



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 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, April 22, 2015
2nd Floor Hearing Room – 367 Main Street, Hyannis, MA

Craig Larson - Chair	Present
Brian Florence – Vice Chair	Present
Alex Rodolakis – Clerk	Absent
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.

As a quorum has been met, Craig Larson opens the hearing at 7:02 PM.

Call to Order

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

Craig reads the following and no one responds.

Notice of Recording

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

Craig Larson states that the principal, for the Village Green has requested to withdraw (EXHIBIT A).

New Business

7:00 PM Comprehensive Permit No. 2003-090 Village Green I LLC

Village Green I LLC has requested an insubstantial change to Comprehensive Permit No. 2003-090 (Consolidated Decision dated March 9, 2011), issued for the development of the Village Green, a 120-unit rental apartment development with a minimum of 40 units committed to being low- or moderate-income units on 14.32 acres. The Applicant seeks to modify the Comprehensive Permit to:

1. Clarify that Certificates of Occupancy for any one building can be issued prior to all buildings in the same phase being ready for a Certificate of Occupancy. The Applicant will be ready to apply for Certificates of Occupancy on Building A and the Community Building on or about April 24, 2015, but will not be ready to request Certificates of Occupancy for Building D until sometime later.
2. Clarify that (i) all landscaping; (ii) the final course of paving on all roadways, parking areas, and the sidewalk from the Community Building to Independence Ave; (iii) final improvements to the central green space; and (iv) the fenced play area, all relating to Phase I, shall be completed prior to the issuance of the 31st Certificate of Occupancy (the first unit in Building D).

The property is addressed 767 Independence Drive, Barnstable, MA, as shown on Assessor's Map 332 as Parcels 010-001 and 010-003, located in the Industrial Zoning District, and Wellhead and Groundwater Protection Overlay Districts.

Motion is made by Craig Larson and seconded by Brian Florence to withdraw without prejudice.

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

7:00 PM Appeal No. 2015-019

Gahan

John W. Gahan III and Catherine Gahan have petitioned to amend Conditions 2 and 8 of Special Permit No. 2014-003 to provide a set of plans to reflect revised existing conditions. All other aspects of Special Permit No. 2014-003 will remain the same, including the house which will be identical to that approved in Special Permit No. 2014-003. The property is located at 95 Summerbell Avenue, Centerville, MA as shown on Assessor's Map 226 as Parcel 060. It is in the Craigville Beach Zoning District, Craigville Village Neighborhood.

Members assigned: David Hirsch, George Zevitas, Brian Florence, Matt Levesque, Craig Larson

Representative: Attorney Michael Schulz and Steve Cook from Cotuit Bay Designs, LLC.

Attorney Schulz states that they are here tonight to seek an amendment to the conditions of the special permit that was previously granted by the ZBA. He introduces the property owner, Mr. Gahan and states that he will be giving a history about the property.

Mr. Gahan speaks and states that approximately 14 months ago some people heard about the special permit request which was to winterize the cottage. After the permit was granted, they began working with the association in regards to the septic system they were to replace. He then put a bid out for home construction contractors and waited until the fall to begin. They had a difficult winter and on the night of February 1st, he heard from his neighbor, Mr. Lane, about access issues with the heavy equipment. Mr. Gahan states that he contacted the contractor and asked him to comply with whatever the neighbors were in need of. Two days later at five o'clock in the morning, he wrote to Mr. Lane asking if he heard from the contractor.

His neighbors have supported them all the way through. There has been a suggestion that the bylaw can only build what was there before. What he thinks that the bylaw means is that he should be able to rebuild what was previously granted and is why they are here. They have a set of plans of what the board approved before and would like to be back to construction as soon as they can.

Attorney Schulz reiterates the relief being sought. He states that he did meet with the Building Commissioner, Tom Perry, went through the plans and he did agree that the plans are identical to the plans. He introduces Steve Cook. Cook from Cotuit Bay Design LLC., who goes over the plans as displayed on the easel. (EXHIBIT A). George Zevitas asks about the other walls and how this situation transpired. Mr. Cook states that it was a miscommunication from contractor to sub contractor. Attorney Schulz states that those people do acknowledge themselves the mistake and that he has letters from the contractor and framer. The letter from the framer is dated April 21st (EXHIBIT B) which Attorney Schulz reads. Attorney Schulz also reads the letter from Adam Hostetter, the contractor (EXHIBIT C).

Craig Larson states that he understands that the applicant has the building permit and that if they wanted to, could reconstruct this house and asks why they haven't started the project. Mr. Cook and Attorney Schulz states that there is a stop work order. Mr. Larson states that they could start to reconstruct the house in accordance with what existed previously if they wanted to in order to occupy by the summer. Mr. Gahan states that he is here because he wants to proceed to build what was granted previously by this board. Mr. Larson and Attorney Schulz discuss what authority the ZBA has in accordance to amending their

decision in the DCPC. Attorney Schulz refers to case law: Huntington vs ZBA of Hadley. Mr. Larson discusses and thinks that this is a demo/rebuild, thinks they could build what they had and what this board granted was based on what existed which does not exist currently. Brian Florence thinks that this could be a self-imposed hardship and agrees with Mr. Larson's interpretation of the bylaw.

The applicant and the board discuss the difference between the DCPC language versus the non-DCPC bylaw. Attorney Schulz suggests that this board could condition this and based on the evidence that this is a unique situation. There is a discussion about the DCPC bylaw as it relates to the powers of the board.

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

Jim Lane of 86 Summerbell Avenue, a direct abutter across the street and also the president of the Christian Camp Association, has supported this and would ask that the applicant be able to build the house with addition.

Craig Larson makes findings:

1. Special Permit No. 2014-003 was granted based upon the finding that the application fell within a category of the ordinance, Section 240-131.4(D)(2), which allows only structures in lawful existence at the time of adoption of Sections 240-131 through 240-131.8 to be expanded.
2. Special Permit No. 2014-003 was granted based upon finding that the Petitioner was expanding an existing structure and that the Petitioner was "preserving the existing historic dwelling, as opposed to demolishing and rebuilding the structure."
3. The structure that existed at 95 Summerbell Avenue at the time Special Permit No. 2014-003 was granted has been demolished.
4. With this appeal, the Applicant requested to amend the conditions of Special Permit No. 2014-003 to allow for the substitution of plans depicting the complete reconstruction of the dwelling which existed at the time that Special Permit No. 2014-003 was granted, plus a 24.7% expansion.
5. The proposed amendment does not fall within a category specifically excepted in the ordinance for a grant of a special permit.
6. There is no structure on the lot that was in existence as of July 1, 1989, November 6, 2009 or January 19, 2011.
7. Section 240-131.4 F-G regulates the reestablishment and reconstruction of demolished structures in the Craigville Beach District. Subsection (a)(1) allows for the reconstruction of a demolished structure as of right provided that there is no material increase in gross floor area or height of the building/structure or footprint of the structure is permitted beyond that which previously existed.

Vote:

AYE: Craig Larson, Brian Florence, George Zevitas, David Hirsch, Matthew Levesque

NAY: None

Motion is made by Craig Larson and seconded by George Zevitas to deny this request.

Vote:

AYE: Craig Larson, Brian Florence, George Zevitas, David Hirsch, Matthew Levesque

NAY: None

DENIED

At 7:58, Craig reads the Hyannisport Club, Inc., appeal into the record:

7:01 PM Appeal No. 2015-020

Hyannisport Club, Inc.

Hyannisport Club, Inc. has petitioned for a Special Permit pursuant to Section 240-34 for an exemption from the flood regulations to allow the use of fill within a flood area designated as a V Zone by the Flood Insurance Study and on the special FEMA Flood Insurance Rate Maps. As part of a phased-in golf course improvement project, the petitioner seeks to regrade and regrass sections of the 4th, 7th and 8th fairways and green approaches. Proposed improvements include bringing in a sand soil root zone mix to: a) fill in pocketed and sunken areas within the existing maintained fairway and rough; and b) elevate low lying areas within the existing maintained fairways that are subject to salt damage during minor storm events; c) install a new tee box behind the 7th green; and d) expand the existing sand bunker complex and elevate existing berms on holes 8 and 17. The property is located at 2 Irving Avenue, Hyannis, MA as shown on Assessor's Map 266 as Parcel 031. It is in the Residence B and Residence F-1 Zoning Districts.

Members assigned: Craig Larson, Brian Florence, George Zevitas, David Hirsch, Herb Bodensiek

Representative: Attorney Mark Boudreau. Also with him tonight is the Superintendent of Grounds, Tom Columbo.. Attorney Boudreau gives summary of relief being sought. They are looking to maintain the course as they have for decades. The fill is to maintain areas that have washed away. The floodplains were redrawn and this section is now in the V zone which now requires a permit to fill in the V zone. He hands in pictures to the board members (EXHIBIT A). He states that all work was shown to the Conservation Commission and approved.

Craig Larson asks for public comment. No one speaks.

Brian Florence asks if there is anyway, in the future, this could be considered by staff as administrative approval. Elizabeth Jenkins states that the Town gets direction from FEMA about language in the ordinances and was something the Town didn't have time to address since the floodplain regulations are fairly new.

Craig Larson makes findings:

Hyannisport Club, Inc. has petitioned for a Special Permit pursuant to Section 240-34 for an exemption from the flood regulations to allow the use of fill within a flood area designated as a V Zone by the Flood Insurance Study and on the special FEMA Flood Insurance Rate Maps. As part of a phased-in golf course improvement project, the petitioner seeks to regrade and regrass sections of the 4th, 7th and 8th fairways and green approaches. Proposed improvements include bringing in a sand soil root zone mix to: a) fill in pocketed and sunken areas within the existing maintained fairway and rough; and b) elevate low lying areas within the existing maintained fairways that are subject to salt damage during minor storm events; c) install a new tee box behind the 7th green; and d) expand the existing sand bunker complex and elevate existing berms on holes 8 and 17. The property is located at 2 Irving Avenue, Hyannis, MA as shown on Assessor's Map 266 as Parcel 031. It is in the Residence B and Residence F-1 Zoning Districts.

Special Permit Findings

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit:
Section 240-34(L) allows the Zoning Board to "authorize exceptions from the flood regulations of [Section 240-34] by special permit within the flood areas in accordance with §240-125.
- Site Plan Review is not required for the proposed work.
- 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: Craig Larson, Brian Florence, George Zevitas, David Hirsch, Herb Bodensiek

NAY: None

Motion is made by Craig Larson to grant with the following conditions on staff report, page 4, dated April 22, 2015 (EXHIBIT B) with the addition of the 3rd, 4th, 7th, and 8th fairways that are subject to salt damage and minor storm events.

Vote:

AYE: Craig Larson, Brian Florence, George Zevitas, David Hirsch, Herb Bodensiek

NAY: None

Other Business

Next regularly scheduled hearings are May 13, May 27, June 10, June 24

Adjourn

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

Vote:

All in favor