



Town of Barnstable Zoning Board of Appeals



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Anna Brigham – Principal Planner – anna.brigham@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, March 8, 2017

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

Brian Florence - Chair	Absent
Alex Rodolakis - Vice Chair	Present
David Hirsch	Present
Herbert Bodensiek	Present
Robin Young	Absent
Matthew Levesque	Present
Spencer Aaltonen	Present
Jacob Dewey	Present

Also present were Anna Brigham – Principal Planner, Elizabeth Jenkins – Interim Director, Carol Puckett – Administrative Assistant

As a quorum has been met, Alex Rodolakis, Vice-Chair calls the hearing to order.

Call to Order

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

Alex reads the following with no response:

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.

7:02 PM Appeal No. 2017-014

Centerville Village Apartments Realty Trust

Adam J. Hostetter and Kristen Williams Haseotes, Trustees of the Centerville Village Apartments Realty Trust have applied for Special Permits pursuant to §240-93(B) Nonconforming Buildings or Structures not used as single or two-family dwellings and §240-94(B) Expansion of a Preexisting Nonconforming Use. The Applicant seeks to expand the preexisting nonconforming multi-family residential use on the property. The proposal is to relocate and preserve the existing filling station building on the property; demolish the remainder of the structures; and construct nine single-family dwellings (four two-bedroom units and five one-bedroom units). The property is located at 981 Main Street, Osterville, MA as shown on Assessor’s Map 117 as Parcels 026 and 178. It is located in the Residence C and Wellhead Protection Overlay Zoning Districts.

Alex notes that there is a request for a continuance by the applicant’s attorney to March 22, 2017

Motion is made by Herbert Bodensiek and seconded by Spencer Aaltonen to continue to March 22, 2017 at 7:00

Vote:

All in favor

CONTINUED TO MARCH 22, 2017 AT 7:00 PM

Alex reads the following into the record:

New Business

7:00 PM Appeal No. 2017-011

DS Realty, Inc.

DS Realty, Inc d/b/a Domino's Pizza has petitioned for a variance from Section 240-35(F)(3) Groundwater Protection (GP) Overlay District Regulations – Lot Coverage. The petitioners are proposing to redevelop the lot, a portion of which is within the GP Overlay District. Lot coverage (impervious surface) on this portion of the lot is limited to 50% (3,182 sq.ft) and the proposed lot coverage on this portion of the lot is 66% (4,201 sq.ft). The property is addressed as 237 & 243 Falmouth Road/Route 28, Hyannis, MA as shown on Assessor's Map 292 as Parcels 164 & 165. It is located in the Highway Business and Groundwater Protection (GP) Overlay Zoning Districts.

7:00 PM Appeal No. 2017-012

DS Realty, Inc.

DS Realty, Inc d/b/a Domino's Pizza has applied for a Conditional Use Special Permit pursuant to Section 240-25(C). The applicant is proposing to demolish two existing buildings and construct a new building on the same footprint as the building on 243 Falmouth Road. The building will contain a restaurant on the first floor and an office and two-bedroom apartment on the second floor. The property is addressed as 237 & 243 Falmouth Road/Route 28, Hyannis, MA as shown on Assessor's Map 292 as Parcels 164 & 165. It is located in the Highway Business and Groundwater Protection (GP) Overlay Zoning Districts.

Members assigned: Alex Rodolakis, David Hirsch, Herbert Bodensiek, Matt Levesque, Jake Dewey

Representative: Attorney John Kenney. Also with him is Matt Eddy – Managing Partner at Baxter & Nye Engineering, Chris Jones, one of the principals of DS Realty, Inc, Gene Burman - Realtor and Paul Revere who is representing the abutter.

Noted that the appeal numbers are 2017 011 and 012.

Attorney Kenney gives summary of relief being sought. One of the buildings was occupied by a dive shop. The house, according to assessor's record was built in 1945. They are looking to remove the two structures and replace it with a new two story structure. The proposed structure will contain restaurant/office on first floor and apartments above. Hours of operation would be from 10:00 am to 1:00 am, 7 days a week. Maximum number of employees on-site at any one shift will be six (6). 25 seats plus take out area. Deliveries are made after hours as they are currently done and will continue. The apartment as intended will be rented and perhaps to employees of the restaurant. He talks about the variance first.

Attorney Kenney addresses the 3 prong test for a variance: 1st prong: the topo feature which affects the property is because of the GP overlay and how it bisects the property. He states that they also met with MASSDOT about the access. The turning radius needed to accommodate delivery and fire trucks. There is a small triangular area in the GP. Matt Eddy addresses the benefits of the project on the water recharge and gives details about the stormwater. 100% of the runoff is being treated onsite and infiltrated to almost the 100 year storm benchmark. They are providing 87% removal. As for prong #2, Attorney Kenney states that this runoff being recharged 100% onsite improves the goals of the overlay protection district and can approve this without detriment to the neighborhood. He then speaks about the conditional use. The proposed uses meet the requirements of special permit requirements. This will not affect the health, welfare, etc.. and that there are other restaurants nearby. Adequate parking will be provided and this project will renovate two run down buildings, eliminating a nonconforming use. Drainage improvements, parking, are benefits that meet the criteria.

Alex Rodolakis asks if they will merge the lots. Attorney Kenney says yes. Alex asks why until 1:00 in the morning. Kenney says it is what it is currently but that they don't have to stay open until one. Alex is hesitant on the 1:00 am hour for the abutters. Alex clarifies that there will be no alcohol. Alex asks about delivery truck hours. Kenney shows where the trucks will be unloading. Kenney asks the owner, who states that there have been zero complaints about the hours of delivery.

Jake Dewey asks about the gated parking area. Attorney Kenney states that some parties have rights to park their cars there. Jake asks where the nearest crosswalk. Matt Eddy says that MASSDOT will be putting a crosswalk going to the mall.

Alex asks for public comment. No one speaks.

Alex would like to see restricted hours and no later than midnight and reserve the right of the applicant to come before the board in the future if need be. Attorney Kenney clarifies where they are pulling in for the deliveries and notes that the gas station across the street has deliverers early in the morning and have not had complaints about gas deliveries.

Paul Revere, who represents the William Baron Trust (42 Hiram Road), states that his client owns the closest property and is giving an easement to the applicant. The neighborhood is economically challenged and thinks that it is a benefit and that the area will be well lit. The fence is there and his client will be able to access

Matt clarifies that the lighting will be contained on the lot.

Alex confirms that Kenney received the staff report and is okay with it.

The board discusses the fence between the lots.

Jake Dewey makes findings on 2017-011.

Variance Findings

The statutory requirement of MGL Chapter 40A, Section 10 for granting a variance is a three-prong test. The Board is required to find that each of the following three requirements has been met in order to consider granting the variance:

- owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
- desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.

Alex would like to amend the findings as to the first and second prong test: that from testimony, that part of the lot is in the GP which is unique and how it impacts this property and that as to the third prong: that the other abutting uses are substantially similar to this proposal and not detrimental.

Vote:

All in favor

Jake makes a motion to grant with the following conditions:

Variance Conditions

1. Variance No. 2017-011 is granted from Section 240-35 (F) (3) to DS Realty Inc. 237 and 243 Falmouth Road, Hyannis, to allow the proposed lot coverage of 66% as part of the redevelopment of the site.
2. The improvements shall be in substantial conformance with the site plan entitled "Site Re-Development Plans 237 and 243 Falmouth Road, Hyannis, Massachusetts" by Baxter Nye Engineering and Surveying dated October 27, 2016 and the plans entitled "Domino's/Apartment" by Bruce Ronayne Hamilton Architects dated November 10, 2016.
3. This decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of a building permit. The rights authorized by this variance must be exercised within one year, unless extended.

Vote:

All in favor

GRANTED WITH CONDITIONS

2017-012:

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.
- 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.
- A Site Plan has been reviewed and found approvable. (*see letter received February 10, 2017*)

Further, Section 240-25 (C) (1) (a) requires the Board to find that:

- Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.

Vote:

All in favor

Jake makes a motion to grant with the following conditions:

Conditions

1. Special Permit No. 2017-012 is granted to DS Realty, Inc. for a Conditional Use Special Permit to allow the applicant to demolish two existing buildings and construct a new building on the same footprint as the building on 243 Falmouth Road. The building will contain a restaurant on the first floor and an office and two-bedroom apartment on the second floor. The property is addressed as 237 & 243 Falmouth Road/Route 28, Hyannis, MA as shown on Assessor's Map 292 as Parcels 164 & 165.
2. The improvements shall be in substantial conformance with the site plan entitled "Site Re-Development Plans 237 and 243 Falmouth Road, Hyannis, Massachusetts" by Baxter Nye Engineering and Surveying dated October 27, 2016 and the plans entitled "Domino's/Apartment" by Bruce Ronayne Hamilton Architects dated November 10, 2016.
3. There shall be no further expansion of the building without prior approval from the Board.
4. All landscaping and landscape screening shall be maintained on the site.
5. There shall be no outdoor storage, including storage in temporary trailers or containers, trucks or storage units, on the site.
6. All dumpsters or trash disposal containers shall be located within the designated trash enclosure.
7. The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance building permit. The rights authorized by this special permit must be exercised within two years, unless extended

Elizabeth Jenkins states that they should add another condition about lighting.

Jake Dewey accepts the suggestion and adds:

8. That all lighting on the structure and site be angled down and away from abutting properties contained on-site.

Vote:

All in favor

GRANTED WITH CONDITONS

Alex reads the following into the record:

7:01 PM Appeal No. 2017-013

Hot Water II Realty Trust

James B. Goodwin, Trustee of the Hot Water II Realty Trust has applied for a Special Permit pursuant to Section 240-94(B) Expansion of Pre-existing Nonconforming Use. The Applicant seeks to expand the automobile body and repair facility into a new, additional building. The property is located at 1364 Phinney's Lane, Hyannis, MA as shown on Assessor's Map 274 as Parcel 019. It is located in the Residence G, Residence F-1 and Business Districts and the Groundwater Protection Overlay District.

Members assigned tonight: Matt Levesque, Spencer Aaltonen, Alex Rodolakis, David Hirsch, Herbert Bodensiek

Attorney Mark Boudreau. Also with him tonight are Jay Goodwin – principal of Hyannis Honda, Roy Catignani from ConServ Group, Inc., and Matt Eddy from Baxter and Nye Engineering.

Attorney Boudreau states that this property has been used as a body shop and was constructed in 1975 and used by International Harvester and Scout. IN the early 80's it was switched to Hyannis Honda and used as such currently. From a zoning standpoint in 1974/1975 when this property was constructed there was haziness in the town's records in terms on zoning. Up until 1994 it was in the B district and in April of 1994. at a town meeting, Article 137 chose to change it to Industrial zoning district however the map reflected something different, however, the building inspector appeared to ignore both of those and issued permits for a number of years to neighboring properties as if it were a B district. None the less, if it were Business or Industrial, the uses were both allowed in 1975. Attorney Boudreau gives a summary of relief being requested.

They are proposing a new structure, free standing and will contain 10 bays, an office, and restroom and storage facility. it is in the GP and town had concerns about waste. The levels will not go up at all. The applicant will reduce two months worth of hazardous waste and proposes an oil/water separator for the floor drains, concrete area where now there is loose sand and stone. They are proposing to tar the back and make it impervious for spills. This area is substantially residential. This building will not be seen by many people and will not be open to the public. Attorney Boudreau states that the inventory that is there which will be reduced from 6 months to 2 months.

Jay Goodwin speaks that they will reduce from 6 months worth of hazardous supplies to 2 months. As part of this way they do business, they will be turning their inventories faster and making it leaner and will expand what they do there without increasing their inventory and will have no problem staying within the permitted amounts. They currently have 28 productive stalls and are looking to add 10.

Alex asks about steps that will be taken for spillage. Attorney Boudreau says that as for the storage of motor oil, it is currently kept in a drum. The drum will be on a pallet which has an overflow capacity of 125% and underneath and surrounding the pallet will be concrete berm which will also contain 125% overflow capacity.

Matt Eddy states that they will also be constructing in the existing structure, an additional containment area. As stated in the plans and letter submitted through Site Plan Review. Eddy states the big improvement will be the paving of the back lot which is currently sand/gravel and explains.

Jake Dewey asks about the car configuration.

Attorney Boudreau states that the cars out front will be the brand new autos for the West Main Street location and the back lot will be for the repair of cars.

Alex asks about fire department status. Eddy states that he met with fire chief who was fine with circulation and what they defined was the storage lot.

Goodwin is asked about cars in need of repair. He states that if it is dropped after hours by a tow driver they will drop cars on the pavement on the far side of the building which is paved and in the morning they move car into the storage area. The front is used for new vehicles and occasionally for dealer owned vehicles and not for damaged cars.

Jake asks what percentage of damaged cars left leak fluids. Goodwin states most of them.

Alex asks about lighting on the lot. Eddy states it will be contained within the lot. Alex asks about floor drainage.

Ray Catignani states that they will create the double containment system in the existing building where they store it now and that they would be okay with that as a condition.

Elizabeth Jenkins asks Mr. Catignani about the plan prepared by ConServ for Hyannis Honda Body Shop re: proposed new building stating that bulk fluids storage, apparently within the building, to include 255 gallons of new motor oil, 55 gallons of waste oil, 55 gallons of waste anti-freeze, 365 gallons of total stored on primary container pallets and how that relates to existing hazardous waste materials contained on-site and the methods of secondary containment in case of a spill.

Ray Catignani states that in order to give some flexibility to Jay (Goodwin) the intention for the entire parcel is within the license limits and as to how they would divide between the two buildings, they would crate containment in sufficient capacities in both locations so that he would be allowed to move some quantity as needed. The method would be that most of the containment, which includes single walled containers which could also be steel drums, would be stored on a containment pallet which is usually a high plastic hollow bottom and that space within the platform. Then, in addition to that on the concrete slab, they will create a containment concrete dyke around the perimeter of that slab. Elizabeth Jenkins asks how the 255 gallons of relates to what is actually stored on site today. Mr. Goodwin isn't sure but states that it is very close to that. Another thing about the paint, Mr. Goodwin states that they are in pint, quart and gallon containers on shelves and is quite easy to contain.

Alex clarifies that there will be no new signage. Goodwin would like some way to identify the building, nothing significant but something on the door or similar on the building and would be off-white and Honda blue.

Alex asks about expanding a nonconforming use. Jenkins speaks to her memo she turned in this evening (Exhibit A) and refers to the Powers vs. Town of Barnstable case (Charles A. Powers and others vs. Building Inspector of Barnstable – 363 Mass. 648, October 6, 1972 – May 17, 1973.

Alex asks for public comment. No one speaks.

Ray has calculations of the new building regarding retainment requirement. Eddy clarifies that it was brought up at site plan review also. They talk about the drains in the existing building. They discuss the containment. They discuss continuing.

Motion to continue until March 22, 2017 is made by Spencer Aaltonen and seconded by Herbert Bodensiek

Vote:

All in favor

CONTINUED TO MARCH 22, 2017 AT 7:00 PM.

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

March 22, 2017, April 12, 2017, April 26, 2017, May 10, 2017

Jenkins reminds board of CPTC training.

Adjournment

Motion is made by Spencer Aaltonen and seconded by Herbert Bodensiek to adjourn.

Vote:

All in favor

Please Note: The list of matters are those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the Board may go into executive session. The Board may also act on items in an order other than they appear on this agenda.

* Public files are available for viewing during normal business hours at the Zoning Board of Appeals office located at 200 Main Street, Hyannis, MA

Approved