

Town of Barnstable



Board Members:

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

Staff Support

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

Minutes

Wednesday, March 13, 2019

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

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

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

As a quorum has been met, Alex Rodolakis opens the hearing at 7:00 PM

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 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Minutes

December 12, 2018, January 9, 2019, January 23, 2019

December 12, 2018

Motion is made by Mark Hansen and seconded by Paul Pinard to approve the December 12th minutes as submitted Vote:

All in favor

January 9, 2019

Motion is made by Mark Hansen and seconded by Paul Pinard to approve the January 9th minutes as submitted Vote:

All in favor

January 23, 2019

Motion is made by Mark Hansen and seconded by Paul Pinard to approve the January 23rd minutes as submitted Vote:

All in favor

Alex reads the following into the record:

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, September 12, 2018, October 24, 2018 and December 12, 2018, January 23, 2019. Members assigned on 09-12-18: David Hirsch, Herbert Bodensiek, Paul Pinard, Todd Walantis and Jacob Dewey.

Members assigned tonight: *Alex Rodolakis, Herbert Bodensiek, Paul Pinard, Todd Walantis, Jake Dewey

*Alex has invoked the Mullin Rule, has viewed the tape and submitted a form to be time stamped with the Town Clerk

Representative: John Kenney, Esq.

Attorney Kenney recaps what transpired at the September 12, 2018 hearing and the reasoning for the subsequent continuances. Attorney Kenney will start with supplemental memo he has submitted to address some of the board's issues of concern. He refers to a plan by Cotuit Bay Designs (Exhibit A) which was done to address concerns from board member Jake Dewey. He points out the storage area and states that he had met with the Building Commissioner on several occasions who explained to him that a special permit would be needed not only for utilizing the area for storage but also for living space. Attorney Kenney refers to another concern of the board regarding elevation. All machinery and equipment will be at least two (2) feet above BFE. The grade slopes down and a small triangle part of the property is in a velocity zone. Attorney Kenney then states that at the previous hearings, board member Bodensiek had concerns about flood damage or flood waters and in reply to that concern hired Philbrook Engineering to do a report which addresses the criteria in 240-34.L subsection 3 and reads from the report (Exhibit B).

The next question raised by one of the board members, Paul Pinard, was if the Board of Health needed to respond. Attorney Kenney states that he had contacted Tom McKean — Director of Board of Health (Exhibit C) who gave a favorable recommendation as this property is serviced by public water and sewer. Final issue raised by Jake Dewey was in regards to the gross floor area. Attorney Kenney states that the addition of the partition has no effect on the gross floor area. The Building Commissioner also agreed with him but also suggested that he obtain a special permit for the living and storage area in the basement. He asks for questions from the board.

Jake Dewey asks if this storage area exists already and if the mechanicals are new. Attorney Kenney states that the house was built in 2013 and that the applicant bought the house in 2016, portioned off this area in order to control temperature and humidity and that the HVAC system is new and will be wall units for both heat and air conditioning. The mechanicals will be around 13.2 feet elevation and cannot put them below 11'. Thereafter, the Building Commission informed them that they had to come to the Zoning Board for relief.

Alex has concerns because originally this was a demo/rebuild planned without the extra living area in this area.

Alex asks for public comment. No one speaks.

Alex asks about a plan and informs Attorney Kenney that this has to be in substantial conformance to the plan submitted.

Paul Pinard makes findings.

From SR dated 07-31-18:

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. Comments supplied by applicant that agrees with that.

Section 240-34 L requires the Board to Find:

- 4. A showing of good and sufficient cause.
- A determination that failure to grant the special permit would result in exceptional hardship to the applicant. 5.
- 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. As has been proven
- 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. He believes they have done that
- Favorable recommendation from the Board of Health on all structures requiring sewerage disposal and/or water supply.

Vate: All in favor

Conditions

- 1. Special Permit No. 2018-041 is granted to Laurie Carbonneau, to allow the basement, located within the floodplain, to be used as living area and for storage. The property is located at 174 Bay Shore Road, Hyannis, MA.
- The proposed alterations will be in substantial conformance with the plan entitled "New House for Rycon Group/LS Ventures 174 Bay Shore Road, Hyannis, MA" drawn by Thomas A. Moore Design Co, dated November 7, 2013.
- This alteration/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.
- All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be located so as to conform to the required setbacks for the district and screened from neighboring homes and the public right-of-way.
- 5. 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
- 6. Buildout with be in substantial conformance with plan dated with 3-6-19.

Vote: All in favor

GRANTED WITH CONDIITONS

Alex reads the following into the record: 7:01 PM

Appeal No. 2019-005

Haseotes

George and Polyxeni Haseotes have applied for a Special Permit in accordance with Section 240-47.1 – Family Apartments and have requested to modify Special Permit No. 1989-67, Conditions 2 and 3 that limit the structure to storage only and plumbing is prohibited. The applicants are seeking relief in order to establish an existing detached, 1 bedroom, 776 square foot family apartment. The subject property is located at 773 South Main Street, Centerville, MA as shown on Assessor's Map 185 as Parcel 013. It is located in the Craigville Beach District (CBD) and the Centerville River North Bank (CRNB) Neighborhood Overlay Zoning Districts.

Continued from February 13, 2019. Members assigned are Alex Rodolakis, Herbert Bodensiek, David Hirsch, Jacob Dewey, Mark Hansen.

Members assigned tonight: Alex Rodolakis, Herbert Bodensiek, Jake Dewey, Mark Hansen

Attorney Christopher Kirrane is informed that there are only 4 here that can sit on this. Attorney Kirrane has agreed to go forward with 4 members.

Attorney Kirrane explains that the original was filed on behalf of the Haseotes and was transferred into an LLC and the question the last time was how can an LLC apply for a family apartment. Attorney Kirrane explains that a LLC owns the property, the 100% owner of that LLC is a revocable trust; the beneficiary of that trust is Athena Haseotes, the owner of the property, so to speak. He suggested findings that she be treated as the owner and suggested conditions certifying that the trust be the 100% owner of the LLC and that she continues to be the 100% beneficial owner of the trust and thinks that will address the concerns of the board. Athena Haseotes would also certify, in accordance with the bylaw, that the family members are her family members and would agree, as a condition to certify that the trust is the owner of the LLC and that she is still the 100% beneficiary of that trust and if there was any change in that the permit, it would lapse.

Alex notes that he still has concerns because, under the family apartment section, it has to be occupied by the owner year round and asks if they are all going to live here year round. Alex reads from the family apartment bylaw and notes that this can't be used as a guest house, and if granted, could be an enforcement nightmare.

Attorney Kirrane states that Ms. Haseotes will be signing the affidavit and has added the precautions in his suggested findings and conditions.

Anyone from public. No one speaks.

Attorney Kirrane noted that the trust's name will be per his email sent to Anna Brigham yesterday.

The board deliberates. Todd Walantis is skeptical that this would be a year round residence. Herb Bodensiek notes that the original permit spelled out that it would only be for storage and no plumbing at all. Attorney Kirrane thinks that if there was no LLC. this would meet all the conditions.

Herb does findings:

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 specia	I permit:

Section 240-47.1 (B) allows a Family Apartment within a detached structure. The Craigville Beach District, Centerville River North Bank zoning permits accessory uses customary and incidental to single-family residences.

- 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 single-family nature of the property and of the accessory nature of the detached structure are preserved.

Further, §240-131.4 of the Craigville Beach DCPC ordinance states that in granting a special permit, the Board shall find that:

The proposed alteration/expansions are not substantially more detrimental to the environment, community and/or historic character of the neighborhood than the existing building or structure.

This proposal is consistent with the purpose and intent of the Craigville Beach District, which is to guide development pursuant to the Guidelines of Barnstable County Ordinance 09-10 to ensure that development and redevelopment meets the following standards:

- Contributes to and respects the character and historic development patterns of the area and minimizes inconsistent redevelopment impacts to the historic and community character resources in this area.
- ☐ Protects and preserves scenic views and vistas and ways to the water.
- Protects and improves natural resources, including but not limited to the barrier beach and groundwater and coastal water quality and minimizes development and redevelopment impacts to the natural resources and ecosystems in this district.
- ☐ Protects human life and property from the hazards of periodic flooding.
- Preserves the natural flood control characteristics and the flood control function of the floodplain.

This proposal is consistent with the general performance standards and design guidelines Centerville River North Bank neighborhood as follows:

☐ The subject structure is not within a FEMA designated flood zone.

Vote:

All in favor

Conditions

Should the Board find to grant the Special Permit No. 2019-005, it may wish to consider the following conditions:

- 1. Special Permit No. 2019-005 is granted to George and Polyxeni Haseotes 773 South Main, LLC., to establish a family apartment in a detached structure at 773 South Main Street, Centerville, MA.
- 2. Special Permit No. 1989-67 has been modified and conditions No. 2 and No. 3 are deleted. All other conditions shall remain in full force and effect.
- 3. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan of 773 South Main Street Centerville" by Down Cape Engineering Inc. dated September 25, 2018.
- 4. The proposed development shall represent full build-out of the lot. Further expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
- 5. The Applicant must comply with the restrictions in Section 240-47.1(C)(1-4) Conditions and Procedural Requirements of the Family Apartment Ordinance (see above).
- 6. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.

Alex wants to add:

- 7. The family apartment may only be occupied by a member of Athena M. Haseotes family
- 8. Athena M. Haseotes shall provide the annual affidavit as provided for in Section 240-47.I(C)(2) along with the certification that the Revocable Trust is still the sole owner of the LLC and that Athena M. Haseotes is still the sole beneficiary of the Trust
- 9. Any change in the ownership of the LLC or in the beneficial interests of the Trust shall be cause for this permit to terminate
- 10. 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 the issuance of a building permit.
- 11. The rights authorized by this special permit must be exercised within two years, unless extended

Vote: All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:02 PM Appeal No. 2019-002

Abbott & Blakeley, Trustees

David H. Abbott and Amanda Blakeley as Trustees of Cedarchip Realty Trust, have petitioned for a variance from Sections 240-13 RC, RD, RF-1 and RG Residential Districts; Section 240-36 Resource Protection Overlay District minimum lot area. The Petitioners are requesting a variance to allow a portion of 148 Windswept Way that includes the apron and end of 186 Windswept Way swimming pool to be exchanged for equal lot area elsewhere on 186 Windswept Way. The subject properties are located at 148 Windswept Way, Osterville, MA as shown on Assessor's Map 052 as Parcel 003 and 186 Windswept Way, Osterville, MA as shown on Assessors Map 052 as Parcel 002. Both parcels are located in the Residence F-1 (RF-1) Zoning District and the Resource Protection Overlay District (RPOD

Continued from January 9, 2019 and February 27, 2019. No members assigned, no testimony taken. Request to withdraw was received on February 26, 2019.

In an email dated 02-26-19 from Attorney William Abbott, he asks to withdraw without prejudice

Motion is made by Alex Rodolakis and seconded by Herb Bodensiek to withdraw without prejudice Seconded by

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

New Business

Alex reads the following into the record:

7:03 PM Appeal No. 2019-009

Zullo

John Zullo has petitioned for a Modification of Variance 1996-114 in order to remove Conditions No. 3 and No. 9 which required one of the four permitted units to be owner-occupied. The subject property is located at 54 Main Street, Hyannis, MA as shown on Assessor's Map 342 as Parcel 025. It is located in the Medical Services (MS) Zoning District.

Members assigned tonight: Alex Rodolakis, Herbert Bodensiek, Jake Dewey, Paul Pinard, Mark Hansen

Representative: Attorney Michael Murphy is representing the applicant, Mr. Zullo, who is also here tonight.

Attorney Murphy gives summary of ownership and the proposal to modify this variance. Attorney Murphy states that in 1996, this was a nineteen (19) room lodging house which allowed the use for a four (4) family unit which has been continued to this day and for which they have no intention to change that. However, Mr. Zullo recently was trying to refinance and denied under the new underwriting guidelines because it was a requirement in the variance that it be owner-occupied. They are seeking today to eliminate the occupancy requirement and also to change #9 (number of occupants) from 10 to 12.

Alex notes that when he read the staff memorandum, it was his understanding that current zoning permits 10 occupants. Attorney Murphy corrects himself that it is limited to twelve (12) bedrooms.

Alex asks Attorney Murphy to goes over the three-prong test for a variance. Attorney Murphy states that as for shape/ topography, the structure is a multi-family unit with nine (9) bedrooms and the current zoning allows up to twelve (12) bedrooms. As for the financial hardship, if Mr. Zullo is allowed to move out of the owner-occupied unit, it could be available to additional occupants and would help support the income producing property and would be better for future owners and the mortgagee who would be satisfied that the property would be fully utilized. As for the third prong, Alex feels that the town has said that 10 is the maximum and if they grant for 12, it would derogate from the intent of the bylaw. Attorney Murphy states that the current zoning: Medical Services allows for twelve (12) bedrooms which to him would logically mean that there could be one person, at least, per bedroom.

Paul Pinard asks for clarification regarding the variance condition regarding occupants versus bedrooms allowed. He asks if Attorney Murphy wants to change the condition from ten occupants to 12. Attorney Murphy would like it changed from ten occupants to twelve.

Mark Hansen clarifies with Attorney Murphy is that the issue is that the bank could have a problem in finding someone to purchase the property because it would need to be owner-occupied.

The board deliberates and Alex states that he doesn't believe that the board has enough information about how many occupants versus bedrooms. Alex would like to know more about why it needed to be owner-occupied. Todd Walantis doesn't know why it needs to be owner-occupied. Mark Hansen asks if the applicant has exhausted his search for bank/mortgage lenders. Paul Pinard doesn't think that he should need to find another lender as he may have a good relationship with his bank but would like a letter perhaps from the lending company to the rationale behind their denial. Attorney Murphy states that if Mr. Zullo had to foreclose they are limiting their ability to attract a buyer to the property. Alex needs more information from the Board of Health regarding definition of bedrooms (occupants) and reasoning behind owner-occupied.

Attorney Murphy asks if the board would vote on just the number of bedrooms. Alex thinks that the board still needs more information.

Alex asks for public comment. No one speaks.

They discuss a continuance to April 24, 2019

Motion is made by Mark Hansen and seconded by Paul Pinard to continue to April 24, 2019 at 7:00 PM Vote: All in favor

CONTINUED TO APRIL 24, 2019 AT 7:00 PM

Alex reads the following into the record:

7:04 PM Appeal No. 2019-012

Jones

Wendy S. and James B. Jones as Trustees of the Wendy S. Jones Trust have applied for a Special Permit in accordance with Section 240-92.B – Nonconforming Buildings or Structures used as Single and Two-family Residences. The applicants are proposing to construct a 7 foot by 22 foot addition that will encroach into the fifteen (15) foot required side yard setback. The subject property is located at 226 Washington Avenue, Osterville, MA as shown on Assessor's Map 139 as Parcel 081-000. It is located in the Residence F-1 Zoning District.

Members assigned tonight: Alex Rodolakis, Herbert Bodensiek, Paul Pinard, Jake Dewey, Todd Walantis

Representative: Scott Peacock, the builder, is representing the applicant/owner. Mr. Peacock states that when the house was originally built, there was a ten foot setback which by today's zoning now requires fifteen feet. The owners are proposing to build a first-floor master bath adjacent and flush to the first-floor master bedroom and discovered that the setback had changed.

Alex asks Mr. Peacock if contact was made with any of the abutters. Mr. Peacock states that the applicant did talk to the abutter most affected who had concerns and states that the abutter is now okay with the proposal.

Todd thinks the proposal is characteristic to the neighborhood. Herb asks about the placement of mechanical equipment. Mr. Peacock states that any mechanics will be on the second floor and that the air conditioning condenser unit will be put on the back of the house.

Alex asks for public comment. No one speaks.

Jake makes findings:

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 240-92 allows for the expansion or alteration of a preexisting nonconforming structure used as a single-family residence with a Special Permit.

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 of the dwelling will not be substantially more detrimental to the neighborhood than the existing building or structure.

Vote:

All in favor

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

Conditions

- 1. Special Permit No. 2019-012 is granted to James and Wendy Jones to construct a 7 foot by 22 foot addition which will be located within the 15 foot side setback. The property is located at 226 Washington Avenue, Osterville, MA.
- 2. The proposed alterations will be in substantial conformance with the plan entitled "Site Plan (for addition) located at 226 Washington Avenue Osterville, MA" prepared for James B. and Wendy S. Jones by MacDougal Surveying & Associates dated January 22, 2019.
- 3. This alteration/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. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be located so as to conform to the required setbacks for the district and screened from neighboring homes and the public right-of-way.
- 5. 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.

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:05PM Appeal No. 2019-013

Clough

Deborah Clough has petitioned for a Variance in accordance with Section 240-11 minimum lot area requirements in the RD-1 Residential District and Section 240-36 - Resource Protection Overlay District (RPOD). The Petitioner seeks to transfer approximately 553 square feet to an abutting lot to establish a new, nonconforming lot. The subject property is located at 633 South Main Street, Centerville, MA as shown on Assessors Map 186 as Parcel 061. It is located in the RD-1 and Resource Protection Overlay District (RPOD).

Alex reads the following into the record:

7:06 PM Appeal No. 2019-014

Clough

Deborah Clough has petitioned for a Variance in accordance with Section 240-11 minimum lot area requirements in the RD-1 Residential District and Section 240-36 - Resource Protection Overlay District (RPOD). The Petitioner seeks to add approximately 553 square feet to lot from an abutting lot in order to establish a new, nonconforming lot. The subject property is located at 627 South Main Street, Centerville, MA as shown on Assessors Map 186 as Parcel 062. It is located in the RD-1 and Resource Protection Overlay District (RPOD).

In a letter dated March 12, 2019, Attorney Mark Boudreau asks for a continuance for both 2019-013 and 2019-014 so that they can be heard with Appeal 2019-015 on April 10, 2019.

Motion is made by Paul Pinard and seconded by Jake Dewey to continue 2019-013 and 2019-014 to April 10, 2019 at 7:00 PM Vate:

All in favor

CONTINUED TO APRIL 10, 2019 AT 7:00 PM

Correspondence

Cape Cod Commission hearing notice for Vineyard Wind Connector will be held on Monday March 18, 2019 at 10:00 am at the Cape Cod Commission offices located at 3225 Main St, Route 6A, Barnstable MA.

Matters Not Reasonably Anticipated by the Chair

Alex states that at the April 10th hearing he and Jake will not be sitting on the Hyannisport Club appeal matter.

Upcoming Meetings

March 27, 2019, April 10, 2019, and April 24, 2019

Adjournment

Motion to adjourn is made by Mark Hansen and seconded by Paul Pinard to adjourn

Vote:

All in favor

For Exhibits, please see the corresponding ZBA file located at 200 Main Street, Hyannis, MA