

**7:00 PM Appeal No. 2014-018**

**Pacheco/Lucien**

Wayne J. Pacheco and Nancy J. Lucien have petitioned for a Special Permit pursuant to §240-94 – Expansion of a preexisting nonconforming use. The petitioners seek expansion of a preexisting nonconforming use as a lodging house to allow at least seven, up to eight lodgers. The premises have been used as a lodging house for six lodgers since 1985. The property is located at 791 Pitcher’s Way, Hyannis, MA as shown on Assessor’s Map 271 as Parcel 159. It is located in the Residence C-1 Zoning District.

Continued from April 23, 2014 & May 14, 2014.

**Members assigned tonight: Alex Rodolakis, Brian Florence, George Zevitas, Craig Larson**

**Craig informs Attorney Moore that David Hirsch, who had sat on this the last time, is not here and that only four members are present. He asks if she would like to go forward. Attorney Moore requests that this be continued until there is a full compliment of the board.**

**Motion is made by Craig Larson and seconded by Brian Florence to continue to June 11, 2014 at 7:00 PM**

**CONTINUED TO JUNE 11, 2014 AT 7:00 PM**

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**Next hearing is June 11, 2014 at 7:00 PM**

**Motion is made by Craig Larson and seconded by Brian Florence to adjourn.**

**Vote:**

**All in favor**

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**Exhibits:**

**7:00 PM Appeal No. 2014-024 – Angeli**

Exhibit A = Letter dated April 2, 2014 from Barbara Fleming of 417 Commerce Road, Barnstable, MA in support

**7:01 PM Appeal No. 2014-025 - Trout Brook Realty Trust**

Exhibit A = Letter dated May 23, 2014 from Robert E. Todd, Jr., of 159 Troutbrook Road, Cotuit, MA in opposition