



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, April 26, 2017

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

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

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

As a quorum has been met, Brian Florence opens the hearing at 7:04 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 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

Old Business

7:00 PM Appeal No. 2017-008

Glick

Marvin and Diane Glick are appealing the Building Commissioner’s constructive denial of a request for zoning enforcement. The Appellants seek enforcement of a zoning violation on 305 Baxters Neck Road, specifically the construction of a retaining wall inside of the zoning setback area adjacent to the Glick property located at 285 Baxters Neck Road. The appeal is filed pursuant to Massachusetts General Law 40A Section 7, citing Sections 240-123 (enforcement), 240-14 (RF Zoning District) and 240-128 (Definitions) of the Zoning Ordinance. The property that is the subject of this appeal is located at 305 Baxters Neck Road, Marstons Mills, MA as shown on Assessor’s Map 075 as Parcel 009. It is located in the Residence F (RF) Zoning District.

Continued from February 22, 2017. No members assigned. No testimony taken. Time Extension: New Date for Decision Due: 05-30-17.

Continued from March 22, 2017. Members assigned: Alex Rodolakis, Herbert Bodensiek, Matthew Levesque, Spencer Aaltonen, Jacob Dewey.

Brian Florence reads an email dated April 26, 2017 from Kimberly Kroha, Esq., stating that because of the 4 member board, they would like to continue this matter to May 10, 2017 at 7:00 pm.

Motion is made by Alex Rodolakis and seconded by Matt Levesque to continue this to May 10, 2017 at 7:00 pm

Vote:

All in favor

CONTINUED TO MAY 10, 2017 AT 7:00 PM

Brian reads the following into the record:

7:00 PM Appeal No. 2017-001

Beauregard

Todd and Anne Beauregard are appealing the decision of the Building Commissioner to issue a building permit (B-16-2228) for the construction of a single-family home with deck, portico and attached garage on property located at 45 East Avenue, Osterville, MA. The appellants claim the lot on which the single-family dwelling is to be constructed has merged with an abutting lot at 25 East Avenue and is therefore not entitled to the "grandfather" protection provided by §240-90 and M.G.L Chapter 40A §6. The subject property is located at 45 East Avenue, Osterville, MA as shown on Assessor's Map 139 as Parcel 079. It is located in the Residence F-1 (RF-1) and Resource Protection Overlay Zoning Districts.

Continued from January 11, 2017, February 8, 2017 and April 12, 2017. Time Extension: New Date for Decision Due: 06-08-17

Members assigned 01-11-17: Brian Florence, David Hirsch, Herbert Bodensiek, Spencer Aaltonen, Jacob Dewey. No testimony taken

Members assigned 02-08-17: Brian Florence, David Hirsch, Jake Dewey, Spencer Aaltonen, Herbert Bodensiek

Members present 04-12-14: Brian Florence, Alex Rodolakis, Jake Dewey, Spencer Aaltonen, Herbert Bodensiek, Matthew Levesque. No testimony taken

7:01 PM Appeal No. 2017-002

Beauregard

Todd and Anne Beauregard are appealing the decision of the Building Commissioner to issue a building permit (B-16-2229) for the construction of a single-family home with deck, portico and attached garage on property located at 25 East Avenue, Osterville, MA. The appellants claim the lot on which the single-family dwelling is to be constructed has merged with an abutting lot at 45 East Avenue and is therefore not entitled to the "grandfather" protection provided by §240-90 and M.G.L Chapter 40A §6. The subject property is located at 25 East Avenue, Osterville, MA as shown on Assessor's Map 139 as Parcel 080. They are located in the Residence F-1 (RF-1) and Resource Protection Overlay Zoning Districts.

Continued from January 11, 2017, February 8, 2017 and April 12, 2017. Time Extension: New Date for Decision Due: 06-08-17

Members assigned 01-11-17: Brian Florence, David Hirsch, Herbert Bodensiek, Spencer Aaltonen, Jacob Dewey. No testimony taken

Members assigned 02-08-17: Brian Florence, David Hirsch, Jake Dewey, Spencer Aaltonen, Herbert Bodensiek

Members present 04-12-14: Brian Florence, Alex Rodolakis, Jake Dewey, Spencer Aaltonen, Herbert Bodensiek, Matthew Levesque. No testimony taken

Brian Florence states that a letter from Attorney Jeffrey Ford submitted today requesting to Withdraw without Prejudice, Appeal #'s 2017-001 and 2017-002 as a result of the Building Commissioner's letter dated April 25, 2017 confirming that both building permits have been revoked.

Motion is made by Matt Levesque and seconded by Spencer Aaltonen to Withdraw without Prejudice

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

Brian reads the following into the record:

New Business

7:00 PM Appeal No. 2017-021

Cabral/Yetman

Mark J. and Christa E. Cabral and Kathleen S. Yetman have petitioned for a Variance pursuant to Section 240-13.E – Residence C Bulk Regulations and 240-36.D Resource Protection Overlay (RPOD) District regulations. The petitioners are proposing to swap an equal area of land to reconfigure the boundary line between two lots. The size of the new lots: 45,232 and 56,004 square feet respectively, will remain unchanged, but will be less than two (2) acres (87,120 square feet) as required by the Resource Protection Overlay District (RPOD). The subject properties are addressed as 951 Old Stage Road and 71 Washington Bursley Way, Centerville, MA as shown on Assessor's Map 172 as Parcels 005-001 and 005-002. They are located in the Residence C and Resource Protection Overlay Zoning Districts.

**Members assigned tonight: Brian Florence, Alex Rodolakis, Herbert Bodensiek, Matthew Levesque, Spencer Aaltonen
Representative: Paul Tardif, Esq., is here with Mr. Cabral. Attorney Tardif states that this is a classical land swap and gives a brief summary of relief being sought. The properties are located in the Resource Protection Overlay District (RPOD) and do not**

have the required two (2) acres of minimum acreage for the RPOD. The lot sizes will remain the same after the swap. The proposal was so that the owners can square off their lots. There is a 215' easement under the power lines. In 2000 one of the applicants received an easement to use Washington/Burseley and as part of the easement they gave up their right to use Old Stage Road. He states that it is an equal swap and an application has been filed with the Planning Board for the Approval Not Required (ANR) plan. He can meet because of the shape of the lots, it is a hardship to either party and would be a better use of their perspective properties and won't be a substantial detriment to the neighborhood. They will still meet the frontage and setback requirements.

Brian Florence asks if there is anyone from the public who would like to speak. No one speaks.

Matt Levesque 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 in order to consider granting the variance:

1. 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;
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
3. 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. More so to #2

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

Matt makes a motion to grant with the following conditions:

Variance Conditions

1. Variance No. 2017-021 is granted to Mark J. and Christa E. Cabral and Kathleen S. Yetman for a Variance pursuant to Section 240-13.E – Residence C Bulk Regulations and 240-36.D Resource Protection Overlay (RPOD) District regulations. The petitioners are proposing to swap an equal area of land to reconfigure the boundary line between two lots.
2. The improvements shall be in substantial conformance with the site plan entitled "Plan of Land at #951 Old Stage Road & #71 Washington Bursley Way Centerville, MA prepared for Mark Cabral Et. Al." by down cape engineering, inc., dated March 27, 2017.
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.

Seconded by Alex Rodolakis

Vote:

All in favor

GRANTED WITH CONDITIONS

Brian reads the following into the record:

7:01 PM Appeal No. 2017-022

Greig

Henry Fox and Tamasine Conway Greig II have applied for a Special Permit in accordance with Section 240-92.B – Nonconforming Buildings or Structures. The applicants are proposing to add two (2) decks off of the back of the existing dwelling. The proposed decks will encroach into the

minimum ten (10) foot side yard setback requirement of the zoning district in which it is located. The property is addressed as 93 Hawes Avenue, Hyannis, MA as shown on Assessor's Map 323 as Parcel 011. It is located in the Residence B Zoning District.

Members assigned tonight: Brian Florence, Alex Rodolakis, Herbert Bodensiek, Spencer Aaltonen, Robin Young
Representative: John Kenney, Esq.

Attorney Kenney gives summary of relief being requested. He states that the applicants recently acquired the property and were doing renovation due to some water damage. The applicants wanted to construct two decks but when applying for a building permit were told they would need a special permit because of the intrusion into the side yard setbacks. After consultation with neighbors who objected to the second floor deck, the applicants want to withdraw the request for the second floor deck and will only be asking for the first floor deck.

Attorney Kenney gives history of the zoning of the property. Lots in the neighborhood are small. This property is a combination of two lots and the third lot is a sliver of land which has been held in common. The two lots were held in common since 1935 and with the sliver; all 3 have been held in common since 1958. The deck will not be visible from Hawes Avenue and will have minimal impact on the neighborhood.

Brian Florence asks Attorney Kenney if he has read the staff report. Attorney Kenney answers yes.

Brian Florence asks for public comment.

Jim Purcell of 99 Hawes Avenue speaks and states he has had a conversation with Mr. Greig who agreed not to build the second floor deck and is here to support the request for the first floor deck. However, his only question is that the plans show a twelve (12) foot deck but the builder indicated it would be a ten (10) foot deck. He would be in support of the ten (10) foot deck. Alex asks Mr. Purcell if he had a conversation with the abutters at 81 Hawes Avenue. Mr. Purcell states that he believes their opposition was against the second floor deck also.

Brian Florence reads an email in opposition from Susan Claytor.

Anyone else from the public. No one else speaks.

Alex Rodolakis makes findings:

Special Permit Findings

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit:
Section 240-92 allows for the expansion a preexisting nonconforming structure used as a single-family residence with a Special Permit. *The proposed first floor deck will encroach into the side yard setback and therefore requires a Special Permit.*
2. After an evaluation of all the evidence presented, the proposal of only a first floor deck fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.
Section 240-92 requires the Board to find:
3. The proposed expansion of the dwelling with a ground floor deck only will not be substantially more detrimental to the neighborhood than the existing building or structure.

Vote:

All in favor

Alex makes motion subject to conditions to staff report dated April 18, 2017: Conditions: 1, 2, 3 & 4 with note they request for two decks will only be a deck on the ground floor of the property and no more than 12 feet wide.

Conditions

1. Special Permit No. 2017-022 is granted to Henry Fox Greig and Tamasine Conway Greig II, to allow for the construction of ~~two~~ one deck to the rear of the preexisting nonconforming dwelling at 93 Hawes Avenue, Hyannis, MA (on the first floor). This permit will allow the easterly side yard setback to be approximately 6 feet and the westerly side yard setback to be approximately 10 feet where 10 feet is required.

2. The deck shall be constructed in substantial conformance with the plan entitled "Site Plan of #93 Hawes Avenue Hyannis, MA prepared for Henry Fox Greig II" dated January 4, 2017 and revised January 19, 2017, drawn and stamped by Down Cape Engineering, inc.
3. This construction shall represent full build-out of the lot. No additional increase in building coverage or gross square footage shall be permitted without prior approval of this Board.
4. This decision shall be recorded at the Barnstable County Registry of Deeds and copies filed with the Zoning Board of Appeals and Building Division. The rights authorized by this special permit must be exercised within two years, unless extended.

Seconded by Herbert Bodensiek

Vote:

All in favor

GRANTED WITH CONDITIONS

Correspondence

Received 04-18-17 – Public Hearing Notice of April 28, 2017 from Cape Cod Commission regarding Eco-Site Wireless Communication Facility/Monopole #TR17003. The purpose of this hearing is to open the DRI hearing period on the project for procedural purposes only.

Received 04-18-17 – Notice of Waterways License Application #W17-4932 to construct and maintain a timber boardwalk, pier, ramp and float at 145 Bridge Street, Osterville, MA for Stephen T. B. Miller.

Received 04-19-17 – Notice of Referral to the Cape Cod Commission by Town of Barnstable Building Commissioner as a mandatory Development of Regional Impact (DRI) regarding Greenside Office Park Project, 10 Attucks Lane, Hyannis, MA.

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

May 10th, May 24th, June 14th, June 28, 2017

Adjournment

Motion is made by Spencer Aaltonen and seconded by Brian Florence to adjourn.

Vote:

All in favor

For exhibits, please see corresponding ZBA file.

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