



Town of Barnstable

Zoning Board of Appeals



www.town.barnstable.ma.us/ZoningBoard

Board Members:

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

Staff Support

Elizabeth Jenkins – Principal Planner - elizabeth.jenkins@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, February 11, 2015

2nd Floor Hearing Room – 367 Main Street, Hyannis, MA

Craig Larson - Chair	Present
Brian Florence – Vice Chair	Absent
Alex Rodolakis – Clerk	Present
George Zevitas	Present
David Hirsch	Present
Herbert Bodensiek	Present
Robin Young	Absent
Matthew Levesque	Present

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

Call to Order

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

Craig Larson indicates that that the Laham appeals will be continued to should anyone in the audience be present for that appeal.

Craig Larson reads the following into the record:

Notice of Recording

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

Approval of Minutes

Minutes from December 10, 2014.

Motion is made by Craig Larson and seconded by Alex Rodolakis to approve the minutes as submitted.

Vote:

All in favor

Craig calls the Berkery appeal and reads it into the record. Alex Rodolakis leaves the dais. Craig Larson informs Attorney Tracey Taylor that there are only four members present who can sit on this case and asks if she would like to go forward. Attorney Taylor states that they would like to proceed with a four member board.

Old Business

7:00 PM Appeal No. 2014-050

Berkery

Andrew M. and Joan W. Berkery have petitioned for a Special Permit pursuant to Section 240-92.B - Nonconforming buildings or structures used as single- and two-family residences. The petitioners are proposing to expand, alter and renovate the existing principal single-family dwelling and accessory cottage. The principal dwelling is to expand from 1,440 sq.ft., to 2,648 sq.ft. and the cottage is to expand from 493 sq.ft. to 829 sq.ft. Additions to the principal dwelling are located based upon existing nonconforming front- and side-yard setbacks. The property is located at 49 Lafayette Avenue, Hyannisport, MA as shown on Assessor's Map 287 as Parcel 047. It is in the Residence F-1 zoning district.

Continued from November 12, 2014 and December 10, 2014. Members assigned: George Zevitas, Brian Florence, Craig Larson, Herbert Bodensiek

Members assigned tonight: George Zevitas, Herbert Bodensiek, David Hirsch, Craig Larson.

Attorney Taylor states that they have reached out to the abutter Mrs. Spence who has objected to this project. They talked about landscaping to screen the addition from Mrs. Spence's view and with that, her clients retained a landscape architect. They had presented the landscape plans to Attorney Bernard Kilroy who is representing Mrs. Spence and who is also present this evening. Attorney Taylor states that Mrs. Berkery, who is also present tonight, has reached out to Mrs. Spence who never responded. Attorney Taylor's understanding is that Mrs. Spence's primary objection is to the placement of the driveway. She also believes that Mrs. Spence objects to the mudroom addition that will extend 2.8 feet into the setback but for which will be necessary in order for the Berkery's to enter and exit the dwelling. She states that the driveway will not abut her property and will not have headlights shining into her bedroom as she believes will. She has plans showing the proposed screening. Also, in order to do this renovation they are planning to move the structure 6 feet to the north to eradicate the setback impingements. It is their position that a special permit is appropriate, have 5 direct abutters that have written letters of support which they feel would be a huge improvement and that Mrs. Spence is the only objector.

Attorney Taylor states that the dwelling is in disrepair and that this proposal would improve the neighborhood.

Craig Larson asks if they have entertained changing the placement of the driveway, perhaps a circular driveway. Attorney Taylor says that putting it to the north would bisect the property.

Craig Larson states that he has moved this hearing in order to accommodate her being here. However, it is noted that she could not be here but that her attorney is.

Attorney Taylor hands in a landscape plan (EXHIBIT A)

Mrs. Berkery speaks and explains the rationale behind the placement of the proposed driveway.

Attorney Bernard Kilroy is here representing Mrs. Spence who could not be here and states that her major objection is the driveway location as her bedroom is located in that area and is concerned about noise in the summertime when the windows will be open. He also states that this property was divided by a previously granted variance and has questions as to standing. He reads a section from the Mendez case (CESAR A. MENDES vs. BOARD OF APPEALS OF BARNSTABLE & others., Mass. App. Ct. 527, January 11, 1990 - April 17, 1990, Barnstable County, Present: BROWN, DREBEN, & KASS, JJ.) in which "It would be anomalous if a variance, by its nature sparingly granted, functioned as a launching pad for expansion as a nonconforming use." and does not know if it would be applicable here. The other thought he had was on developed lot protection. He states that the staff report noted that this does not appear to be a demolition/rebuild, however, he feels that the buildings being raised up, new foundations set and relocated and the dwelling gutted sounds close to a demolition/rebuild. Craig Larson states that would need to be determined by the Building Commissioner. Attorney Kilroy asks that the driveway be relocated along with the outside shower. Mr. Larson asks about a circular driveway in the front. Attorney Kilroy believes that his client would be okay with that.

There is a discussion about parking on the premises. Attorney Taylor also addresses the issue of standing and the Mendez case and points out that it is unapplicable as, in the Mendez case, they were trying to argue for a special permit based on a nonconforming and pre-existing use created by a variance. She presents some photos of distance between the Berkery's and Spence's property (EXHIBIT B) and what little affect it will have on Mrs. Spence. The driveway as proposed would only extend half way down the Berkery's house.

Craig Larson clarifies that the second photo is from Lafayette Avenue. Mr. Larson asks if the client would be willing to move the shower and the driveway. Mrs. Berkery signals that she would.

Craig Larson asks Attorney Kilroy if Mrs. Spence would be okay with moving the driveway to the north and removing the outside shower.

Craig Larson states that there are letters of support from Gallagher, etc. (EXHIBIT C)

Craig Larson clarifies that the driveway will be moved with the outside shower. Attorney Taylor agrees. Elizabeth Jenkins suggests adding a landscape plan into the conditions also.

They discuss the landscape plan.

Craig Larson makes the following findings:

Special Permit Findings

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit:
Section 240-92(B) allows for the alteration and expansion of a preexisting nonconforming single-family residence with a Special Permit.
The proposed renovated and expanded structures will encroach on required setbacks, but the existing nonconformities will not be intensified.
- Site Plan Review is not required for single-family residential dwellings.
- 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.
- The proposed alteration and expansion will not be substantially more detrimental to the neighborhood than the existing building or structure.
- The Barnstable Historical Commission determined that the portions of the dwelling and the cottage to be demolished were not preferably preserved.
- The presence of two dwellings on the property is nonconforming; however, in accordance with relief issued by this Board, the use of the property is limited to single-family residential use only.

Craig Larson stresses that it is for single-family residential use only and not to be rented out. Attorney Taylor agrees.

Vote:

All in favor

Motion is made by Craig Larson to grant with the following conditions 1 through 9 as mentioned on Staff Report:

Vote:

AYE: George Zevitas, Herbert Bodensiek, David Hirsch, Craig Larson

NAY: None

GRANTED WITH CONDITIONS

Alex Rodolakis returns to the dais.

Craig Larson calls the Gevorgyan appeal at 7:40 PM and reads it into the record:

7:01 PM Appeal No. 2015-001

Gevorgyan

Garik Gevorgyan has applied for a variance from the one-acre minimum lot area requirement in the Residence B Zoning District (§240-11) to divide one lot into two, buildable lots for single-family residential use. The proposed lots would consist of 13,943 square feet and 18,076 square feet of upland. The Applicant also seeks relief from maximum lot shape factor requirements (§240-

8D) for one of the proposed lots. The Applicant is seeking to demolish all existing structures on the property and redevelop the lot with two single-family dwellings. The property is located at 36 Old Colony Road, Hyannis, MA as shown on Assessor's Map 306 as Parcel 117. It is zoned Residence B.

Continued from January 14, 2015 where members assigned were: David Hirsch, Robin Young, George Zevitas, Alex Rodolakis, Craig Larson

Herbert Bodenseik leaves the dais.

Members assigned tonight: George Zevitas, Alex Rodolakis, David Hirsch, Matthew Levesque, Craig Larson

Attorney David Lawler is here representing the applicant. Attorney Lawler states that the issue before the them previously were the structures themselves and that he had gone over all the variance requirements. Some of the members had concerns about the structure themselves. He states that there have been some changes to Section 6 & 7 of the staff report an explains. There have also been additional letters of support submitted to the board.

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

Alex Rodolakis makes findings:

Garik Gevorgyan has applied for a variance from the one-acre minimum lot area requirement in the Residence B Zoning District (§240-11) to divide one lot into two, buildable lots for single-family residential use. The proposed lots would consist of 13,943 square feet and 18,076 square feet of upland. The Applicant also seeks relief from maximum lot shape factor requirements (§240-8D) for one of the proposed lots. The Applicant is seeking to demolish all existing structures on the property and redevelop the lot with two single-family dwellings. The property is located at 36 Old Colony Road, Hyannis, MA as shown on Assessor's Map 306 as Parcel 117. It is zoned Residence B.

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 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 relief being sought with the conditions according to the revised staff report dated January 23, 2015, Conditions 1 through 13.

Vote:

AYE: : George Zevitas, Alex Rodolakis, David Hirsch, Matthew Levesque, Craig Larson

NAY: None

GRANTED WITH CONDITIONS

Herbert Bodensiek returns to the dais.

Craig Larson reads the following into the record:

7:00 PM Appeal No. 2015-005

Santos

Luiz Alberto Dos Santos has applied for a variance to Section 240-47.1A(1) Family Apartments to establish a family apartment in an existing detached garage. The ordinance requires family apartments to be located within or connected to a single-family dwelling. The property is located at 685 Strawberry Hill Road, Centerville, MA as shown on Assessor's Map 249 as Parcel 060. It is located in the Residence D-1 Zoning District.

7:00 PM Appeal No. 2015-007

Santos

Luiz Alberto Dos Santos has petitioned for a Special Permit in accordance with Section 240-47.1A(3) Family Apartments to construct a 896 square foot family apartment. Family apartments in excess of 800 square feet require a special permit from the Zoning Board of Appeals. The property is located at 685 Strawberry Hill Road, Centerville, MA as shown on Assessor's Map 249 as Parcel 060. It is located in the Residence D-1 Zoning District.

Members assigned tonight: George Zevitas, Alex Rodolakis, David Hirsch, Matt Levesque, Craig Larson

Mr. Santos states that the garage is eighteen (18) off the house and would like the family apartment above the garage as his daughter just got married last year. Craig Larson asks if he is familiar with the bylaws regarding family apartments and explains such. Mr. Santos agrees with the bylaw and conditions.

Craig Larson asks for public comment. No one speaks.

George Zevitas makes findings:

In Appeal Nos. 2015-005 and 2015-007, Luiz Alberto Dos Santos seeks to permit an 896 square foot detached family apartment accessory to the single-family dwelling at 685 Strawberry Hill Road in Centerville. The property is a .48 acre lot located south of Route 28 and north of West Main Street, near their intersection. The rectangular-shaped lot backs up to the "Sterling Ridge" residential condominium complex and abuts single-family residential lots to the north and south.

The property is improved with a 3,024 gross sq.ft (1,668 living area), three-bedroom, single-family dwelling, built in 1968. There is a 28' x 32' accessory two-car garage with second-floor living space. The site is served by public water and an on-site septic system sized for four bedrooms

Special Permit Findings

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit: Section 240-47.1(A)(1) of the Barnstable Zoning Ordinance allows for a family apartment greater than 800 square feet, not to exceed 1,200 square feet, with a Special Permit from the Zoning Board of Appeals.
- Site Plan Review is not required for single-family residential structures or family apartments.
- 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.

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 in order to consider granting the variance:

- 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.

An application for a variance that has met all three requirements "does not confer ... any legal right to a variance." The Board still has the discretionary power to grant or not to grant the variance.

Vote on both special permit and variance:

AYE: George Zevitas, Alex Rodolakis, David Hirsch, Matt Levesque, Craig Larson

NAY: None

George Zevitas makes motion to grant with the conditions as outline on the staff report which are Conditions 1 through 9 for the variance and Conditions 1 through 3 for the special permit.

Vote on both special permit and variance:

AYE: George Zevitas, Alex Rodolakis, David Hirsch, Matt Levesque, Craig Larson

NAY: None

GRANTED WITH CONDITIONS

Craig Larson reads the following into the record:

7:01 PM Appeal No. 2015-006

Habitat for Humanity of Cape Cod, Inc.

Habitat for Humanity of Cape Cod, Inc, as prospective owner, has applied for a Comprehensive Permit in accordance with MGL Chapter 40B, §§20-23 and 760 CMR 56. They are proposing to divide a 1.03 acre parcel into two buildable lots, each to be developed with an affordable, two-bedroom single-family dwelling. Waivers are being sought from the two-acre minimum lot area requirement of the Resource Protection Overlay District and from the requirements of Chapter 397 - Wells for the installation of a private water supply. The property is located at 1819 Old Stage Road, West Barnstable, MA as shown on Assessor's Map 152 as Parcel 036. It is in the Residence F and Resource Protection Overlay Zoning Districts.

Members assigned: George Zevitas, Alex Rodolakis, David Hirsch, Herbert Bodensiek, Craig Larson
Leedara Zola is here presenting the appeal before the board. She introduces Vicky Goldsmith – Executive Director, Keith Fernandez – of JM O'Reilly Associates Engineering, some volunteers and friends and the Jenkins who are owners of the lot. She states that the permitting attorney could not be here tonight and is not here is a legal capacity. She gives summary of the donation of the lot from the Jenkins who wanted to give back to the community and who feel that affordable housing as a critical need. They are here under 40B under LIP, locally supported. They have been before the Community Preservation Committee (CPC) with an application pending before town council. They have their eligibility letter, from DHCD who found it eligible under LIP, etc. The proposal is to construct two new single-family habitat homes which will include solar panels. She gives the details of the lots locations. She lists waivers they are requesting and notes that they will be deed restrictive to affordability and to two bedrooms only.

Alex Rodolakis asks if there will be restriction regarding square footage of these homes. Ms. Zola states that the way the deed rider is written there is a process for capital improvement and someone could add to it but would be within this board's purview but that these homes are limited to two bedrooms.

Craig Larson has a problem with one of the waivers regarding 150 versus 125 feet radius in regards to the septic system.

George Zevitas asks for clarification on who is eligible to purchase these homes. Leedara explains and has Vicki Goldsmith explain that applicants for purchase of these homes must have residency status.

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

Kris Clark and her husband reside at 398 Woodside Road which is directly abutting this proposed project. She is concerned about the septic systems which will be just outside the 150 feet from their well and also notes that the soil is dense clay. She states that she had a discussion with Donna Mirandi from the Town's Board of Health who noted that Mrs. Clark's leaching field and well constructed in 1982. She states that, as water commissioner for West Barnstable Water District, that there is an increase in acidity of the wells. She is also concerned about their own vacant lot in proximity to the wells of these lots.

Ken Thibeau and his wife live at 1845 Old Stage Road and which abuts this property. He has a major concern with the aquifer and having two septic systems close to the abutter's wells.

Mr. Jenkins speaks and states that he has paid taxes on this lot and wanted to give something back to the community.

Keith Fernandez from the engineering company states that there is suitable soil for the septic systems and if this lot could be developed for a single-family home, by right it could be for four bedrooms. Craig clarifies that this would not affect the aquifer any more than if it was a single-family home with four bedrooms. George Zevitas asks about future family apartment. Craig Larson states that if so, they would need to give up one of the bedrooms.

Craig Larson calls a two minute recess.

Craig makes findings on standing:

See Draft dated January 28, 2015 (Exhibit A)

Vote:

AYE: George Zevitas, Alex Rodolakis, David Hirsch, Herbert Bodensiek, Craig Larson

NAY: None

Craig makes findings on local needs.

See Draft dated January 28, 2015

Vote:

AYE: George Zevitas, Alex Rodolakis, David Hirsch, Herbert Bodensiek, Craig Larson

NAY: None

Motion is made by Craig Larson and seconded by Alex Rodolakis to grant relief being sought with Conditions on Page 4 and 5 1-20 drafted January 28, 2015.

Vote:

AYE: George Zevitas, Alex Rodolakis, David Hirsch, Herbert Bodensiek, Craig Larson

NAY: None

GRANTED WITH CONDITIONS.

Craig Larson reiterates that the following have been continued to March 11, 2015 at 7:00 PM.

7:03 PM Appeal No. 2015-009

Laham Management & Leasing, Inc

7:04 PM Appeal No. 2015-010

Laham Management & Leasing, Inc

7:05 PM Appeal No. 2015-011

Laham Management & Leasing, Inc

Adjourn

Motion is made by Craig Larson and seconded by Alex Rodolakis to adjourn

Vote:

All in favor

Exhibits

7:00 PM Appeal No. 2014-050

Berkery

Exhibit A – Part I = Landscape Plan dated September 15, 2014 entitled “Berkery Residence, 49 Lafayette Ave., Hyannis Port, MA , Proposed Elevations and

Exhibit A – Part II - Letter from Peter Hansen Design dated 1-3-2015. .

Exhibit B = Two (2) color photos showing distance from Mrs. Spence’s residence.

Exhibit C = Email of support dated November 12, 2014 from Susan Gallagher

Email of support dated November 11, 2014 from Richard & Virginia Fanning

Email of concern dated November 12, 2014 from Wilma Spence

Email of support dated November 11, 2014 from Tracy Isham

Email of support dated December 2, 2014 from Michael & Julie Berube

Email of support dated November 26, 2014 from Madeline Clark

7:01 PM Appeal No. 2015-006

Habitat for Humanity of Cape Cod, Inc.

Exhibit A = Decision and Notice dated January 28, 2015