

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, August 26, 2015

367 Main Street, Hyannis, MA

Since Hearing Room renovation was complete, hearing was held in the Hearing Room instead of the Selectman’s Conference Room.

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

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

As a quorum has been met, Brian Florence opens the hearing at 7:05 PM.

Call to Order

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

Brian Florence reads the following 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.

Approval of Minutes

Minutes of August 12, 2015

Motion is made by Alex Rodolakis and seconded by Robin Young to approve the June 10th minutes as submitted.

Vote:

All in favor

Motion is made by Matthew Levesque and seconded by George Zevitas to approve the August 12th minutes as submitted.

Vote:

All in favor

At 7:07 PM, Brian Florence reads the following into the record:

Requests for Extensions

7:00 PM Appeal No. 2013-070

Cumberland Farms, Inc.

By a letter dated July 29, 2015, E. James Veara, Esq., as representative for Cumberland Farms, Inc., has requested a one year extension of Appeal No. 2013-070, a special permit to demolish and rebuild a pre-existing nonconforming gas station. The property is located at 395 West Main Street, Hyannis, MA as shown on Assessor's Map 269 as Parcel 116. Granting the request would extent the validity of the permit from December 18, 2015 to December 18, 2016.

Attorney E. James Veara is representing Cumberland Farms and explains that they are requesting a one year extension in order to redesign and reconfigure the interior of the proposed building which is causing a delay in construction. He explains that the interior redesign will not affect the relief which was granted in December of 2013 but that the crew may not be able to get started until May, 2016 which is the nature of their request.

No questions from the board.

No public comment.

Motion is made by Matthew Levesque and seconded by Herbert Bodensiek to grant the extension request.

Vote:

All in favor

ONE YEAR EXTENSION GRANTED

Brian reads the following into the record:

New Business

7:00 PM Appeal No. 2015-044

The Rycon Group, Inc.

The Rycon Group, Inc., as prospective purchaser, seeks a Special Permit pursuant to Section 240-94(A) to change a nonconforming use to another nonconforming use. The Petitioner seeks to convert an existing gift shop to an office use and to maintain a residential apartment use. The property is located at 1540 Main Street/Route 6A, West Barnstable, MA as shown on Assessor's Map 197 as Parcel 015. It is located in the Residence F and Resource Protection Overlay Zoning Districts.

By a letter dated August 26, 2015, Attorney John Kenney has submitted a request to Withdraw without Prejudice.

Motion is made by Alex Rodolakis and seconded by George Zevitas to Withdraw without Prejudice.

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

Brian reads the following into the record:

Old Business

7:00 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.

Continued from May 27, 2015 and July 8, 2015.. No members assigned.

By a letter dated August 24, 2015, Attorney Albert J. Schulz has requested that this application be Withdrawn without Prejudice as the applicant has applied for and issued a building permit for the pier which is the subject of the application.

Motion is made by Herbert Bodensiek and seconded by George Zevitas to Withdraw without Prejudice.

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

Brian reads the following into the record:

7:00 PM Appeal No. 2015-038

Atlantic Development

Atlantic Development has petitioned for a variance to Section 240-25(E) – Front Yard Setback Requirements and to amend the conditions of Variance No. 1995-21. The petitioner seeks to demolish the existing building and site features (pavement, landscaping, fuel storage tanks, utilities, etc) and construct a new self-service BJ's fueling station with canopy, attendant's kiosk and associated driveways, fuel storage tanks, landscaping, utilities, etc. Variance relief is sought to decrease the required front yard setback from Hinckley Road and modify conditions regarding the number of curb cuts on Iyannough Road and Hinckley Road set forth in Variance No. 1995-21. The property is located at 590 Iyannough Road/Route 132, Hyannis, MA as shown on Assessor's Map 311 as Parcel 017. It is in the Highway Business Zoning District.

Continued from July 8, 2015, July 22, 2015 and August 12, 2015. Members assigned: Alex Rodolakis, George Zevitas, David Hirsch, Matthew Levesque, Brian Florence

7:00 PM Appeal No. 2015-039

Atlantic Development

Atlantic Development has applied for a Special Permit for extension of a preexisting nonconforming site dimension per Section 240-93 and expansion of a preexisting nonconforming use per Section 240-94. The applicant seeks to demolish the existing building and site features (pavement, landscaping, fuel storage tanks, utilities, etc) and construct a new self-service BJ's fueling station with canopy, attendant's kiosk and associated driveways, fuel storage tanks, landscaping, utilities, etc. Special Permits are sought to extend existing nonconformities regarding impervious area (increase impervious area from 73.2% to 84.8% of the lot) and fuel storage (replace 30,000 gallons of fuel storage with three new 64,000 gallon underground fuel storage tanks, plus 200 gallons of diesel fuel for emergency generator). The property is located at 590 Iyannough Road/Route 132, Hyannis, MA as shown on Assessor's Map 311 as Parcel 017. It is in the Highway Business Zoning District.

Continued from July 8, 2015, July 22, 2015 and August 12, 2015. Members assigned: Alex Rodolakis, George Zevitas, David Hirsch, Matthew Levesque, Brian Florence

Members assigned tonight: Brian Florence, Alex Rodolakis, George Zevitas, Robin Young, Matthew Levesque (Robin Young has used the Mullin Rule for this hearing).

Attorney Michael Scott is representing the applicant

Attorney Scott explains the reason for this continuance was in order for a peer traffic review and storm water review. He states that the traffic review was completed by McMahan Transportation Engineers and Atlantic Design Engineering regarding the storm water management system. Both reviews were done and Attorney Scott states that they have since met with staff. Overall, he states that Atlantic Design found that the storm water management system was designed in accordance with the groundwater protection requirements and standard engineering practices within a groundwater protection district. Also, based on comments from the board, BJ's has agreed to make some adjustments which will include extending the median for the full length of the property and to reconfigure the curb cut on Route 132 in order to prevent eastbound traffic from making left hand turns. Also, it was also recommended to have two additional parking spaces in the front of the property which they will also do. Revised plans have been submitted to the town engineer and fire department who have both found it acceptable. He states that Deputy Chief Melanson is also present tonight should he have any additional comments about the plan. VHB has also done a GAP analysis. He introduces Randy Hart from VHB who discusses modifications of the plan, comments from peer review and some commentary on the letter from the airport commission.

Brian Florence calls Colleen Medeiros from McMahon Associates. Ms. Medeiros states that they had 11 comments as shown in their report (EXHIBIT A). She points out the March and July traffic counts. They were in concurrence that the data was okay to use for their analysis. They also raised concerns about the median and character of the roadway and the right in and outs on the roadway. Safety will be better with the median. She explains the LOSF as in the report. Another concern was the traffic being backed up on Hinckley Road and feels okay with the data and that traffic will be safely processed. They also talked about how the gas tankard truck could maneuver and they provided the circulation plans for the truck and thinks the circulation is tight for this site. She thinks there could be minor tweaks such as moving trash receptacles and putting traffic cones to prevent autos from being damaged when the tankard is present. She states that crash analysis is standard practice

Robin Young asks if the study includes restaurant traffic. Ms. Medeiros explains that it is all traffic.

George Zevitas asks Ms. Medeiros what entrance would be preferred: Hinckley Road or Route 132. Ms. Medeiros states that according to Randy Hart, that the Route 132 entrance would be the primary entrance. George asks about queuing on Route 132.

Mr. Hart states that what they said in the report is that they wanted them to analyze the impact the airport would have to see what it would operate at; to see if there were any safety implications which they didn't do. In contrast, (VHB) analyzed it to see what impact their project would have and thinks they have demonstrated that it can be accommodated and that it would be a benefit to safety in that traffic corridor.

Board member Robin Young asks about fuel tank failure. Mr. Dzwonczyk states that these tanks have a lifespan of approximately 30 years and is asked who would clean up the mess. Mr. Dzwonczyk states that the first responders will be the local fire department but that the process for sign off is first through the state and then locally.

Deputy Chief Dean Melanson from Hyannis Fire who has done a basic code review with the applicant and based on the process at this time it will go no further than that. What stands in front of them, should they be allowed to move on is a permitting process where their licensed removal technician would have to submit a plan for approval to the Hyannis Fire Department and then they would reference the Board of Health. The applicant would then pull removal permits with the Department of Environmental Protection, who also oversees tank removal, and then would have an LSP on site to make sure that there were no underground products left from the existing tanks. Once the site is certified to be clean, they would have another installer come in with a plan to meet the fire code requirements that Hyannis Fire would oversee, the state fire marshal who would have to do a complete review of the location, etc., and sign off before they can proceed. They will then have to maintain according to current standards. Chief Melanson explains that Hyannis Fire would be the first responder and would call in the Board of Health and the Water Department and then DEP. The owner of the land is responsible for the clean-up and would also have to chase the spill. Additionally, should this be approved by ZBA, they have to go before licensing for the increase of volume numbers.

Attorney Scott clarifies the size of the tanks coming out and going in.

Chief Melanson then talks about his peer review and notes that as for the turning of the tankard on the property, should the entrance and exits be rearranged, the applicant has to demonstrate that they can 100% come into the property and not create a queue or obstruct traffic. The applicant did provide turning templates and the fire department feels comfortable with this. As for fire department access in and out, they can access via airport rotary, they can turn and an ambulance does not need to make a left in order to get it back to the hospital. They have no problem with median being extended, there are hydrants on 132 and have good fire suppression in the area. They have met with applicant number of times and do not have any outstanding concerns at the time.

Public comment:

Ron Persuitte, Chairman of the Barnstable Municipal Airport Commission is concerned about the question regarding the ability of Hinckley Road to handle large amounts of traffic which needs to be addressed as this is a short road. His suggestion is to address the ability of traffic flow on Hinckley and on 132 to the rotary. He wants to make sure there are no left hand turns onto Hinckley Road.

Bud Breault – Manager of the Barnstable Municipal Airport speaks and reconfirms what Mr. Persuitte and Mr. Gilmore had said. They are very concerned about queuing on Hinckley and possible queuing on Route 132 and because Hinckley is one of the main entrances to the airport. Also one of the consultants mentioned groundwater and a monitoring well and would ask that a monitoring well be required so that they can identify where the spill would be coming from.

The board discusses. Robin Young wants to ask consultants about the queuing on Hinckley Road. Mr. Hart says that they have demonstrated that the actual conditions can accommodate it with the configuration put forth.

Attorney Scott talks about the monitoring wells in the plans and that the current plan calls for two monitoring wells.

**Alex Rodolakis makes findings:
2015-038 and 2015-039**

2015-038: Atlantic Development has petitioned for a variance to Section 240-25(E) – Front Yard Setback Requirements and to amend the conditions of Variance No. 1995-21. The petitioner seeks to demolish the existing building and site features (pavement, landscaping, fuel storage tanks, utilities, etc) and construct a new self-service BJ’s fueling station with canopy, attendant’s kiosk and associated driveways, fuel storage tanks, landscaping, utilities, etc. Variance relief is sought to decrease the required front yard setback from Hinckley Road and modify conditions regarding the number of curb cuts on Iyannough Road and Hinckley Road set forth in Variance No. 1995-21. The property is located at 590 Iyannough Road/Route 132, Hyannis, MA as shown on Assessor’s Map 311 as Parcel 017. It is in the Highway Business Zoning District.

2015-039: Atlantic Development has applied for a Special Permit for extension of a preexisting nonconforming site dimension per Section 240-93 and expansion of a preexisting nonconforming use per Section 240-94. The applicant seeks to demolish the existing building and site features (pavement, landscaping, fuel storage tanks, utilities, etc) and construct a new self-service BJ’s fueling station with canopy, attendant’s kiosk and associated driveways, fuel storage tanks, landscaping, utilities, etc. Special Permits are sought to extend existing nonconformities regarding impervious area (increase impervious area from 73.2% to 84.8% of the lot) and fuel storage (replace 30,000 gallons of fuel storage with three new 64,000 **total** gallon underground fuel storage tanks, plus 200 gallons of natural gas fuel for emergency generator). The property is located at 590 Iyannough Road/Route 132, Hyannis, MA as shown on Assessor’s Map 311 as Parcel 017. It is in the Highway Business Zoning District.

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 240-93 allows for the alteration and expansion of nonconformities. The Applicant seeks to allow an increase in the impervious surface coverage on the lot from 73.2% to 84.8%. In the Groundwater Protection Overlay District, a maximum of 50% of the lot may be made impervious by the installation of buildings, structures and paved surfaces. Special Permit No. 1995-43 allowed an increase in impervious surface coverage as necessary to construct the canopy, but not to exceed a maximum of 89% of the lot.
 - Section 240-94(B) allows for the expansion of a pre-existing nonconforming use. Within the Groundwater Protection Overlay District, underground fuel storage tanks and “storage of liquid petroleum products of any kind” are prohibited. The Applicant seeks to expand the preexisting nonconforming use of underground storage tanks and storage of liquid petroleum by adding three new underground storage tanks containing a total of 60,000 gallons of fuel and 3 tanks. The total increase in hazardous materials proposed on the site is 30,000 gallons. The proposal eliminates the use of the property for vehicle service and repair, which is also prohibited in the GP Overlay District.
- A Site Plan Review approval issued for the project on July 21, 2015. The letter states that “for reasons of safety, final plans must depict the redesigning of the entrance from Iyannough Road which absolutely discourages left turns into the site from this

entrance.” The Town Engineer and Hyannis Fire Department Fire Prevention Officer today are on record stating the final plan submitted to the Board is approvable.

- 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 alterations and expansion are not substantially more detrimental to the surrounding neighborhood.

Section 240-94(B) requires the Board to find:

- The structures associated with the proposed expansion of the use are nonconforming. The Applicant seeks variance relief with Appeal No. 2015-038 for the relocation of the gas station canopy.
- The proposed use and expansion is on the same lot as occupied by the use nonconforming use on the date it became nonconforming. The use is located on Lots 246, 247 and 248 as shown on Land Court Plan 11519-E.
- The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming. The nonconforming use is located within the Groundwater Protection Overlay District.
- To reduce the impact on the neighborhood and surrounding properties, the number of curb cuts on the site has been reduced and the only entrance on Route 132/Iyannough Road has been restricted to provide for right turns only.

Vote:

AYE: Alex Rodolakis, Matt Levesque, Robin Young, Brian Florence

NAY: George Zevitas

Alex Rodolakis makes a motion to grant the relief being sought for 2015-039 as outlined in the staff report dated August 16, 2015 being conditions 1 through 10 (Exhibit B).

Seconded by Robin Young

Vote:

AYE: Alex Rodolakis, Matt Levesque, Robin Young, Brian Florence

NAY: George Zevitas

George Zevitas states that as outlined by the public and the Barnstable Airport Commission and the inconsistencies in the consultants report, he cannot say that this would not be a detriment to the public in general.

GRANTED WITH CONDITIONS

Alex Rodolakis makes findings for Variance No. 2015-038:

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.

The applicant will have to substantiate variance conditions for the relief requested:

- The construction of a 40' x 113' canopy located 50.4' from Route 132 and 8' from Hinckley Road. The new canopy location improves the nonconforming setback to Route 132 and creates a new nonconforming setback along Hinckley Road, thus requiring additional variance relief.
- Amend the conditions of Variance No. 1995-21 to allow the proposed access plan. The conditions proposed for amendment are:
 - That the existing two curb cuts on Route 132 be reduced in width from 45 feet to 25 feet.
 - That the existing curb cut on Hinckley Road be reduced in width from 77 feet to 25 feet.
- 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.

George Zevitas asks if future activities in this matter, can they specify the conditions for the 3-prong test of the variance.

Vote:

AYE: Alex Rodolakis, Matt Levesque, Robin Young, Brian Florence

NAY: George Zevitas

Motion is made by Alex Rodolakis to grant the relief being sought with the conditions as outlined on staff report dated August 26, 2015, Variance conditions 1 through 10 (EXHIBIT B).

Seconded by Robin Young

George Zevitas would like the 3 prong test addressed

Attorney Scott says it is irregular shaped lot with frontage on two streets and in previous relief they made similar findings because of the irregular shape and frontage and would be impossible to develop this lot in conformance with the setback requirements of both the front and side yard setback.

He also states that they are eliminating convenience items and that the only thing being sold is gas but wants to make clear that they can also sell BJ memberships.

Board members are okay with that clarification.

Vote:

AYE: Alex Rodolakis, Matt Levesque, Robin Young, Brian Florence

NAY: George Zevitas

George Zevitas states that he does not feel that the granting of this variance can go without nullifying or derogating from the intent of the zoning ordinance.

GRANTED WITH CONDITIONS

Brian Florence reads the following into the record:

7:00 PM Appeal No. 2015-035

Cwynar

Elaine R. Cwynar has applied to modify Conditions No. 1 & 2 of Variance No. 2007-072. The applicant seeks to amend the conditions to allow for the construction of a 219 sq.ft second floor loft. Under Variance No. 2007-072 the “dwelling shall not be increased in area, limited to “one story” and “the gross area of the building shall not be expanded.” The property is located at 29 Norris Street, Hyannis, MA as shown on Assessor’s Map 306 as Parcel 033. It is in the Residence B Zoning District.

Continued from July 8, 2015 and August 12, 2015 – No members assigned.

Attorney Michael Schulz has requested a continuance. A discussion is had as to whether they want the 23rd or 30th in September.

They agree to September 30th

Motion is made by Alex Rodolakis to continue to September 30th at 7:00 PM

Seconded by George Zevitas

Vote:

All in favor

7:00 PM Appeal No. 2015-040

Thompson

Jane McC. Thompson, Trustee of 205 Scudder Realty Trust, has applied for a modification of the conditions of Variance Nos. 1995-052 and 2011-023. The applicant is requesting to eliminate Condition #3 of 1995-052 and Condition #3 of 2011-023 restricting the further d
Division of the land. The applicant seeks to allow approval of a further division of the land from one nonconforming lot into two conforming lots. The property is located at 205 Scudder Lane, Barnstable, MA as shown on Assessor's Map 259 as Parcel 007-001. It is located in the Residence 2-C Zoning District.

Continued from August 12, 2015 – No members assigned

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

Attorney Robert Mills is representing the applicant and notes that also with him tonight are Jane Thompson, Dan Ojala from Down Cape Engineering and Christopher Vaccaro, Esq. He notes that he has submitted a memo (EXHIBIT A). Basically they would like to eliminate two conditions in the previously granted decision. He gives history of the parcel. The proposal before the board is to remove the condition and an addition of one (1) acre to the parcel and then dividing the 7 acres to conform into zoning. At of now that 6 acre parcel is nonconforming and does not have frontage. It will provide better access to the lot. He reads his narrative (memo) dated July 1, 2015 in support (EXHIBIT A).

Alex Rodolakis asks Attorney Mills to clarify where the parcel is. Dan Ojala shows where the additional acreage is on the easel. Brian Florence asks Attorney Mills to speak to the three (3) prong test. Attorney Mills doesn't view it as a three prong test but only if it would be more detrimental than that what currently exists. Brian Florence reiterates that when they modify a variance, in essence, they create another variance and are looking for that information. Dan Ojala speaks and states that what they are dealing with are existing conditions (Lot B) which is entirely unique to the neighborhood where the lot has zero frontage. The shape of that would be extremely unusual and because they are making it better that would be grounds for a variance. He gives summary of history of the lot. He talks about the fire truck radius turning and states that they went to the Conservation Commission and got the ability to widen those easements which are in place and recorded on this plan and on the chain of title. He shows an historic picture on the easel pointing out the parcels. He states that the Mr. Mills' memo addresses the three prong test in that frontage will be cured, the land will fundamentally change the reason this board looked at the variances and if concerned about access and size you could restrict it, they have purchased extra land, they have deeded access over Calves Pasture Lane which is a 40' private way. As for public safety, this will be an improvement in this area because they are getting rid of the dead end on Calves Pasture Lane and the dead end off the Thompson easement by connecting them with an emergency only access between the two. He refers to the pages 20 & 21 a deed showing that Mr. Chase of Great Marsh has now acquired fee title thereby making this all happen.

Public Comment:

Ann Canedy – Town Councilor speaks and states she is very familiar with this property and that in 1989, the fire chief at that time noted that if any additional properties were to be built upon in this area, roads would have to be substantially changed and water would have to be put into the area. The Pearsons did bring in water. In 2008, the fire chief at that time, Bob Crosby, told her that if any other development happened in this area (DCPC) would require pavement, paved road and turnaround for their fire apparatus. One of the issues has always been a narrow entry for fire vehicles. She asked the applicant earlier if they would go back to current fire chief, Frank Pulsifer, if he would have any objections because if it was it would be a detriment to the neighbored as this is a quaint area. She asked them to have that discussion but does not know how the applicant feels about that.

Mike Stusse, Esq., is here representing Dr. Michael Murphy who is present, and who owns property on the corner of Scudder and Calves Pasture Road and has the same concerns as Ann Canedy has addressed. He also doesn't think there is any hardship in this matter and nothing unique about this property that makes it different than any other property in the neighborhood and thinks a variance modification is uncalled for. This road, if it was a subdivision, would violate the subdivision control law. Thinks that are creating a new variance condition. Thinks that this being called an ANR is a stretch. This is a dirt cartway, not paved, no drainage and not 40 feet wide. Thinks it would adversely affect the people in the neighborhood. He talks about a list in 2008 from attorney Patrick Butler about who had rights in Calves Pasture which he hands to the members (EXHIBIT B). He reiterates why he doesn't think it meets the criteria.

Bill Cook of 141 Calves Pasture Lane speaks. The neighborhood is now 2 acre zoning and have worked hard to make it 2 acres. He references the letter from the fire chief previously wrote the letter about further subdivision and is not in support of this request by the applicant.

Dr. Michael Murphy speaks stating where the applicant's property is in relationship to his property. When Mrs. Thompson's house was built in 1995, he feels it created a wind tunnel into his back yard. He is concerned about the road being widened and the removal of historic structures and character of the road and feels that other people need to be considered in this process.

Jane Thompson speaks and states that he husband had purchased this property back when it was a bird hunting shack and have preserved those buildings as they were and used them all these years. She states that she isn't interested in taking down the existing buildings or mansionizing the property. She speaks about the access and thinks that the driveway they have goes back to the 1890's and is still the driveway they had. She feels strongly about this and doesn't think they are cluttering up the traffic here.

Dan Ojala talks about the 750 feet as alluded to before and how it only applies to when you lay out a way/subdivision. The dead end road length, in his opinion, is a red herring in this case. They will not take down the historic stone walls and would like to retain the rustic nature.

Attorney Mills wants to clarify that this would be a hardship and would be a severe financial hardship by not having the ability to divide and sell the lot. As for derogating from the intent or purpose of the bylaw, what they are proposing makes it substantially in more conformance.

Alex Rodolakis asks if the applicant would agree to limiting the heavy equipment, construction access so they do not go down Calves Pasture Lane but rather on Scudder through the easement. Attorney Mills agrees.

Robin Young asks if people live there year round and how would emergency vehicles access it during the winter.

Mike McFee, caretaker of the Thompson property, lives there year round and has it plowed.

The board discusses access. Brian Florence asks Elizabeth Jenkins if this board has the ability, as a condition, to ask for a safe access determination when they go to the Planning Board. Jenkins doesn't think the Planning Board has the authority to deny based on the condition of the condition of the road. Brian Florence's concern tonight is that one attorney is saying they have access and the ability to use the road and the other attorney saying they do not. He would like town counsel to give their opinion and doesn't feel he is prepared to vote on this tonight. Board members agree.

Attorney Mills requests a continuance for that purpose and asks for clarification on the access.

Brian Florence says that co-council discussed the applicant's right to use Calves Pasture Lane and Attorney Stusse provided documentation that says that they don't. Brian would like town attorney to review the documentation.

Attorney Stusse doesn't see anything about the applicant having a problem with access just a list of people who have access over Calves Pasture Lane.

Motion is made by Herbert Bodensiek and seconded by Alex Rodolakis to continue to September 9, 2015 at 7:00 PM

CONTINUED TO SEPTEMBER 9, 2015 AT 7:00 PM

Other Business

Next regularly scheduled hearings are September 9, September 30

Items Not Reasonably Anticipated by the Chair

Correspondence

Adjourn

Motion is made by Alex Rodolakis and seconded by Robin Young to adjourn

Vote:

All in favor

Approved