



Town of Barnstable Zoning Board of Appeals



19 JAN 28 11:40

Board Members:

Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek - Clerk
Jacob Dewey – Regular Member Paul Pinard – Regular Member
Kyle Evancoe – Associate Member Todd Walantis – Associate Member Mark Hansen – Associate Member
James Tinsley – Town Council Liaison

Staff Support

Elizabeth Jenkins – Director - elizabeth.jenkins@town.barnstable.ma.us
Anna Brigham – Principal Planner – anna.brigham@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, September 12, 2018

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

Alex Rodolakis - Chair	Absent
David Hirsch – Vice Chair	Present
Herbert Bodensiek - Clerk	Present
Jacob Dewey – Regular Member	Present
Regular Member	
Paul Pinard – Associate Member	Present
Kyle Evancoe – Associate Member	Present
Todd Walantis – Associate Member	Present
Mark Hansen – Associate Member	Absent

Also present were Anna Brigham – Principal Planner and Carol Puckett – Administrative Assistant

Vice-Chair, David Hirsch, opens the hearing at 7:01 PM

Call to Order

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

David Hirsch reads the following into the record with no response:

Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Old Business

7:00 PM

Appeal No. 2018-041

Carbonneau

Laurie Carbonneau has applied for a Special Permit pursuant to Section 240-34.L – Floodplain District Regulations – Exception from the Requirements. The applicant is seeking relief to finish the lower level of the principal dwelling to allow for temperate controlled storage and additional living space. The property is located at 174 Bay Shore Road, Hyannis, MA as shown on Assessor’s Map 325 as Parcel 084. It is located in the Residence B (RB) and the AE (11) – 100 Year Flood and VE (13) – Velocity Zone Flood Zones.

Continued from August 22, 2018. No members assigned. No testimony taken.

Members assigned tonight: David Hirsch, Herb Bodensiek, Paul Pinard, Jake Dewey, Todd Walantis

Representative: John Kenney, Esq.

Attorney Kenney is here tonight with Laurie Carbonneau. He gives summary of where the property is located. He states that the house was constructed in 2013 and also includes a boathouse. His client ran into problems during the cold winter months such as pipes freezing and in the warmer months was dealing with mildew and occasional mold. His clients have been using dehumidifiers but because they are on the

harbor it has futile. In order to address those issues, his client has put up petitions with plans to install a ductless HVAC system over the base flood elevation. However, his client was informed by the Building Commissioner that they needed relief from the Zoning Board of Appeals as they are within the AE flood zone which requires relief. They need this relief and must meet the requirements of the Special Permit.

This design is flood resistant and will reduce hyper static pressure on the foundation walls. Many of the homes in the area have finished basements. He goes over the criteria for Section 240-34.L. He states that it would be a hardship to his client's family who suffer from allergies and have to run space heaters in the winter unattended as this is not their primary premises. The construction does not increase flood heights or threat to public safety and will eliminate the need for space heaters during the winter. His clients will abide by the provisions regarding the flood zone as in the ordinance. He would suggest that this meets the requirements of the criteria for the grant of a Special Permit.

Jake Dewey asks if there are plans that they can view. Attorney Kenney states that he doesn't have any floor plans and that the Building Commissioner has the plans but explains that the plans did not include the petitions and that this is basically a basement. Jake asks why it couldn't be temperature controlled without being finished. Attorney Kenney states that it would be more convenient for the family in order to have storage and living space like a gymnasium, recreational room and in discussion with the Building Commissioner he strongly recommended that his client come here for both the storage and living space. Jake asks what the elevation is of the basement floor is. Attorney Kenney is not sure and thinks that it is above sea level. Jake asks what the floor area ratio would be. Attorney Kenney does not have those figures.

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

Board deliberates. Jake Dewey is not sure how they can approve this without the plan. Jake has seen other houses in the area that have had strict restrictions on adding living space and is concerned that they don't have plans. Herb asks if there is any engineering in regards to the VE zone. Attorney Kenney refers to his memo showing a flood certification from an engineer.

Attorney Kenney confirms that the work in the basement was being done without a building permit. Eventually they will have to go for a permit for the basement.

Paul Pinard makes findings:

The Applicant, Laurie Carbonneau, is seeking permission to use the lower level area, which currently sits within the floodplain, for living area and storage. This area is otherwise not permitted for living.

Under Section 240-34 Floodplain L., the Zoning Board of Appeals may authorize exceptions from the flood regulations of this section by special permit within the flood areas in accordance with § 240-125 herein, as in any other zoning district, and may grant special permit exceptions from the requirements of this section in the case of new structures or substantial improvement to be erected on a lot contiguous to and surrounded by lots with existing structures and constructed below the base flood elevation, provided that the following are met:

- (1) A showing of good and sufficient cause.
- (2) A determination that failure to grant the special permit would result in exceptional hardship to the applicant.
- (3) A determination that the special permit will not result in increased flood heights, additional threats to public safety or environment, extraordinary public expense, or any conflict with requirements in accordance with Chapter 40A of the Massachusetts General Laws.
- (4) The Zoning Board of Appeals has notified the applicant for the special permit in writing that the actuarial rates will increase as the first-floor elevation decreases, and that such construction below base flood elevation increases risks to life and property.
- (5) Favorable recommendation from the Board of Health on all structures requiring sewerage disposal and/or water supply.

Proposed 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.

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

Section 240-34 L. allows the Board to grant a Special Permit for exceptions.

2. 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.

Section 240-92 requires the Board to find:

3. The proposed expansion/alteration of the dwelling will not be substantially more detrimental to the neighborhood than the existing building or structure. *Paul finds that it does not*

Section 240-34 L requires the Board to Find:

4. A showing of good and sufficient cause. That it has due to health
5. A determination that failure to grant the special permit would result in exceptional hardship to the applicant. Health and financial problem
6. A determination that the special permit will not result in increased flood heights, additional threats to public safety or environment, extraordinary public expense, or any conflict with requirements in accordance with Chapter 40A of the Massachusetts General Laws. Which it does not
7. The Zoning Board of Appeals has notified the applicant for the special permit in writing that the actuarial rates will increase as the first-floor elevation decreases, and that such construction below base flood elevation increases risks to life and property. Paul clarifies that it will not be a problem and that they are agreeable to it.
8. Favorable recommendation from the Board of Health on all structures requiring sewerage disposal and/or water supply.

Vote:

AYE: David Hirsch, Todd Walantis

Nay: Jake Dewey, Herb Bodensiek

Jake Dewey feels that the health/allergies issue is not a hardship and that there are better options. If this was just for storage it would make more sense.

Herb would echo Jake's comments. He noticed that the HVAC system is elevated. With the lack of plans, he doesn't see how petitioning the area would help. He would have no problem if this was just for storage

Laurie Carbonneau speaks and states that they have to allow petitions as part of the building permit and walls, for heating and temperature. She asks what the harm would be in that and that the walls would still have to be approved by the building department.

Jake again says that if there were plans. Laurie says they have windows and doors.

Attorney Kenney asks if it would be better if they come back with plans to remove the petitions. Jake thinks that this would only need a central dehumidifier. Laurie says it is a large area.

Attorney Kenney asks for a continuance in order to get materials and layout how the space will be used.

Motion is made by Paul Pinard and seconded by Herb Bodensiek to continue this matter to October 10, 2018 at 7:00 PM

Vote:

All in favor

CONTINUED TO OCTOBER 24, 2018 at 7:00 PM.

David Hirsch reads the following into the record:

New Business

7:01 PM

Appeal No. 2018-045

Laham Management & Leasing, Inc.

Laham Management & Leasing, Inc., has petitioned for a Use Variance from Section 240-24-1.6 – Principal Permitted Uses in the Office Medical (OM) Zoning District. The petitioner is proposing to; demolish an existing building and to use the lot as an entryway to a new automobile dealership building to be located at 141 Stevens Street, Hyannis, MA, to utilize a portion of the lot upon which to locate approximately 250+/- square feet of a proposed new dealership building, and for parking use accessory to the dealership use. The petitioner is also seeking a Variance in accordance with Section 240-24.1.6.C – Dimensional relief to the extent required for minimum lot area, minimum lot frontage and landscape requirements. With the adoption of the Office Medical (OM)/Multifamily Residential Zoning District, the use of an automobile dealership is not permitted as-of-right. The subject property is located at 105 Bassett Road, Hyannis, MA as shown on Assessor's Map 309 as Parcel 236.

7:02 PM

Appeal No. 2018-046

Laham Management & Leasing, Inc.

Laham Management & Leasing, Inc., has petitioned for a Modification of Variance No. 2015-025 in order to amend Conditions 4 and 5 to reference a new site plan entitled "Site Plans for Proposed Redevelopment at Premier Mazda, 141 Stevens Street, Hyannis", dated July 10, 2018, Revised July 27, 2018. The revised site plan has been amended to relocate the proposed automobile dealership building and to reconfigure the parking lot and landscaping. The subject property is located at 157 Stevens Street, Hyannis, MA as shown on Assessor's Map 309 as parcel 240. It is located in the Office Medical (OM)/Multifamily Residential Zoning District.

Members assigned tonight: David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard, Kyle Evancoe

Representative: Michael Ford, Esq. is representing the applicant. With Attorney Ford tonight is Attorney Jeff Ford, the applicant - Joe Laham, and Rich Tabaczynski – Engineer. Attorney Ford gives summary of the building and it's zoning history. He summarizes that this area was zoned in the 60's as UB and stayed that way until 2005 when the Hyannis districts came in and this became OM. Most of the uses are nonconforming as well as the single family homes. He explains that the OM district and the GP overlay district do not allow this use. However, the dealership is existing and sits on the lot line adjacent to Salvation Army and wraps around that lot (Exhibit A). In 2011, the then owner of the dealership came to the Planning Board and sought a special permit and did so to change the nonconforming dealership which resulted in a special permit that was granted.

Mr. Laham purchased the property in 2016, went to the Planning Board (PB) and made some changes to the existing Special Permit issued in 2011 which was never implemented and received an extension from the Planning Board.

Attorney Ford explains that when the Town adopted the OM district, they took away the right of a property owner to handle a nonconforming use under the provision. He knows that use variances are a high bar in terms of the statute but that this will straighten out problems which will bring this site much more into conformance. He hands out another plan with pink line showing the lot line (Exhibit B) between this property and the Salvation Army lot. In order for the board to grant the variance, he is aware that they have to make findings as such. He would suggest that the dealership lot has a unique condition which is that it is enveloped on two sides by a large structure that over looms it and is right up to the lot line. To him that is a unique and would be a hardship as this would make it difficult to develop that site in accordance with the permitted uses in the OM zoning district. Also, desirable relief can be granted without substantial detriment to the neighborhood and to grant this would have an end result that would be in the interest of the public good. The benefit again would be a reduction in the number of structures in that area, will rid the area of a very dilapidated building, it will be landscaped and be a new entrance into the dealership that will be demolished and relocated and more centered on the site and be more in conformance and a state of the art facility. It could be granted contingent upon the PB approval of the overall plan and would suggest that they could do that. Also, if granted it would not nullify the purposes and intent of the bylaw. He believes that this could fit into the criteria to protect and conserve the property values of the town and that this size, width, etc., of the lot would result in a good location.

Attorney Ford has read the Staff Report and the fact that this lot is in the OM and also in the Hyannis Village Zoning District, the other option would be the process for a regulatory agreement. However, since this has the benefit of a previous Special Permit, he feels that this process will better serve them. As for Proposed Condition #6 on the Staff Report, they did submit a lighting plan and have now brought the poles down to 18' or less and all of the light is shining down on the property. They went to Site Plan Review and there is an approval letter for this overall plan.

Attorney Ford hands in another plan for 2018-045 (Exhibit C). The board briefly discusses.

David Hirsch asks for public comment

Stacey Mendes of 167 Stevens Street states that her property is across the parking lot and she wants to know if the current traffic will it be rerouted when the new building is constructed. She states that there are car carriers and 18-wheelers that deliver parts and is curious as to if this traffic will be diverted or continue to use that public easement.

Attorney Ford states that one of the goals is to provide an access off Bassett Lane and that the right-of-way will remain open and still be utilized. However, he would suggest that by opening this new access off Basset Lane perhaps there might be relief from the traffic over Stevens Street.

Ms. Mendes is also concerned about the destruction of the black top with the amount of traffic coming through and asks who has the responsibility for the wear and tear if that is a public easement.

Attorney Ford states that Mr. Laham, to the extent that there is damage from his vehicles, is happy to be responsible for that and is okay with a condition to that effect. Ms. Mendes is okay with it in writing.

No one else from the public speaks.

Attorney Ford then gives the summary of relief request for the modification of the existing permit. He states that they had previously met with the Building Commissioner after the purchase of the Mazda dealership, who directed them to the Zoning Board of Appeals for a use variance. That variance is tied to an existing site plan and what they are seeking is to modify that permit in order to reference Site Plan #3 and the new plan which will be before the Planning Board. He would also ask that this relief be contingent upon the decision of the Planning Board. Jake Dewey confirms that once this is complete that all these lots will be merged.

Jake Dewey makes findings:

USE VARIANCE: 105 Bassett Road:

Variance Findings

- Laham Management and Leasing, Inc. seeks a variance from the provisions of Section 240-24.1.6 (OM Zoning District) to construct a new automobile dealership and accessory parking. *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 .25 acre lot does not conform to the 20,000 sq.ft minimum lot area requirement of the OM District. The lot contains 60 feet of frontage on Stevens Street.*
- The Petitioner also seeks variances from the landscaping requirements, including landscape setbacks. *A minimum ten foot front yard landscape setback is required. The landscape setback along Stevens Street is less than 10 feet and no setback is provided from the unnamed right-of-way.*
- The subject property is located at 105 Bassett Lane, Hyannis, MA as shown on Assessor's Map 309 as Parcel 236. 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 (Special Permit No. 2011-03) granted by the Planning Board allowed for expansion of the existing dealership building and use on the adjacent parcels.*

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:

- 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; Jake states that they had found this through evidence of an uniquely shaped lot and sits in a unique space
- A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. Petitioner already owns the parcel and not a lot of other uses for it.
- 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. This would be a substantial improvement to the neighborhood.

Vote:

All in favor

Jake makes a motion to grant relief being sought with the following conditions:

Conditions

1. Relief from Section 240-24.1.6 OM Zoning District is granted for 105 Bassett Lane, Hyannis to allow the principal use of the property for an automobile dealership and surface parking (storage of automobiles) accessory to the automobile dealership located at 105 Bassett Lane.
2. Relief is granted from the minimum lot area and, as necessary, frontage requirements and landscape 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. The site shall be improved as shown on the plan entitled "Site Plans for Proposed Redevelopment at Premier Mazda, 141 Stevens Street, Hyannis", dated July 10, 2018, Revised July 27, 2018.
4. Site improvements shall be in compliance with the Site Plan Approval dated August 22, 2018.
5. Vehicles shall not be parked within the landscaped area along Stevens Street.
6. 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 Planning & Development Department for Design and Infrastructure Plan approval.
7. 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.
8. Contingent upon approval by Planning Board as well as other agencies of the Town of Barnstable
9. Mr. Laham will take responsibility for the businesses effect on the public easement identified on the plan shown

Vote:

All in favor

GRANTED WITH CONDITIONS

Jake makes findings on Modification:

MODIFICATION

Variance Findings

Variance No. 2015-025 provided the following relief:

- Laham Management and Leasing, Inc. sought 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 sought a dimensional variance from Section 240-24.1.6(C) as to minimum lot area, minimum lot frontage. *The 7,840 square foot vacant lot does not conform to the 20,000 sq.ft minimum lot area requirement of the OM District. The lot contains 60 feet of frontage on Stevens Street.*
- The Petitioner also sought variances from the landscaping requirements, including landscape setbacks. *A minimum ten foot front yard landscape setback is required. The landscape setback along Stevens Street is less than 10 feet and no setback is provided from the unnamed right-of-way. There is a maximum lot coverage (impervious surface) requirement of 80% in the District.*
- 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 modify Variance 2015-025, Condition No. 4 and Condition No. 5 to reference revised plans for site redevelopment.
- This modification of Variance 2015-025 may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purposed of the zoning ordinance.

Vote:

All in favor

Jake Dewey makes a motion to grant with the following conditions:

Suggested Conditions

1. All conditions of Variance No. 2015-025 shall remain in full force and effect except as herein modified.
2. Condition No 4 shall be modified as follows:
 4. The site shall be improved as shown on the plan entitled "Site Plans for Proposed Redevelopment at Premier Mazda, 141 Stevens Street, Hyannis", dated July 10, 2018, revised July 27, 2018.
3. Condition No. 5 shall be modified as follows:
 5. Site improvements shall be in compliance with the Site Plan Approval dated August 22, 2018.
4. 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.
5. Contingent upon approval of the Special Permit by Planning Board authorizing the proposed Mazda dealership as shown on the Site Plan.

Vote:

All in favor

GRANTED WITH CONDITIONS

Correspondence

Application for a Regulatory Agreement filed by 720 Main Street Residences, LLC for a property located at 720 Main Street, Hyannis, shown on Assessors Map 308 as Parcel 003.

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

September 26, 2018, October 10, 2018, October 24, 2018

Adjournment

Motion to adjourn is made by Kyle Evancoe and seconded by Paul Pinard

Vote:

All in favor

Approved

