



Town of Barnstable
Zoning Board of Appeals
Minutes
March 4, 2008

A special meeting was duly posted for the Town of Barnstable Zoning Board of Appeals and was held on Tuesday, March 4, 2008 at 7:00 PM in the Selectman's Conference Room at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. A quorum was met. Also present were Arthur Traczyk, Principal Planner and Carol Puckett – Administrative Assistant.

<i>Gail Nightingale</i>	<i>Present</i>
<i>Ron Jansson</i>	<i>Present</i>
<i>Daniel Creedon III</i>	<i>Absent</i>
<i>James Hatfield</i>	<i>Present</i>
<i>Sheila Geiler</i>	<i>Absent</i>
<i>John Norman</i>	<i>Present</i>
<i>Jeremy Gilmore</i>	<i>Present</i>
<i>Kelly Lydon</i>	<i>Absent</i>

Also in attendance were Attorney Michael Ford, Town Manager – John Klimm, Town Attorney – Ruth Weil.

Appeals 2008-010, 011 & 012

**Berkshire Development - Circuit City
Redevelopment**

Opened February 13, 2008, continued February 27, 2008 and to March 4, 2008.
Public hearing closed. Continued for Board's Decision

Members: Ron S. Jansson, James Hatfield, John T. Norman, Jeremy Gilmore, Gail C. Nightingale
No Alternates

Appeals 2008-010 - Bulk Variance Min. Front Yard and Lot Coverage

Berkshire Development, LLC has applied for a Variance to Section 240-25.E Bulk Regulations, Minimum Front Yard Setback off Route 132 and Section 240-35(F)(3) Lot Coverage in the Groundwater Protection Overlay District. The applicant seeks to locate the proposed building 45 feet off Route 132 where a 100-foot front yard setback is required and to maintain the existing lot coverage that does not meet with today's 50% maximum lot coverage by impervious surfaces. The property is addressed as 624 and 640 Iyannough Road (Route 132), Hyannis, MA. The lots are shown on Assessor's Map 311 as parcels 012 and 013. The property is in the Highway Business, B Business, Groundwater and Wellhead Protection Overlay Zoning Districts.

Appeal 2008-011 - Highway Business Conditional Use Permit

Berkshire Development, LLC has petitioned for a Special Permit pursuant to Section 240-25(C)(1) Conditional Use in the Highway Business Zoning Districts. The petitioner seeks to redevelop the site with a 23,500 sq.ft., building to be used for retail sales of electronics. The property is addressed as 624 and 640 Lyannough Road (Route 132), Hyannis, MA. The lots are shown on Assessor's Map 311 as parcels 012 and 013. The property is in the Highway Business, B Business, Groundwater and Wellhead Protection Overlay Zoning Districts.

Appeal 2008-012 - Expand/Alter Nonconforming Building Structure

Berkshire Development, LLC has petitioned for a Special Permit pursuant to Section 240-93 Nonconforming Buildings or Structures Not Used as Single- or Two-family Dwellings. The petitioner seeks to redevelop the site with a 23,500 sq.ft., retail store and associated site improvements. The permit is sought to allow for the alteration and expansion of certain nonconformities on site, including impervious coverage. The property is addressed as 624 and 640 Lyannough Road (Route 132), Hyannis, MA. The lots are shown on Assessor's Map 311 as parcels 012 and 013. The property is in the Highway Business, B Business, Groundwater and Wellhead Protection Overlay Zoning Districts.

At 7:05 PM Gail Nightingale indicates that we are awaiting Attorney Ford. Gail Nightingale calls the hearing into order at 7:32 PM. She indicates that this hearing is for the continuance of the hearing for Berkshire Development/Circuit City which was held February 27, 2008.

Gail Nightingale asks Attorney Ford if the leases were filed. Attorney Ford concurs and he did redac the financials. Gail then asks if he has obtained permission from the airport. Attorney Ford indicates that Attorney Butler received a letter from the Airport Commission and had put it on hold pending because no other permits had issued for it and as of yet, they don't know if they have access.

Ron Jansson asks if they would be agreeable to a condition stating that when this road becomes available for ingress and egress it is utilized to address the traffic concerns. Attorney Ford indicates that the proposal was to have access and is agreeable to a condition.

Ron Jansson indicates that this will be two lots under separate ownership and the proposed development and will be a lease development and one is registered and one is unregistered land and knows nothing about the title history. He indicates his concern is if something should occur on the severance of one parcel falls under the control of someone else and is no long under this lease and is talking about the lot the parking is on. Attorney Ford gives Cape Cod Mall as an example and suggests they make it a condition which they are agreeable to. Ron then asks if all drainage is to be on site. Art Traczyk answers yes. Ron then asks if there inadequate lighting, Art concurs.

Ron then asks about the connectivity with McDonald's and if that has ever been addressed. Art answers no but it is not an absolute. Ron asks what is the long term regarding sidewalks. Art isn't sure about the long term plans. Ron asks about a 20 foot easement in case the Town would, in the future, expand that roadway. Attorney Ford indicates that he has talked to Ruth Weil, Town Attorney, and John Klimm the Town Manager, and in the future 132 might be widened but will cooperate with that. Attorney Ford indicates that he is sure it could be worked out in good faith.

Ron Jansson then asks Art Traczyk if he is comfortable with handicapped access. Art indicates yes. Ron asks about security lighting and asks Art if he thinks that security lighting in the parking lot would be sufficient. Art believes there is adequate security lighting.

Ron Jansson asks about delivery trucks, and if access is to be to the rear in the future, could a contingent condition be imposed that would require delivery to occur

- 1. to the rear of the building to eliminate traffic from accumulating in that area*
- 2. what the potentiality is in the mean time for restricting delivery trucks so that they don't occur during peak operating traffic hours*

Attorney Ford indicates that first he would need approval from the Airport Commission regarding the access road. Attorney Ford then asks Theresa Cofske, representative from Berkshire Development, about deliveries and she indicates it was also a question that was addressed at the Cape Cod Commission. She indicates that Circuit City indicated that their deliveries are after hours so they would be talking about 10:00 PM at night.

Ron Jansson asks for clarification about the delivery hours. Theresa Cofske indicates that it would be before the store opens at 6:00 AM and after the store closes at 10:00 PM. Attorney Ford indicates that at some point there might be an exception to that but there could be a condition that the applicant would make a good faith effort to make the deliveries within those hours.

John Norman indicates that he is concerned about meeting the variance conditions for the granting of a variance under Chapter 40A, Section 10 because the ordinance and bylaws are conflicting. Ruth Weil, Town Attorney, relates the ordinance regarding the parking to the side and rear and the ordinance for the front setback and indicates and that it should be harmonious. She indicates that landscaping instead of parking to the front of the parcel is better for the public and that the Town and the Cape Cod Commission have embraced that concept.

Attorney Ford indicates that the Town as well as the Cape Cod Commission preferred the variance; however, he also requests that the Board also the grant the special permit as-of-right.

Gail Nightingale comments that she would be in opposition to the variance because of the size of the building on Route 132 and would find it not appealing.

Attorney Ford indicates that the variance is still on the table.

Jerry Gilmore asks if both a variance and a special permit can be granted.

Gail Nightingale comments that if Growth Management has a strong feeling with the 100 foot setback why isn't the ordinance changed.

Ron Jansson indicates that he is favor of the project overall but is still concerned about the traffic.

The Board and Attorney Ford discuss what should be decided first. They agree to do the variance first.

Gail Nightingale does findings first for 2008-010.

The applicant is Berkshire Development and it is to build 45 feet off Route 132 where a 100 foot front yard setback is required.

Findings of Fact:

- 1. The subject property (the Property) is comprised of two separate lots, addressed 624 and 640 Iyannough Road (Route 132), Hyannis, MA. The lots are shown as parcels 012 and 013 on Assessor's Map 311. The two lots total approximately 2.53-acres and are to be used as one for the purposes of zoning and redevelopment.*
- 2. The lots are presently developed with a 3,996 sq.ft. professional office building and a 6,160 sq.ft., restaurant building, last licensed in 2005 for 202 seats total. Most of the Property is zoned Highway Business with a small area to the rear zoned Business B. Office use is a principal permitted use allowed as-of-right in the Highway Business District. The existing restaurant is a legally created nonconforming use in the district as it dates to 1963, and predates the rezoning along Route 132 to Highway Business. The restaurant has the benefit of Special Permit No. 1984-69 that allowed an addition to the nonconforming use and authorized a maximum capacity of 300-seats.*
- 3. The office lot, 640 Iyannough Road, is owned by MDM Realty Trust and the restaurant lot, 624 Iyannough Road, is owned by Star Nominee Trust. Berkshire Development, LLC (the petitioner), is a Massachusetts limited liability company and Manager to Berkshire-Hyannis, LLC. Berkshire-Hyannis, LLC has executed a Ground Lease with the owners of each lot. Copies of the Leases have been submitted to the file for proof of standing. The initial term of each lease is 20 years with the option to extend them for 12 additional terms of 5-years each.*
- 4. The Petitioner is proposing to demolish the two existing buildings on the Property and redevelop the 2.53-acre site with a new one-story, 23,500 square foot retail sales building, parking and associated site improvements. The site is to be occupied by Circuit City, Inc., an electronic "superstore" retailer, as the sole tenant of the property. Two sets of plans for the redevelopment have been submitted to the file. One set of plans entitled "Berkshire Development Iyannough Road, Barnstable, Massachusetts" shows that the building can conform to the Highway Business Zoning District bulk regulations that require a 100-foot setback off Route 132. A second set of plans, entitled "Berkshire Development Iyannough Road, Barnstable, Massachusetts - Site Alternative" proposes to locate the building with a reduced front yard setback of 45-feet. It is for this reduced front yard setback that the Applicant has submitted Appeal 2008-010 seeking a variance to Section 240-25.E Bulk Regulations, Min. Front Yard Setback.*
- 5. The proposed redevelopment has been found to be a Change of Use **and over the 10,000 sq.ft. gross floor area** that triggered a review as a Development of Regional Impact (DRI) by the Cape Cod Commission. The Commission's DRI review was that of a limited review to issues of Community Character, Economic Development, Transportation, and Water Resources. **Ron Jansson interjects and notes the 10,000 square foot area which is added in red above.** On February 7, 2008, the Commission issued its DRI Decision with conditions. In issuing that decision, the Commission recommended the redevelopment comply with the Regional Policy Plan that recommends that all commercial parking be located to the side and rear of the building and not within the front yard. To that end, the Commission, in concurrence with the Town's Growth Management Department requested the alternative plan be drafted. That plan locates the building only 45-feet off Route 132 and the parking is situated to the side and back of the structure.*

6. *Section 240-25.E of the Town's Zoning Ordinance specifies that the minimum setback off Route 132 is 100 feet. That amendment was incorporated into the Ordinance in 1983. The intent was to lessen the implications of future expansion in the right-of-way of Route 132, should that be needed. Section 240-54 was amended into the Ordinance in 1999. That section states that "parking lots shall be located to the rear or side of a building unless such location would have an adverse environmental impact, or is infeasible due to configuration of the site." The Growth Management Department has testified that they endorse a reduced front yard setback, as that pattern of development is now more favorable to the image they are striving for along Route 132.*
7. *The proposed redevelopment has also been reviewed by the Town of Barnstable Site Plan Review Committee and a site plan approval letter dated February 11, 2008, has been issued with conditions.*

Ron Jansson then indicates that #8 should not be read as it is for the denial of a variance.

Gail Nightingale indicates that those are the findings.

James Hatfield seconds.

Discussion on the findings:

Ron Jansson asks about adding a finding that Route 132 is considered a gateway to downtown Hyannis; therefore is considered an important aspect of the redevelopment of the downtown Hyannis area. Jerry Gilmore indicates he believes it is incorporated in Finding #7.

Ron Jansson asks about an easement on the road. Gail Nightingale asks for clarification from Attorney Ford as she believed it would be more difficult to get an easement if it was 45 feet from the road. Attorney Ford indicates that he said that one has to look at more closely if the building ends up being much closer

Gail Nightingale reiterates that she has problems with the building being so large and so close to the roadway and that we still have the option of putting it back where it belongs because the parking doesn't absolutely have to be to the side and rear and that the building would have an adverse environmental impact if it is placed closer to the roadway.

Ron Jansson asks Gail Nightingale if there would be a halfway point that she would feel comfortable with. Attorney Ford interjects and indicates that it wouldn't work technically.

The Board discusses the potential widening of the roadway.

Attorney Ford suggest adding an amendment indicating that a literal enforcement of the setback requirement of the ordinance would result in the petitioner locating the parking spaces in the front of the building along Route 132 and therefore creating a hardship. This hardship is that they can't comply with the other provision of the bylaw.

Ron Jansson comments that he doesn't find it a hardship as the portion of the zoning bylaw does provide for exclusions from that requirement. Attorney Ford indicates that it says if not feasible.

Board accepts the amendment.

Jerry Gilmore seconds.

Vote:

AYE: Jerry Gilmore, John Norman, Ron Jansson, James Hatfield

NAY: Gail Nightingale

Gail Nightingale as she does not feel there are variance conditions substantial to grant a variance as it can be placed 100 feet back as required.

Ron Jansson makes the following motion:

Based upon the positive findings of fact, a motion was duly made and seconded to grant Variance No. 2008-010 to allow the proposed building to be located 45-feet off Route 132, subject to all of the following conditions:

- 1. This variance is issued for the two lots, totaling 2.53-acre and addressed as 624 and 640 Iyannough Road (Route 132), Hyannis, MA (Assessor's Map 311, parcels 012 and 013) to be used as one for the purposes of redevelopment and use as retail store for the sales of electronics. Notices of the executed Ground Leases to the lots shall be recorded at the Barnstable Registry of Deeds and Barnstable Registry District and proof of the recording submitted to the Zoning Board Office prior to the issuance of any building permit that relies on this variance. **Registry of Deeds will also mean to incorporate Registry of the District of the Land Court as one is registered and one is unregistered.***
- 2. The redevelopment shall be limited to a one-story, 23,500 sq.ft., single-tenant building for the retail sales of electronics. The site shall be developed as per the engineered site plan submitted entitled; "Berkshire Development Iyannough Road, Barnstable, Massachusetts – Site Alternative" as prepared by VHB Vanasse Hangen Brustlin, Inc., dated February 23, 2007, and last revised February 1, 2008, **showing a 45 foot setback from Route 132 . This plan is to be initialed by the Chairperson to avoid any confusion to what is granted.** The exterior of the building shall be developed as shown on the elevations submitted entitled; "Berkshire Development Hyannis, MA" as drawn by Casco Project Managers. This shall include the exterior coloration of the building (Sheets C1 through C8, SL1 and SV1).*
- 3. The development **of the variance** herein, and shown on the plans approved, shall be considered full build out of the 2.54-acre site. The interior of the building shall be one-story only. It shall not be expanded by the addition of interior floors or mezzanine areas. The parking on the lot shall not be shared with any other use unless it is approved by this Board nor shall any building addition, accessory building or other use be permitted without approval of this Board. Storage units and/or trailers are prohibited on the property except during the construction of the building, and then only as permitted by the Building Commissioner as temporary, construction-related units and trailers.*
- 4. The **applicant** and occupant of the property shall be responsible for assuring that the redevelopment and use of the site is in compliance with, and maintained consistent with, this **variance** as well as all conditions of the Cape Cod Commission's Development of Regional Impact Decision issued February 7, 2008 **which is in possession of the Board.** If the Commission's DRI decision is modified, the Applicant shall be responsible for notifying the Zoning Board of Appeals Office **immediately** of that modification for a determination if this permit needs to be modified.*

5. *The Stormwater Management System inclusive of the bio-retention basins and first flow to and over vegetated areas shall not, in the future, be circumvented by the installation of paved areas that would channel runoff directly into the catch basins. No run-off shall be diverted to Town sewers.*
6. *The requirements of the Cape Cod Commission, as it **currently** relates to the acquisition of the off-site mitigation property and transfer into the Town's ownership, **shall be executed prior to the issuance of any building permit for the property.** Proof of the transfer of the two lots to public ownership **as well as the petitioner's requisite contribution of the acquisition costs of 50% amount set forth in the decision of the Cape Cod Commission** shall be submitted to the Zoning Board of Appeals **prior to the issuance of a building permit.***

Ron Jansson and Attorney Ford discuss the percentage contribution and the issuance of building permits. Ruth Weil indicates that it would be the Town's discretion and it is their intention to close before the building permits issue. It is decided to leave #6 in but striking "prior to the issuance of the building permit".

7. *Signage shall comply with the Town of Barnstable's Zoning Ordinance. No variance from the zoning requirements for signage shall be issued from the Zoning Board of Appeals and no nonconformity in signage shall applied to the redevelopment of the property. Signage shall be substantially as represented to the Board in the illustrated building elevations submitted. There shall be no signage added to the exterior of the building, including signage adhered to the surfacing of the window placed there so as to be visible to the outside, signs that display a sale price, and/or pictorial representations of electronics that are for sale. Window display of merchandise is encouraged over signage.*
8. *The development shall be required to meet all applicable building and fire codes. All Fire Department requirements shall be met, including but not limited to stand pipes, fire hydrant locations and interior building sprinkler system.*
9. *All on-site dumpsters shall be screened and shall be **located as set forth in the plans submitted to this Board** and meet all Board of Health regulations. The store shall properly dispose of all waste materials and to the extent practical, recycle **subject to the provisions of the Groundwater Protection Overlay District.** ~~As the property is in a Groundwater Protection Overlay District, there shall be no storage of hazardous materials.~~*

Ron Jansson and Attorney Ford discuss the terms "hazardous materials versus hazardous waste". Attorney Ford comments that he doesn't want it conditioned if the electronics store is selling batteries, for instance. Art Traczyk quotes the ordinance which indicates waste. Ron Jansson and Attorney Ford agree to state for the purposes of clarification it should be subject to the provisions of the Groundwater Protection Overlay District.

10. *The building shall be connected to public water and to the Town of Barnstable Wastewater Treatment Facility.*
11. *Upon the issuance of a building permit for the redevelopment authorized herein, Special Permit No. 1984-69, that authorizes a restaurant use on one of the subject lots shall become null and void and all rights authorized in that permit shall expire.*
12. *The applicant shall install no-left turn signs **and appropriate road markings as determined by the Department of Public Works** on Route 132 clearly identifying that the ingress to the property is a right-turn in and right-turn out only. The nature of the signage and location **and road markings** shall be reviewed by the Town of Barnstable prior to its installation.*
13. *The landscaping plan shall be implemented, or a cash bond **in the amount of the proposed***

landscaping as determined by the Growth Management Department posted with the Town prior to the grant of an occupancy permit for the store. The trees that are identified on the plan as being retained shall be retained and incorporated into the landscape plan.

14. *The applicant shall attempt to secure a pedestrian walkway connecting the property with the abutting McDonald's restaurant to the west. If the access cannot be secured, the applicant shall create a walkway from their parking area out to the public way on the west side of the site exit drive in accordance with specifications as determined by the Town's Department of Public Works. The walkway shall be installed to the specification of the Department of Public Works. The added pavement to create the pedestrian walkway shall not be included in the lot coverage as it is being requested by this Board for the convenience and safety of the public.*
15. *In the future, the Petitioner shall cooperate fully with the Town of Barnstable in implementing improvements to Route 132 to that portion of the property that abuts their property. To that end, should the Town of Barnstable determine that added right-of-way is necessary for improving Route 132; the Petitioner shall assent to an easement of up to 20-feet wide over the Property as it abuts Route 132.*
16. *The applicant shall seek Airport Commission approval to temporarily use the back entrance to the lot during the initial construction of the building and site improvements to the property for the purposes of moving construction equipment into and out of the site. Thereafter, the applicant shall seek a permanent agreement that the roadway can be used for emergency access via the roadway that abuts to the rear. Additionally, in the future should the opportunity occur, the applicant shall cooperate with the Town of Barnstable regarding vehicular access from the lot to said roadway.*
17. *The occupant of the building and/or applicant shall be responsible for the proper maintenance and upkeep of the landscape and property, including on-site litter control, periodic cleaning and sweeping of the parking lot, watering and irrigation of the landscape, maintaining of site lighting, annual cleaning of the catch basins, demarcation of on-site parking and circulation, and on-site traffic signage. Lighting at the access and egress portions of the property along Route 132 shall be provided as set forth in the plans and maintained as to assure maximum safety conditions for vehicles using this portion of the roadway.*
18. *Delivery vehicles shall, to the fullest extent possible, use the rear access to the property is available. All such deliveries to the greatest extent possible shall be made between the hours of 6:00 AM and 10:00 PM.*
19. *The applicant shall comply with all terms and conditions imposed by this Town's Department of Public Works with reference to the curb cuts permits but the elongated curb cut shall not be altered without further approval from this Board.*
20. *All drainage shall be contained on-site and shall not be allowed to run off onto Route 132 or any abutting properties. All drainage shall be so disposed as not to overburden Town sewerage.*
21. *The applicant shall contribute the sum of \$5,000 to the Town of Barnstable that shall be earmarked to enhanced safety on Route 132 in this segment of the roadway. The intent of this contribution is to further discourage left hand turning movements. The funds shall be contributed at the time the building permit is applied for.*
22. ~~The lighting plan submitted with the plan set referenced herein shall be implemented and maintained to assure proper safe levels of lighting at the entrance to the site as well as throughout the parking area of the Property.~~
23. ~~The Petitioner shall comply with all conditions and specifications of the Department of Public Works regarding the elongated curb cut to be installed as the entrance to the Property. It~~

~~shall not be altered in the future without due notice to the Office of the Zoning Board of Appeals for a determination if that proposed alteration will require prior approval of the Zoning Board of Appeals.~~

24. The applicant shall not exercise its rights under this decision until such time as it provides the Building Commissioner with a final, fully executed and recorded decision ~~copy of the Cape Cod Commission DRI Decision. and a recorded copy of this Special Permit Decision.~~

Jerry Gilmore seconds.

Vote:

AYE: Ron S. Jansson, James R. Hatfield, Jeremy Gilmore, John T. Norman,

NAY: Gail C. Nightingale

Gail Nightingale indicates that her reasons for voting in the negative are because she does not feel there are variance conditions and she does feel that the location of the parking at the rear with the building only located 45 feet back from Route 132 would have an adverse environmental impact.

Gail Nightingale indicates they will now do the 2008-011 which is the Special Permit.

Ron Jansson does the findings for 2008-011.

With reference to appeal 2008-011, conditions #1, 2, and 4 that were set forth in the prior variance findings are incorporated without having to repeat each one of them.

New condition #4 with reference to findings. The Property is also located in the Groundwater and Wellhead Protection Overlay Zoning Districts. Those districts were imposed in 1987 and overlay the underlying zoning. The overlay district regulations, in addition to prohibiting certain uses and the storage of hazardous materials, imposed limits on the extent of impervious coverage of a lot. The current use and development of the lots predates adoption of groundwater protection and the lots do not conform to the 50% maximum impervious lot coverage.

5. The applicant/petitioner is proposing to demolish the two existing buildings on the Property and redevelop the 2.53-acre site with a new one-story, 23,500 square foot retail sales building, parking and associated site improvements. The site is to be occupied by Circuit City, Inc., an electronic "superstore" retailer as the sole tenant of the property. Plans for the redevelopment have been submitted. In addition to the redevelopment site, the applicant/petitioner has agreed to assist the Town of Barnstable in the acquisition of two lots that abut the Airport Rotary at the intersection with Route 132 – the Off-Site Mitigation Property. The two lots are the former 266-seat, nonconforming "Chili's Restaurant" addressed as 545 Iyannough Road and the accessory employee parking lot adjoining Wendy's addressed as 0 Iyannough Road. The restaurant closed on September 15, 2005 and has been vacant since then. The Zoning Ordinance defines abandonment as nonuse of the property for three years **or more; therefore, the restaurant that was at the site **has not lost** its nonconforming rights. The two lots **that are going to be provided in mitigation** total 0.95-acres and are in the same Highway Business and Groundwater Protection Overlay Zoning Districts as the redevelopment property.**

6. *The proposed redevelopment has been found to be a Change of Use as well as development that exceed 10,000 sq.ft., and triggered a review as a Development of Regional Impact (DRI) by the Cape Cod Commission. The Commission's DRI review was that of a limited review to issues of Community Character, Economic Development, Transportation, and Water Resources. On February 7, 2008, the Commission issued its DRI Decision with conditions.*

7. *The proposed redevelopment has also been reviewed by the Town of Barnstable Site Plan Review Committee and a site plan approval letter dated February 11, 2008 has been issued with conditions. The site plan approval satisfies one of the three prong requirements of Section 240-125.C for the grant of a special permit.*

Ron Jansson asks if we have incorporated the conditions of site plan approval in our decisions and asks if we know that for sure. Art Traczyk indicates that we can add that in there.

Ron then indicates that Finding #8 from the draft is redundant as it has been referenced it as far as the conditions.

8. *The applicant/petitioner has indicated that they desire this redevelopment to be an asset to the community and an improvement over the current uses on the Property. To this end, the Applicant will be making a contributions of: \$30,000.00 to Barnstable Housing Authority for affordable and workforce housing, \$30,000.00 to the Cape Cod Community College for workforce training, and \$10,000.00 worth of equipment to the Barnstable School System. These contributions are a part of the terms and conditions of Cape Cod Commission DRI and are incorporated by reference into this decision*
9. *Appeal 2008-011 is before the Zoning Board for a Special Permit pursuant to Section 240-25(C)(1) Conditional Use in the Highway Business Zoning District. The applicant/petitioner seeks to redevelop the Property for the retail sales of electronics. Section 240-25(C)(1) authorizes uses permitted in the Business B Zoning District to be located in the Highway Business Zoning District by the grant of a Conditional Use Special Permit from the Zoning Board of Appeals. **Therefore, this Board has the authority to grant with conditions applicable the special permit that is being sought in this application.** Retail Sales is fact a permitted use in the Business B Zoning District and therefore the Board is authorized to grant a special permit.*
10. *To grant the Conditional Use Special Permit requires findings to support that the use does not "substantially adversely affect the public health, safety, welfare, comfort or convenience of the community."*
- a. *This is a business and commercial area of the Town with many of the uses along Route 132 serving Barnstable County and the Cape Cod region. The Cape's major retail malls are in close proximity, as are other freestanding "superstores". Most front on Route132. This area is identified in the adopted Local Comprehensive Plan as a Growth Activity Center. That designation encourages this area as a regional shopping and commercial area. The site is served by pubic water and public sewer. The location of the proposed retail store at this site can and will be adequately serviced by public utilities and town services. It is also compatible with the overall established land use patterns and the redevelopment is consistent with both the adopted as well as the recently revised draft Local Comprehensive Plan.*

- b. *The proposed redevelopment and off-site mitigation that we will impose as part of will reduce demand for public water and reduce wastewater flows to the Town's Wastewater Treatment Plant. The two restaurants, with a possible total of 566 seats, represent a wastewater flow of 19,810 gallons per day. A 23,500 sq.ft. store represents a wastewater flow of only 1,175 gallons per day. A reduction of 18,635 gallons per day. Reduced flows to the public treatment plant are in the interest of the Town as it helps to address the need to extend sewers to other areas of critical concern for nitrogen loading from private on-site septic systems.*
- c. *The redevelopment of the two lots as one, eliminates one of the existing curb-cuts on Route 132. The proposed new site entrance has been designed as an elongated right-in and right-out only driveway to provide safe egress and ingress to the property. In addition, the off-site mitigation property will also reduce curb-cuts on Route 132 and Route 28. Reduction and elimination of curb-cuts will improve traffic flow and safety.*

11. *The redevelopment of the Property and acquisition of the Off-site Mitigation Property has been conservatively estimated to reduce traffic flows by an estimated 514 weekday trips and 642 Saturday trips. Peak hour traffic is also projected to be reduced. The reduction is in the public interest and will enhance safety and comfort of the motoring public.*

12. *These factors support this Board's contention that the proposal before us as well as information provided by the Town, Growth Management Department and others fulfills the spirit and the intent of the zoning ordinance but does not represent a substantial detriment to the public good or the neighborhood impacted provided that the conditions we are about to impose are observed. ~~above are evidence that to grant the relief being requested, fulfills the spirit and intent of the Zoning Ordinance as overall the redevelopment will improve the quality of stormwater infiltration to groundwater, and reduce water consumption and wastewater. The granting of this permit would not represent a detriment to the public good of the commercial neighborhood in which it is located.~~*

Jerry Gilmore seconds.

Vote:

AYE: John Norman, Ron Jansson, James Hatfield, Jerry Gilmore, Gail Nightingale

NAY: None

Ron Jansson makes a motion based on the positive findings he moves that this Board grant the petitioner relief being sought in appeal 2008-011 subject to the same conditions that we have imposed in the granting of the variance.

With reference to Condition #2:

- 2. *The redevelopment shall be limited to a one-story, 23,500 sq.ft., single-tenant building for the retail sales of electronics. The site shall be developed as per the engineered site plan submitted entitled; "Berkshire Development Iyannough Road, Barnstable, Massachusetts – Site Alternative" or in the alternative as prepared by VHB Vanasse Hangen Brustlin, Inc., dated February 23, 2007, and last revised February 1, 2008, showing a 45 foot setback from Route 132. This plan is to be initialed by the Chairperson to avoid any confusion to*

what is granted. The exterior of the building shall be developed as shown on the elevations submitted entitled; "Berkshire Development Hyannis, MA" as drawn by Casco Project Managers. This shall include the exterior coloration of the building (Sheets C1 through C8, SL1 and SV1).

There is a discussion and it is agreed to include either plans. Ron Jansson asks Art Traczyk to come with the language indicating such.

Ron Jansson indicates that 3, 4, 5, 6 as amended, 7, as amended in the variance findings to be incorporated herein.

Jerry Gilmore seconds.

Vote:

AYE: John Norman, Ron Jansson, James Hatfield, Jerry Gilmore, Gail Nightingale

NAY: None

2008-011 Granted with Conditions

In 2008-012, Ron Jansson indicates that he would like to basically like to make the same findings of fact.

Gail Nightingale asks if there is anyway some of the paved parking areas could be made into paver parking areas so that we are bringing the percentage of impervious coverage down even more. Attorney Ford indicates that they try to keep them out of the areas of the trucks.

There is a motion on the floor to make the same findings that they have made in reference to appeal 2008-011 unless there are any additional findings.

Attorney Ford indicates there are.

In addition to the findings that we have made in reference to appeal 2008-011 we shall incorporate in this decision and make as part thereof make the following findings:

*Appeal 2008-012 is before the Zoning Board for a special permit pursuant to Section 240-93 Nonconforming Buildings or Structures Not Used as Single- or Two-family Dwellings. The applicant seeks to redevelop the site with an impervious surfacing of 59.9%. Not in conformity to Groundwater and Wellhead Protection Overlay District regulations that limit lot coverage impervious surfacing to no more than 50%. The existing site is nonconforming in that 61.7% is now surfaced by buildings, pavement and gravel parking. In addition to the 50%, in order to reach that figure the applicant must show that all drainage is contained on site. **The existing site does not have all drainage contained on-site and is even more nonconforming as a result.** Section 240-93.B allows for alterations or expansions of a pre-existing nonconformity **on the site** as that term structure is defined in our zoning ordinance, only by a special permit from the Zoning Board of Appeals.*

The existing site developments on the subject property dates to 1973 for the office use on 640 Lyannough Road, and to 1963 for the restaurant use on 624 Lyannough Road. The Groundwater and Wellhead Protection Overlay District regulations that limits lot coverage to 50% by impervious surfaces was adopted in 1987. The lots as now developed predate the adoption of Groundwater and Wellhead Protection, and therefore the existing 61.7% lot coverage by parking lots surfaces, buildings and walks is a pre-existing legally-created ~~structural~~ nonconformity. The applicant proposes to redevelopment the site with coverage by impervious surfacing of 59.9%. Although less than that which now exists, it still does not meet today's maximum lot coverage by impervious surfacing of 50%. Therefore, the Applicant has requested this special permit for proposed alterations to the site in a manner that does not conform

To grant the Special Permit to allow that alteration requires findings that support "that the proposed repairs, alterations and/or expansion are not substantially more detrimental to the surrounding neighborhood."

- a. Most of the businesses abutting Route 132 in this area predate the adoption of Groundwater and Wellhead Protection and many of the commercial sites do not conform to the 50% impervious lot coverage now required. As most lots are nonconforming and as this redevelopment will overall improve the situation since all run-off is being contained and recharged on-site, the granting of this permit should not represent a substantial detriment to the neighborhood.*
- b. The redevelopment of the property is striving to properly delineate on-site parking and circulation as well as provide proper pavement, drainage and landscaping. This is an upgrade over that which now exists and as the overall commitment of lot coverage by development is being reduced from 61.7% to 59.9%, this is a benefit to protecting the groundwater resources that the ordinance strives to protect. The parking improvements are those that the public have come to expect and meet the requirements of site plan review. From that perspective, it is an improvement for the users of the area and not a detriment.*
- c. The applicant has incorporated a state-of-the-art "best practice" on-site drainage for dealing with surface run-off. The technique being employed diverts run-off into vegetated areas noted on the plan as bio-retention basins. The water will flow over vegetated areas and, to a degree, linger in those areas thereby allowing for a first flush to remove 90% of particulate matter and allow for natural infiltration. The bio-retention basins are vegetated so that plant material will absorb nitrogen and other nutrients rather than leaching them directly to groundwater. At a high storm event, run-off eventually flows into the catch basins and the basins function as needed to assure proper drainage that meets today's standards.*
- d. The applicant has gone one step further to improve the overall situation in this recharge area to the public wells through their 50% share in the acquisition of the Off-Site Mitigation Property. The Off-Site Mitigation Property is initially to be restored as landscaped areas. The lots total 0.95 acres and will result in all of the property being rendered pervious, except as may be needed for public amenities and in the future for roadway improvements. This is an added benefit that will improve groundwater recharge to the public supply wells.*
- e. The proposed redevelopment and off-site mitigation reduces demand for public water and reduces wastewater flows to the Town's Wastewater Treatment Plant by*

18,635 gallons per day. Reduced flows to the public treatment plant are in the interests of the Town.

Jerry Gilmore seconds.

Vote:

AYE: John Norman, Ron Jansson, James Hatfield, Jerry Gilmore, Gail Nightingale

NAY: None

Ron Jansson makes a motion based on the positive findings, to grant the relief being sought subject to all of the terms and conditions that we have enumerated in the granting of variance 2008-010 and the special permit 2008-011.

Jerry Gilmore seconds

Vote:

AYE: John Norman, Ron Jansson, James Hatfield, Jerry Gilmore, Gail Nightingale

NAY: None

Appeal 2008-012 Granted with Conditions

Motion to adjourn

Meeting adjourned at 9:28
