

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, September 30, 2015

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

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

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

Call to Order

Introduction of Board Members – *All embers 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.

Brian Florence reads the following into the record:

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 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 and August 26, 2015 – No members assigned August 12, 2015

Members Assigned August 26, 2015: Brian Florence, Alex Rodolakis, George Zevitas, Herbert Bodensiek, Robin Young

Brian notes that there is a request from the applicant's attorney, Robert Mills, to continue this to October 28, 2015.

Motion is made by Herbert Bodensiek and seconded by Matt Levesque to continue this matter to October 28, 2015 at 7:00 pm

Vote:

All in favor

CONTINUED TO OCTOBER 28, 2015 AT 7:00 PM

Brian Florence states that this board will be going into executive session and reconvene in open session late this evening. He makes the following motion:

To go into executive session to discuss litigation strategy with regard to the following pending cases:

- 1) John W. Gahan, III, et al. v. Town of Barnstable Zoning Board of Appeals, et al. – ZBA Special Permit Petition No. 2015-019*
- 2) EAC Disposal, Inc. dba v. Barnstable Zoning Board of Appeals – ZBA Variance Appeal No. 2009-025*

He declares that an open meeting may have a detrimental effect on the litigating position of the Zoning Board of Appeals and to reconvene in open session.

Roll call vote is taken to go into session and to convene in open session later:

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

Back in session at 8:10 PM.

Brian calls the Reynolds appeal and reads it into the record

7:00 PM Appeal No. 2015-045

Reynolds/Gauvreau/Cramer

Ellen W. Reynolds, Andrea W. Gauvreau and Robin W. Cramer have applied for variances from the 1 acre minimum lot area requirements of §240-14E RD-1 District, the 2-acre minimum lot area requirements of §240-36D Resource Protection Overlay District (RPOD) and §240-7D Lot Shape Factor Requirements. The applicants seek to construct a single-family dwelling on a lot that is nonconforming due to merger. The property is located at 149 Beech Leaf Island Road, Centerville, MA as shown on Assessor’s Map 187 as Parcel 063-005. It is located in the Residence D-1 and Resource Protection Overlay Zoning Districts

Attorney David Lawler is representing the applicant and asks to withdraw without prejudice.

Motion is made by Herbert Bodensiek and seconded by David Hirsch to withdraw without prejudice

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

Comprehensive Permits

7:00 PM Appeal No. 2005-013

KTW Group – Osterville Landing LLC

KTW Group – Osterville Landing LLC., has requested release of lots: 1, 3, 4, 5, 7 & 11 under covenant in Osterville Landing subdivision which is being developed pursuant to Comprehensive Permit No. 2005-013. The property is located at 4-48 Darby Way, Osterville, MA (formerly 449-459 Old Mill Way, Osterville, MA) as shown on Assessor’s Map 166 as Parcels 001, 001-002, 001-006 and Map 143 as Parcels 040, 040-001 and 040-004. They are in the Residence C and Resource Protection Overlay zoning districts.

Attorney John Kenney is representing the applicants and hands in a map (EXHIBIT A). He explains the status of the lots and that currently there is a covenant securing the work to be done in the subdivision for the infrastructure and that most of the work

has been completed. He also states that DPW did an assessment and there is approximately \$54,000 of work to be done which includes 10% overage. They are asking that lots 1, 3, 4, 5, 7 & 11 be released leaving only lot 10 under the covenant and thinks there is more than sufficient collateral.

Motion is made by David Hirsch and seconded by George Zevitas to accept lot 10 as full collateral and release the remaining lots.

Brian Florence states that release is for lots 1, 3, 4, 5, 7 & 11.

Vote:

All in favor.

GRANTED

Old Business

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, August 12, 2015 and August 26, 2015 – No members assigned.

New Business

7:00 PM

Appeal No. 2015-048

Marks/Cwynar

John S. Marks and Elaine R. Cwynar have applied for a variance to Section 240-11.E Bulk Regulations. The applicants seek variances from the minimum lot area and width and variances from the side and rear setbacks for an existing single-family residential dwelling. The property is located at 23 Norris Street, Hyannis, MA as shown on Assessor's Map 306 as Parcel 032. It is in the Residence B Zoning District.

Representative: Michael Schulz, Esq.

Members assigned tonight: David Hirsch, Herb Bodensiek, George Zevitas, Matt Levesque, Brian Florence

Attorney Schulz states that first is the amendment of the variance. He gives a summary of the history as stated in his memo dated September 29, 2015 (EXHIBIT A). He states that on Exhibit 11 and that the conveyance and the significance of it was that everything, the 265' along Norris Street, all the way to Sea Street, remained in E.B. Norris showing it was all one lot. In 1930, Ernest Norris constructed 23 Norris Street with two residential structures and a business (commercial garage). In 1937 that lot was divided into two lots, lots 9 & 10. In 1950, E.B. Norris constructed 2 more residential structures both on lot 9 & 10. In 1952, the first zoning bylaw for bulk regulations goes into effect. In 1962, what Ernest Norris does is to convey his property to his son and daughter. In 1975, Sally Norris submitted an ANR plan but failed to file for a variance. What they are seeking is to legalize the lot. He states that the lots are small, no other lots can be purchased to add to it, have paid taxes, etc., since 1977 and without granting of variance there is no other way to fix the lot, both houses are build and cannot be forced to be torn down but they are seeking protection in case there is a need to rebuild.

George Zevitas clarifies the ownership and that there isn't a problem of a merger.

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.

Brian Florence asks Attorney Schulz to speak to the 3-prong test for a variance:

Attorney Schulz explains that first, the existence of multiple residential dwellings in such close proximity to each other on a single lot which is the E.B. Norris lot which runs 265' from Norris Street to Sea Street was a unique topographical feature which predated the 1952 zoning in the town which would not generally affect the zoning district in which it is located. Secondly, the applicant purchased the property back in 1977 without any knowledge of the issue and for it not to be a legal zoning lot would result in significant financial hardship: they paid the taxes every year since 1962, it has been assessed as a single lot and the value is reflected as that. Thirdly, they have notified everyone in the neighborhood and have received 24 letters of support.

George Zevitas would like an argument for the addition but not for the legalization of the lots. Attorney Schulz states that in 2007 they were focused on one property. When they discovered the problem with the other property, they acted on what information they had at that time. At that time it was a single story dwelling and wanted only to fix the kitchen.

The board discusses

Brian Florence does finding on the modification of 2015-035:

In issuing 2007-072 that the previous board found that conditions had not been met; had not been established by the requirements of MGL 40A Section 10. However, neighborhood support has been substantiated. The proposed improvements are needed and would represent an enhancement to the property and neighborhood.

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.

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 Brian Florence to grant the relief being sought with the following conditions:

- 1. Condition Nos. 1 and 2 of Variance No. 2007-072 are hereby amended to allow an increase in the gross square footage and a second-story loft addition to the dwelling located at 29 Norris Street, Hyannis, MA. The increase shall consist of a 219 square foot loft addition.*
- 2. The addition and reconstruction of the main section on the dwelling shall be in substantial compliance with the site plan entitled "Plan of Land at 29 Norris Street" dated September 24, 2014, drawn and stamped by CapeSurv and the elevations and floor plan entitled "29 Norris St. Hyannis, MA" dated June 4, 2015 drawn by Callahan Architects.*
- 3. The expansion of the dwelling approved with this decision notwithstanding, the dwelling shall not be further increased in area and there shall be no further increase in the building footprint or gross floor area with proper approvals of this board.*
- 4. All conditions of Variance No. 2007-072 shall remain in full force and effect. Condition Nos. 1 and 2 shall only be modified to the extent allowed to permit the addition referenced in Condition No. 2.*
- 5. This variance shall be recorded at the Barnstable County Registry of Deeds within one year from the date of issuance or this variance shall expire, unless extended by the Board. Copies of the recorded decision shall be provided to the Zoning Board of Appeals and Building Division files prior to issuance of building permits.*

Seconded by Herbert Bodensiek

Vote:

All in favor

GRANTED WITH CONDITIONS

Brian Florence makes findings for 2015-048

Variance Findings

Owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;

A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and

Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.

Vote:

All in favor

Brian Florence makes motion to grant with following conditions:

Conditions

:

1. *This variance is granted from the minimum lot area and width requirements of 240-11(E) for the existing 4,356 sq.ft lot and the minimum side and rear yard setback requirements for the existing structure and lot at 23 Norris Street, Hyannis.*
2. *The use of the property is limited to a single-family residential dwelling.*
3. *The existing structure can be improved and maintained, including rebuilt; however, the footprint of the structure and the total gross area of the building shall not be expanded unless done so lawfully.*
4. *Construction of any additional accessory structures on the lot is prohibited without relief from this board.*
5. *The lot shall remain connected to public water and Town sewer.*
6. *This variance shall be recorded at the Barnstable County Registry of Deeds within one year from the date of issuance or this variance shall expire, unless extended by the Board. Copies of the recorded decision shall be provided to the Zoning Board of Appeals and Building Division files.*

Seconded by George Zevitas

Vote:

All in favor

GRANTED WITH CONDITIONS

7:01 PM

Appeal No. 2015-049

William Walser, Trustee

William Walser, as Trustee of the Windsong Trust I and as Trustee of the Wingway Trust has applied for variances to Section 240-7.D – Lot Shape Factor and Section 240-36.D – RPOD Resource Protection Overlay District. The applicant is proposing to reconfigure two lots by dividing a 6,344 square feet parcel from 315 Baxter Neck Road and adding it to 305 Baxter Neck Road. Both resulting lots will have in excess of 87,120 square feet of upland; however the newly configured 315 Baxter Neck Road will continue to be nonconforming as to shape factor at 27, where a shape factor of 22 is permitted. The properties are located at 315 Baxter Neck Road and 305 Baxter Neck Road as shown as Assessor's Map 075 as Parcels 009-000 and 008-001. They are in the Residence F and Resource Protection Overlay Districts.

Representative: Michael Ford, Esq.

Attorney Ford indicates that the land surveyor isn't sure that the plan that is before the board is the last recorded plan of record and asks that this be continued to October 14th.

Motion is made by Brian Florence and seconded by David Hirsch to continue this matter to October 14, 2015 at 7:00 pm

Vote:

All in favor

CONTINUED TO OCTOBER 14, 2015 AT 7:00 PM.

Correspondence

- From Cape Cod Commission – Minor Modification – Type 1 to the Development of Regional Impact (DRI) Decision for the ICE/Sprint Tower Barnstable project that was approved by the Cape Cod Commission on September 9, 2015.
- Chapter 91 Waterways License Application – Proposed Residential Seasonal Dock at 1343 Falmouth Road, Centerville, MA.

Elizabeth Jenkins reminds that there was training for CPTC and they have contacted the town attorney for training in October. David Hirsch prefers October 14th.

Carol will send Robin Young link to CPTC.

Adjournment

Motion is made by Herbert Bodensiek and seconded by David Hirsch to adjourn

Vote:

All in favor