



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, May 27, 2015

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

Brian Florence – Vice Chair	Present
Alex Rodolakis – Clerk	Present
George Zevitas	Present
David Hirsch	Present
Herbert Bodensiek	Arrives after board vote on elections
Robin Young	Present
Matthew Levesque	Absent

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

As a quorum has been met, Brian Florence opens the hearing at 7:01 PM.

Call to Order

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

Brian Florence reads the following into the record with no response:

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.

Election of Officers

In accordance with Section 240-125.A(4), the Election of Officers for the Zoning Board of Appeals will be held during tonight’s public hearing of May 27, 2015

Nomination for Brian Florence for Chair is made by George Zevitas and seconded by David Hirsh

Vote:

All in favor

Nomination for Alex Rodolakis for Vice-Chair is made by: David Hirsch and seconded by George Zevitas.

Vote:

All in favor

Nomination for George Zevitas for Clerk is made by David Hirsch and seconded by Alex Rodolakis

Vote:

All in favor

Brian Florence calls the following and reads it into the record at 7:04. Herb Bodensiek arrives at 7:05 PM.

Comprehensive Permits

7:00 PM Comprehensive Permit No. 2005-013 Osterville Landing/KTW Group, LLC

KTW Group, LLC has requested a modification to Comprehensive Permit No. 2005-013, as modified, to change permit condition No. 26 by eliminating the requirements that the Applicant secure an insurance policy or bond equivalent to cover the entire replacement cost of the shared septic system in case of failure; that the Applicant turn the policy or bond over to the Homeowners' Association; and that the Homeowners' Association be required to keep in force the insurance policy or bond.

Comprehensive Permit No. 2005-013, as modified, allows for the development of 11 single-family dwellings, including three dedicated in perpetuity as affordable units. 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: George Zevitas, Alex Rodolakis, Brian Florence, Robin Young, David Hirsch

Representative: Attorney John Kenney

Attorney Kenney states that he is asking that this request be deemed a minor modification and that Condition #26 of the comprehensive permit be changed to eradicate the requirement for the need of an insurance policy and/or bond, as well as it being turned over to homeowner's association who would then be required to maintain it. Mr. Kenney states that the applicants cannot obtain the insurance and have gone to two agencies. He states that from an insurance perspective, the comment was that everything is underground and that the agencies didn't know what they would be insuring. The request to remove this condition is because they have four pending building permits, are going for an occupancy permit for one house which cannot be obtained therefore bringing this project to a stand still. Attorney Kenney states that they did talk to the town attorney's office and were referred back to this board. He talks about Condition #27 and cannot accomplish this because they can't get insurance or a bond or an occupancy permit.

Robin Young asks why this problem wasn't foreseen. Attorney Keeney states that he wasn't involved in the beginning and that, in 2005, the economy was better and some things got overlooked. Brian Florence asks if the septic system is okay and if the only problem is getting the insurance. Attorney Kenney states that the system was recently installed, inspected and approved by the director of health prior to the issuance of the building permits. George Zevitas asks if the home, recently built, will be on a shared system. If so, who will pay for the remainder of the shared system. Attorney Kenney clarifies that the developer will be subsidizing the remainder, that there is a budget and a contract for annual maintenance and testing of the system. He states that it will be covered under the association fees and that the first homeowner will only pay their share. As homes are sold they will become part of the association and share in the cost.

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

Robin Young reiterates in asking why this was part of the comprehensive permit previously granted. Elizabeth Jenkins states that she has spoken with the Board of Health who noted that there weren't many shared systems out there. She states that of other permits who had shared systems, no condition as this is typical. In his opinion, Brian thinks this would be a minor modification and also thinks that a condition, such as this, would be hard to enforce.

Brain claries that they are voting as to whether this would be a major or minor modification only. If the board determines it is a major modification the requirement would be that a public hearing be held.

Alex Rodolakis makes findings and a motion that this request is an insubstantial change to the comprehensive permit and that this is therefore not substantial and no hearing is needed.

Robin Young seconds

Vote:

All in favor

Elizabeth Jenkins clarifies that this approves the request for the elimination of the requirement that a bond and insurance policy be secured and later turned over to the homeowner's association.

Motion is made by Alex Rodolakis to grant the request eliminating the requirement for insurance policy or bond to cover the entire cost of the shared septic system in case of failure and subsequent requirements turn the bond over to the homeowner's association and that the homeowner's association thereafter be required to keep and enforce the insurance policy or bond and that all other conditions of the comprehensive permit be kept in full force and effect.

Seconded by George Zevitas

Vote:

All in favor

INSUBSTANTIAL MODIFICATION

At 7:22 Brian Florence calls the Pacheco/Lucien appeal and reads it into the record and asks Alex Rodolakis to chair this appeal:

Old Business

7:00 PM Appeal No. 2015-023

Pacheco/Lucien

Wayne J. Pacheco and Nancy Lucien have petitioned to modify Special Permit No. 2014-018 pursuant to Massachusetts General Law Chapter 40A Section 14. The petitioners seek to delete Condition No. 3 of the decision, which requires "any kitchen or other improvements that represent a second unit on the property be removed by the owner with the required permits from the Building Division." The Petitioners stated reason for the request is the decision conflicts with Barnstable Ordinance Chapter 501, Article IV Sections 501-28 and 501-29. The property is located at 791 Pitchers Way, Hyannis MA as shown on Assessor's Map 271 as Parcel 159. It is in the Residence C-1 Zoning District.

Continued from May 13, 2015.

Members assigned: George Zevitas, Robin Young, Herbert Bodensiek, George Zevitas, Alex Rodolakis

Members assigned tonight: George Zevitas, Alex Rodolakis, David Hirsch, Robin Young, Herbert Bodensiek

Representative: Attorney Paul Tardif

Attorney Tardif states that they are back to get clarification on ZBA's decision granted in June of 2014 to his client. He summarizes that decision stating that one of the conditions listed was that the house shall be single family only and any kitchen or other improvement that represent a second unit on the property shall be removed by the owner with the required permits from the building division. He believes that the way this came about was that the unit that was to be added as lodging rooms in the basement had some cabinets, countertops and it was proposed to have a small sink and probably a fridge. The building department determined that it would constitute a kitchen where only one kitchen is allowed in a lodging house. He states that it was learned after that meeting about the definition of lodging house (and notes that there is not definition of kitchen) and then reads the definition of cooking facilities. After being granted the relief in the 2014 decision, his clients then applied for their permit for the 8 lodgers and were denied. He states that they are here to get clarification as he believes there is a disconnect between the building department's definition and the definition in the ordinance.

Alex Rodolakis states that, at the last hearing, they noted that they would like to hear from the building department on this and introduces Robin Anderson. Robin Anderson who is the Zoning Enforcement Officer clarifies that she works directly for the Building Commissioner, Tom Perry and states that they are not opposed to the 8 lodgers, only to the area where the other two lodgers would be housed. She states that the unit in question is a suite of rooms segregated from the rest of the house with a locked door and not a room as defined in the ordinance. This area would not be accessible to any other lodgers except the two lodgers downstairs and views that as an apartment.

Brian Florence asks Ms. Anderson about the apartment for the manager as outlined in the previous decision. Ms. Anderson states that this dwelling already has a resident occupant unit with a kitchen that is suppose to be accessible to everyone else which she believes currently is not. Brian asks for further clarification regarding the manager's apartment. Ms. Anderson

states that after conferring again today with the Building Commissioner that this should be a single-family dwelling with one kitchen. When renting lodging rooms, those occupants are to be sharing the common rooms including the kitchen.

Robin Young asks Ms. Anderson if any of the other rooms have a living area. Ms. Anderson states that she has not been able to gain access to any of the other rooms, only the downstairs apartment. Robin Young asks her if the manager has their own living area. Robin Anderson answers yes but that kitchen is part of his living area.

Brian Florence asks Attorney Tardif what the likelihood would be of separating as just a manager's cooking facilities and nothing to do with the rest of the property. Attorney Tardif states that the manager's unit is on the first floor and has a full kitchen with a full stove cook top and refrigerator. All of the people that live their have access to this room either from the outside with their own key or through the inside with their own key. He believes that the board is asking why wouldn't it be possible to move the manager's unit to the basement area to which he states no because the first floor unit has already been designated as such. He states that he is asking for guidance from this board as to why lodging rooms, although typically one bedroom in a building and where does it say it has to be one room only. He also reads the definition of cooking facilities as outlined in the ordinance. He states that the floor plan submitted to the board in June, when it was perceived to be for two lodgers, was approved. Attorney Tardif and the board discuss the basement area and whether this is a unit. Robin Anderson states that if this is truly a lodging room that the locks should be on the individual room that the unit in question is not a self-contained lodging unit. Attorney Tardif and Robin Anderson discuss definition of lodging room.

The board and Attorney Tardif discuss potential resolutions. Attorney Tardif asks that If they took the door off the basement unit that has a full kitchen, now there would be two kitchens in the house and accessible to the lodgers and would that be okay with the building division? Elizabeth Jenkins asks for clarification of the request is to be approved. The applicant has indicated that there are cabinets in the downstairs area and in the initial floor plan that he submitted it appears that the proposal was to add a sink and fridge to those cabinets. She asks if it is just to maintain the cabinets or is it to amend those cabinets with a bar sink, fridge and hot plate? Attorney Tardif is asking for what is allowed under the ordinance for cooking facilities. Alex suggests removing the door and having the basement area be a common area.

Alex Rodolakis would like to go to next appeal and come back to this one.

The Laham appeal is read into the record and discussed as shown below with Brian Florence chairing this appeal.

7:01 PM Appeal No. 2015-025 Laham Management & Leasing, Inc

Laham Management and Leasing, Inc has applied for a use variance from the provisions of Section 240-24.1.6 (OM Zoning District) to establish parking to be used in conjunction with the existing abutting automobile dealership. The Applicant also seeks, to the extent required, a dimensional variance from Section 240-24.1.6(C) as to minimum lot area, minimum lot frontage and landscape setbacks. The property is located at 157 Stevens Street, Hyannis, MA as shown on Assessor's Map 309 as Parcel 240. It is zoned OM Office/ Multi-Family Residential Zoning District.

Continued from May 13, 2015.

Members assigned: George Zevitas, Robin Young, Herbert Bodensiek, George Zevitas, Alex Rodolakis

Members assigned tonight: George Zevitas, Alex Rodolakis, David Hirsch, Robin Young, Herbert Bodensiek

Representative: Attorney Michael Ford

Attorney Ford states that also with him tonight are Joe Laham and a representative from Atlantic Engineering. Attorney Ford refers to the new landscape plan which was requested of the board at the last hearing for this appeal.

Herbert Bodensiek asks about the right of way. Attorney Ford states that the right of way will be observed and that Mr. Laham has, and will, maintain it. Alex Rodolakis clarifies that the parking spaces will be for cars available for sale only and not for customer parking.

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

Alex Rodolakis asks about lighting. Rich and Mr. Laham state that there is lighting already there which is sufficient enough and will not be any additional lighting. Attorney Ford states that the remainder of the property has benefit of a special permit and a landscape plan approved as part of that and will be the same as the other special permit.

Alex clarifies that no car lifts will be on the lot to which Attorney Ford agrees and also states that they will be okay with a condition to that affect if necessary.

David Hirsch makes findings:

- Laham Management and Leasing, Inc. seeks a variance from the provisions of Section 240-24.1.6 (OM Zoning District) to establish parking to be used in conjunction with the existing abutting automobile dealership. *Automobiles sales, retail sales, or vehicle parking are not allowed as principal or conditional uses in the district.*
- The Petitioner also seeks a dimensional variance from Section 240-24.1.6(C) as to minimum lot area, minimum lot frontage. .
- The Petitioner also seeks variances from the landscaping requirements, including landscape setbacks.
- The subject property is located at 157 Stevens Street, Hyannis, MA as shown on Assessor's Map 309 as Parcel 240. It is zoned OM Office/ Multi-Family Residential Zoning District and located in the Hyannis Growth Incentive Zone.
- The Petitioner seeks to use the parking in conjunction with the adjacent automobile dealership, a preexisting nonconforming use. A January 28, 2011 Special Permit granted by the Planning Board allows for expansion of the existing dealership building and use on the adjacent parcels.
- There are 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.
- 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.

Motion to accept the findings by George Zevitas and seconded by Herbert Bodensiek

Vote:

All in favor

Motion is made by David Hirsch to grant the relief being sought with the following conditions:

Conditions

1. Relief from Section 240-24.1.6 OM Zoning District is granted for 157 Stevens Street, Hyannis to allow principal use of the property for surface parking (storage of automobiles) accessory to the automobile dealership located at 141-151 Stevens Street and 91 Bassett Lane.
2. Relief is granted from the minimum lot area and, as necessary, frontage requirements of Section 240-24.1.6(C) to allow the 7,840 square foot lot with 60 feet of frontage on Stevens Street to be used as specified in Condition No. 1.
3. Relief is granted from the landscaping requirements of 240-24.1.6 to allow reduced landscape areas as shown on the plans referenced in Condition No. 4.
4. The site shall be improved as shown on the plan entitled "Site Plan for Premier Mazda Parking Expansion," dated November 21, 2014, and the landscape plan entitled "Landscape Plan for Premier Mazda Parking Expansion" dated May 21, 2015, both drawn Atlantic Design Engineers, Inc.
5. Site improvements shall be in compliance with the Site Plan Approval dated December 2, 2014.
6. Vehicles shall not be parked within the landscaped area along Stevens Street.
7. Any site lighting shall not exceed 18 feet in height and shall only be directed onto the site. Any new exterior lighting shall comply with the recommendations of Cape Cod Commission Technical Bulletin 95-001 and shall be submitted to the Director of the Growth Management Department for Design and Infrastructure Plan approval
8. 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. A copy of the recorded decision shall be submitted to the Zoning Board of Appeals and Building Division files.

Alex Rodolakis would like to amend the Condition #6 to reference that vehicles shall not be elevated or placed on any lifts and add that there be no signage on the lot in reference to vehicle sales and that directional signage would be okay.

Amendment accepted by David Hirsch.

Motion seconded by Robin Young

Vote:

All in favor

Attorney Ford clarifies that the plan is dated December 22nd and not December 2nd. Elizabeth Jenkins to clarify for the purposes of the decision.

GRANTED WITH CONDITONS

After the Laham appeal, Alex Rodolakis recalls the Pacheco/Lucien appeal.

Attorney Tardif states that he has discussed this with his client but that the suggested plan would not work with their business model and that the position of the Building Division is arbitrary and capricious , contrary to the ordinance, and for those reasons asks that the board take a vote.

Elizabeth Jenkins gives suggestions for findings.

Alex makes findings seeking to modify permit to allow kitchen facilities.

On Appeal 2015-023 seeking to allow kitchen facilities and for Wayne J. Pacheco and Nancy Lucien who have petitioned to modify Special Permit No. 2014-018 pursuant to Massachusetts General Law Chapter 40A Section 14. The petitioners seek to delete Condition No. 3 of the decision, which requires “any kitchen or other improvements that represent a second unit on the property be removed by the owner with the required permits from the Building Division.” The Petitioners stated reason for the request is the decision conflicts with Barnstable Ordinance Chapter 501, Article IV Sections 501-28 and 501-29. The property is located at 791 Pitchers Way, Hyannis MA as shown on Assessor’s Map 271 as Parcel 159. It is in the Residence C-1 Zoning District

Based on evidence presented it would be his finding that this is an untimely appeal. Elizabeth Jenkins cites from the supplemental staff report (EXHIBIT A): that addresses an untimely appeals as in Klien v. Planning Board of Wrentham¹” in that the special permit had been executed ; there was no appeal of the condition after the permit was filed with the Town Clerk and that there has been less than two years from the grant of the original date of that special permit. She states that the board could also go on to find that there have not been significantly changed circumstances between now and the date the original permit was granted.

Alex reiterates that this is an untimely appeal and that there were no substantial changes with respect to the applicant and therefore should be denied.

Vote on the findings this as an untimely appeal is seconded by Herbert Bodensiek.

Vote:

AYE: Robin Young, Alex Rodolakis, George Zevitas, Herbert Bodensiek

NAY: David Hirsch

Motion is made by Alex Rodolakis and seconded by Herbert Bodensiek that this is an untimely appeal and to deny the special permit.

AYE: Robin Young, Alex Rodolakis, George Zevitas, Herbert Bodensiek

NAY: David Hirsch

Elizabeth Jenkins states that Attorney Tardif clarifies that this was a modification of a special permit. Alex Rodolakis accepts the amendment.

DENIED

Brian Florence takes the chair back from Alex Rodolakis and reads the following into the record:

Business

7:00 PM Appeal No. 2015-026

Brown Group Retail, Inc., d/b/a Famous Footwear

Brown Group Retail, Inc. (d/b/a Famous Footwear), as tenant, has petitioned for a variance to the allowable square footage of signage pursuant to §240-65. They are proposing one, three sq.ft blade sign in addition to an existing 50 sq.ft wall sign. The ordinance allows for two signs not to exceed a total square footage of 10% of the area of the building wall facing a public way (50 sq.ft of signage). The property is located at 790 Iyannough Road, Suite 9, Hyannis, MA as shown on Assessor's Map 311 as Parcel 092. It is in the Highway Business (HB) and Business (B) Zoning Districts.

Members assigned tonight: Alex Rodolakis, George Zevitas, Herbert Bodensiek, David Hirsch, Brian Florence

Representative: Carol Bugby is from Poyant Sign and is here tonight representing Famous Footwear. She gives summary of past attempts before the board for signage at this location in March, 2015. She states, that visibility is difficult for motorists traveling on Iyannough Road which is why there is a request to maximize the wall sign was essential when they first permitted the sign. The setback of the fascia is over 350 feet from Route 132. The proposed signage would identify the store to the customer and many shoppers walk from one to another as the wall signs are not visible under the canopy. There are many under-canopy signage and feel this request would not be detrimental and benefit the pedestrian traffic.

Brian Florence asks about the 3 prong test for a variance. She states as to the topography, the building is set far back from Route 132 which made this unique and the signs cannot be viewed.

David Hirsch asks if the three foot sign under the canopy will help visibility from Route 132. Ms. Bugby states that it will make it more visible for pedestrian traffic.

Alex Rodolakis feels that this is a problem to be resolved by the owner of the plaza and not with the sign code.

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

The board discusses. Brian feels that the whole plaza has a signage problem. Alex doesn't think he would be in favor of this request.

Carol Bugby states that the applicant would like to withdraw without prejudice.

Motion is made by George Zevitas and seconded by Alex Rodolakis to withdraw without prejudice

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

At 8:21, Brian Florence calls the Barzun appeal and reads it into the record:

7:01 PM Appeal No. 2015-027

Barzun, et al

The Bluff, LLC; Thomas H Lowell, Trustee of the Thomas H Lowell Cotuit Property Trust Agreement; James L Barzun; Isabel Barzun; Francis C Lowell Jr; and Charles R Lowell have applied for a Special Permit pursuant to Section 240-94 –

Nonconforming Uses. The applicants seek a special permit to continue a nonconforming use when a division of the land occurs. There are currently five single-family dwellings and accessory structures on a single lot; the proposed division of land would result in four single-family dwellings and accessory structures on one lot (Lot 2). The property is located at 135 Putnam Avenue, Cotuit, MA as shown on Assessor's Map 036 as Parcel 040. It is in the RF Residence F and Resource Protection Overlay Districts.

Members assigned tonight: George Zevitas, Alex Rodolakis, Robin Young, David Hirsch, Brian Florence

Representative: Michael Schulz, Esq.

Attorney Schulz gives history of property. He has materials of Form B's from historical (Exhibit A). Some members of family wish to sell and some who want to retain the property. He states that these parties have come to an agreement for the division of Lots # 1 and 2 and that the sellers will hold title to Lot #1 which will consist of a dwelling and approximately 11.78 acres. Since Lot #1 will only be improved by one single-family dwelling which meets the bulk and area requirements, it is not the subject of this appeal tonight. However, the family members retaining ownership will hold title to Lot #2 which will be improved with four (4) single-family dwellings and accessory structures on approximately 14.07 acres. The nonconforming use on Lot #2 will not represent a substantial detriment to the neighborhood and will be used by the family who will be residing there.

George Zevitas asks for clarification as the structure, as seen on the plan, straddles the lot line. Attorney Schulz states that the structure will be moved to Lot #2 but does not know where specifically on the lot it will be moved.

Brian Florence asks whom the Way serves as shown on the plan and is it generally for both properties. Attorney Schulz indicates it is an easement. Lot #1 was carved out by land court back approximately in the e 50's and never conveyed to anyone and remained a ghost lot. At that time there was an easement drawn from Lot #1 and 2 for easement which is in full force and effect. If this board does approve the special permit and if the Planning Board endorses the ANR then the land court will cancel that ghost lot.

Brian Florence clarifies with Elizabeth Jenkins what the whole process regarding this would involve.

Robin Young asks about the current right of way. Attorney Schulz states that they are presently working on this and believes that, for the time being, it is to remain as nothing has been approved yet. If not approved, and the sellers are able to sell their lot what he envisions is for access to be coming over Lot #2 in the future.

Robin Young asks about future subdivision. Attorney Schulz believes that he would need to come before this board and would be okay with making that a general provision. Brian Florence asks Attorney Schulz if his clients would be okay with a condition that states that further subdivision must comply with zoning requirements at the time of subdivision. Attorney Schulz agrees to that condition.

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

Brian Florence makes findings:

Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit:

Section 240-94 allows for the alteration and continuation of a preexisting nonconforming use with a Special Permit.

The multiple single-family dwellings on the lot predate the adoption of zoning and was a family compound for over 100 years.

- Site Plan Review is not required for single-family residential uses.
- 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 continuation of the preexisting nonconforming use will be no more detrimental to the neighborhood than the use as it exists today.

Vote:

All in favor

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

Conditions

1. Special Permit No. 2015-013 is granted to The Bluff, LLC; Thomas H Lowell, Trustee of the Thomas H Lowell Cotuit Property Trust Agreement; James L Barzun; Isabel Barzun; Francis C Lowell Jr; and Charles R Lowell to allow the continuation of multiple-single family dwellings on Lot 2, as shown on the plan referenced in Condition No. 2 herein.
 - a. Lot 1 shall be used in conformance with zoning.
 - b. Four single-family dwellings and their accessory uses shall be permitted on Lot 2.
2. The lots shall be configured as shown on draft Approval Not Required (ANR) plan, entitled "Plan of Land in Barnstable (Cotuit) Massachusetts, Petitioners: Roger M. Barzun [et. al.]" dated April 22, 2015, drawn by CapeSurv.
3. An Approval Not Required plan shall be prepared based upon the plan referenced in Condition No. 2. The ANR plan shall be submitted to the Planning Board for endorsement and thereafter recorded at the Registry of Deeds along with the recording of this Special Permit. Copies of the recorded ANR plan and this decision shall be submitted to the Zoning Board of Appeals.
4. The dwelling bisected by the proposed lot line shall be relocated onto Lot 2 in conformance with setback requirements in the RF District.
5. There shall be no relocation of the dwellings or future development within the FEMA Special Flood Hazard Areas (A or V Zones).
6. The decision shall be recorded at the Barnstable County Registry of Deeds. The rights authorized by this special permit must be exercised within two years, unless extended.
7. That further subdivision shall comply with zoning requirements at the time of such subdivision...

Attorney Schulz would like to insert the word "building" instead of development on the FEMA flood zone. They discuss. Brian Florence asks the board if they would accept an amendment to change Condition #5 to:

5. There shall be no relocation of the dwellings or future development within the FEMA Special Flood Hazard Areas (A or V Zones without the proper permits or approvals.

Board accepts that amendment.

Motion seconded by David Hirsch.

Vote:

All in favor

GRANTED WITH CONDITIONS

Brian Florence reads the following into the record:

7:02 PM Appeal No. 2015-028

Bancroft & Bancroft

Eric Bancroft and Robert C. Bancroft, as Trustee of the Robert C Bancroft Revocable Trust, have petitioned for variances from the minimum lot area requirements of the Residence F and Resource Protection Overlay District. The petitioners seek to exchange an equal area of land between the two lots, resulting in a reconfiguration of the shared lot line. The properties are located at 5 & 29 Sundelin Way, West Barnstable, MA as shown on Assessor's Map 216 as Parcels 069 & 068. They are in the RF Residence F and Resource Protection Overlay Districts.

Members assigned tonight: George Zevitas, Alex Rodolakis, Herbert Bodensiek, David Hirsch, Brian Florence

Representative: Eric Bancroft from 5 Sundelin Way. With him are his wife Rachel and his father, Robert, who resides at 29 Sundelin Way. He states that he and his wife are looking at putting a pool on their property and talks about the topography of the lots and summarizes the relief being sought.

Robin Young asks about the right of way and driveway. Mr. Bancroft states that the existing right of way is for water access so that the topography dramatically drops off making it inaccessible by vehicle. Both houses are accessed from Sundelin Way.

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

David Hirsch makes findings:

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.

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:

All in favor

Motion is made by David Hirsch to grant the relief being sought with following conditions:

Conditions

1. Relief from the minimum lot area requirements of §240-14(E) RF District, the shape factor requirements of §240-7(D), and the two-acre minimum lot area requirements of §240-36(D) Resource Protection Overlay District is granted to allow an equal exchange of two 1,345.1 square foot parcels between 5 and 29 Sundelin Way, West Barnstable. The exchange shall result in the reconfiguration of a common lot line between two developed lots.
2. The lots shall be configured as shown on the Approval Not Required (ANR) plan, entitled “Plan of Land, Oak Street & Bancroft Circle, West Barnstable, MA” dated April 21, 2015 drawn by Canal Land Surveying & Permitting, Inc.
3. The ANR plan shall be recorded at the Registry of Deeds along with the recording of this variance. Copies of the recorded ANR plan and this decision shall be submitted to the Zoning Board of Appeal’s file for this variance to be in effect.
4. This variance shall amend Appeal No. 2000-96 to allow for reconfiguration of the lots. The conditions of Appeal No. 2000-96 shall remain in full force and effect.
5. If the variance and Approval Not Required (ANR) plan have 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.

Seconded by Alex Rodolakis

Vote:

All in favor

GRANTED WITH CONDITONS

Brian reads the following into the record:

7:03 PM Appeal No. 2015-029

Marshall

Winton W Marshall has applied to modify condition No. 6 of Special Permit No. 2002-95, which states "there shall be no accessory building added to this property." The applicant seeks to allow construction of a pier, ramp and float. The property is located at 132 Bay Shore Road, Hyannis, MA as shown on Assessor's Map 325 as Parcels 080. It is zoned RB Residence B.

Brian Florence state that a letter has been received from Attorney Albert Schulz requesting a continuance to June 24, 2015.

Motion is made by Brian Florence to continue this to June 24, 2015 at 7:00 pm.

Seconded by David Hirsch

Vote:

All in favor

CONTINUED TO JUNE 24, 2015 AT 7:00 PM

Other Business

Next regularly scheduled hearings are June 10th , June 24th and July 8, 2015.

Correspondence

Cape Cod Commission Meeting Notice for May 28, 2015 – Notice of Intent to File a Development Agreement for South Sandwich Village Sports & Convention Complex

Adjourn

Motion is made by Brian Florence and seconded by David Hirsch to adjourn.

Vote:

All in favor

EXHIBITS

7:00 PM Appeal No. 2015-023

Pacheco/Lucien

- Exhibit A = Staff Memorandum – Addendum to Staff Report for Pacheco/Lucien dated May 12, 2015

7:01 PM Appeal No. 2015-027

Barzun, et al

- Exhibit A = Massachusetts Historical Commission, Form B – Building and other materials (total # of pages = 7 double-sided)