Town of Barnstable
Zoning Board of Appeals
Minutes
February 13, 2008

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday, February 13, 2008 at 7:00 PM 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.

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

Gail Nightingale opens the hearing at 7:04 PM and reads a summary of the appeals into the record.

She then calls the Crosby appeal.

Appeal 2008-006 - New Crosby
Bulk Variance Minimum Front Yard Setbacks.

Roger M. & Jane M. Crosby have applied for a Variance to Section 240-11.E, Bulk Regulations, Minimum Front Yard Setbacks. The applicants seek to add a 2 foot by 6 foot front vestibule entrance to the existing nonconforming single-family dwelling. The location of the vestibule is 22.9 feet from the front property line and will infringe 2.6 feet more that the existing dwelling which is located 24.3 feet off the front yard setback. The property is addressed as 89 Emerson Way, Centerville, MA and is shown on Assessor’s Map 188 as parcel 021. It is in a Residence D-1 Zoning District.

Members assigned: Jerry Gilmore, James Hatfield, Dan Creedon, John Norman, Gail Nightingale

Attorney Freeman is representing the applicants who are also here. He gives a brief explanation of the reason for the appeal. He submits copies of letters from abutters who are in favor...
Gail Nightingale indicates the letters are from:
Edward & Karen Rodman of 61 Emerson Way, Marja Watson of 69 Emerson Way, Margaret & Timothy Wuskell of 100 Emerson Way, Jeffrey & Lisa Zent of 99 Emerson Way, and Nancy & J. Kevin Griffin of 79 Emerson Way which are submitted to the file.

Attorney Freeman gives the details of the reason for the request for the variance. He indicates that the applicants were unaware of the zoning regulations regarding the front yard setback and proceeded to build the vestibule. He indicates that they were made aware by the building inspector of the problem; therefore, applied for a variance for the small added area. He indicates that they are close to a special permit but they can’t find the building permit to the satisfaction to show that it was legal nonconforming structure and believes it is safer to ask for the variance. He indicates that the hardship is an internal, practical reason as the swing of the door comes extremely close to the bottom of the stairs when opening. He refers to the photos submitted. He indicates that Mr. Crosby is a builder by trade. He then indicates that site plan is accurate. Attorney Freeman points out that the neighboring houses are all about the same distance from the street.

Gail Nightingale asks if there is anyone here from the public either in favor or in opposition. No one speaks either in favor or in opposition.

Dan Creedon does findings.

1. The applicants in Appeal 2008-006 are Roger M. & Jane M. Crosby. The subject property is addressed as 89 Emerson Way, Centerville, MA and is shown on Assessor’s Map 188 as parcel 021. It is in a Residence D-1 Zoning District. The applicants seek a variance from the minimum front yard setback in order to expand the existing dwelling with a modest one-story addition consisting of a 2-foot by 7-foot front vestibule. The existing structure is located 24.3-feet off Emerson Way and is nonconforming to the required 30-foot front yard setback. The addition will increase that degree of nonconformity in setback by 2.6 feet resulting in a new setback of 22.9 feet.

Attorney Freeman asks that it be said that the addition is to be “2-foot by 6-foot interior and 2-foot by 7-foot exterior”. Dan Creedon amends it to say “2-foot by 6-foot interior and 2-foot by 7-foot exterior”.

2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship to the petitioner as the entrance area of the home lacks sufficient space to safely enter and leave the premises given the location of stairs in close proximity to the front door.

Jerry Gilmore seconds.

Vote:
AYE: Jerry Gilmore, James Hatfield, Dan Creedon, John Norman, Gail Nightingale
NAY: None

Dan Creedon makes a motion to move to grant the variance subject to the following conditions:
1. This variance is granted to allow for an addition of a front door vestibule that will infringe further into the nonconforming front yard setback. The infringement is limited to that shown on the proposed land survey plan submitted with the application and entitled “Plan Showing Proposed Entry at 89 Emerson Way Barnstable, (Centerville) Mass.” dated December 14, 2007, as drawn by Cape Surv. The addition is limited to that of a 7-foot wide by 2 foot deep to the interior one-story vestibule as shown in plans submitted with the application and labeled; “Crosby 89 Emerson Way, Centerville”.

Jerry Gilmore seconds.

Vote:
AYE: Jerry Gilmore, James Hatfield, Dan Creedon, John Norman, Gail Nightingale
NAY: None

**GRANTED WITH CONDITIONS**

Gail Nightingale then recuses herself from all the Corey hearings and turns it over to Dan Creedon.

Dan Creedon calls the Corey appeals.

**Appeal 2006-024 - Continued**

Corey
Conditional Use in a Highway Business

Members: Ron S. Jansson, James Hatfield, Daniel M. Creedon, Kelly Kevin Lydon, John T. Norman
No Alternates


Continued for Peer Consultants review of traffic and rework of conditions based upon revised plans submitted that eliminated the access roadway onto Wequaquet Lane.

Donald J. Corey, Jr., has petitioned for a Special Permit pursuant to Section 240-25 (C)(1) Conditional Use in a Highway Business District and a Modification of Special Permit 1969-66 issued to Father McSwiney Associates Inc. The applicant seeks to demolish the existing Knights of Columbus Hall and redevelop the site with a 9,801 sq.ft. retail building and related site improvements. Use of the site is to be that of retail sales of liquor. The property is addressed as 1030 Falmouth Road (Route 28), Centerville/Hyannis, MA, as shown on Assessor’s record as Map 250 as parcel 065, in a Highway Business and Residence D-1 Zoning District.

**Appeals 2007-009 & 010 - Continued**

Corey


Given the plan changes, Staff anticipates that Appeals 2007-009 & 010 will be requested to be withdrawn.
Appeal 2007-009  Conditional Use Special Permit

Donald J. Corey, Jr., has petitioned for a Special Permit pursuant to Section 240-25(C) Conditional Use in a Highway Business Zoning District. The applicant seeks to designate a 30-foot wide easement from Wequaquet Lane to property addressed as 1030 Falmouth Road (Route 28), Centerville/Hyannis, MA. The easement is to be developed as a driveway for access to and egress from a proposed commercial development of 1030 Falmouth Road. The easement and drive is to be created over land addressed as 28 and 0 Wequaquet Lane, Centerville, MA, and 0 and 1030 Falmouth Road, Centerville/Hyannis, MA. The property is shown on Assessor’s Map 250 as parcels 024, 023X02, 023X01 and 065. The land is zoned Residence D-1 and Highway Business.

Appeal 2007-010  Use Variance for Driveway

Donald J. Corey, Jr., has applied for Variances to Section 240-11(A) Principal Permitted Uses and Section 240-11(E) Bulk Regulations of the Residence D-1 Zoning District. The applicant seeks to designate a 30-foot wide easement from Wequaquet Lane to property addressed as 1030 Falmouth Road (Route 28), Centerville/Hyannis, MA. The easement is to be developed as a driveway for access to and egress from a proposed commercial development of 1030 Falmouth Road. The easement and drive is to be created over land addressed; 28 and 0 Wequaquet Lane, Centerville, MA, and 0 and 1030 Falmouth Road, Centerville/Hyannis, MA. The property is shown on Assessor’s Map 250 as parcels 024, 023X02, 023X01 and 065. The land is zoned Residence D-1 and Highway Business.

Noticed Anew - Continued  Corey

Appeal 2006-024, Appeal 2007-009 and Appeal 2007-010

These appeals were also re-noticed anew to allow for a new public hearing to be heard should it be necessary for quorum. Public Notices were the same as above with the notation “This Appeal is being re-noticed to allow for a new public hearing if necessary.”

No Members Assigned - No Testimony taken

Attorney Patrick Butler is representing the applicant. He recognizes that 2 of the Board members are not here and is asking for the February 27th continuance. He indicates that at the next meeting he will provide staff with report on the peer traffic review.

Dan Creedon asks about signing time extensions. Attorney Butler indicates he will review the new extensions.

Attorney Butler also indicates that there was a discussion the previous night by the School Committee and that they will be meeting with the Committee before the next hearing.

Art Traczyk indicates that they can continue it at 7:45 on February 27, 2008.

Dan Creedon continues this to February 27, 2008 at 7:45 PM.

Art comments that Kelly Lydon will not be here at the February 27th hearing.

The Board and Attorney Butler talk about schedules and agree to continue this to the February 27th hearing.
At 7:22, Gail Nightingale calls the Cape Codder Resort appeals.

Members assigned: Sheila Geiler, John Norman, Dan Creedon, James Hatfield, Gail Nightingale

She then reads the appeals into the record.

**Appeal 2008-007 - New**

**Cape Codder Resort**

**Expand/Alter Nonconforming Structure/Building**

Cape Codder Resort has petitioned for a Special Permit pursuant to Section 240-93.B Nonconforming Buildings or Structures Not Used as Single- or Two-family Dwellings. The petitioner seeks to expand the existing structures located on the property by adding a third floor to existing and proposed new sections of the hotel and to increase the existing nonconforming lot coverage from 56.4% to 61.9%. The property is addressed as 1225 Iyannough Road (Route 132) and 0 Settlers Lane Hyannis, MA and is shown on Assessor’s Map 273 as parcels 023 and 122. The property is in the Highway Business, B Business, Residence C-1, and Groundwater Protection Overlay Zoning Districts.

**7:15 PM**

**Appeal 2008-013 - New**

**Cape Codder Resort**

**Bulk Variance Maximum Building Height**

Cape Codder Resort has applied for a Variance to Section 240-21.E Bulk Regulation – Maximum Building Height. The applicant seeks a variance to allow for the addition of a third floor where two stories is the maximum allowed in business zoning districts. This variance is sought in the alternative to the above nonconforming special permit application in order to expand a part of the existing structure and the proposed new structure to be located on the property. The property is addressed as 1225 Iyannough Road (Route 132), Hyannis, MA, and is shown on Assessor’s Map 273 as parcel 023. The property is in the Highway Business, B Business, and Groundwater Protection Overlay Zoning Districts.

**Appeal 2008-014 - New**

**Cape Codder Resort**

**Conditional or Nonconforming Use Special Permit**

Cape Codder Resort has petitioned for a Conditional Use Special Permit pursuant to Section 240-25.C, Conditional Uses in a Highway Business Zoning District, or in the alternative, an expansion of a nonconforming use pursuant to Section 240-94 – Nonconforming Use. The petitioner seeks to expand the existing hotel use of the property. A small addition of which is situated within that area of the lot zoned Highway Business that does not allow a hotel use as-of-right. The property is addressed as 1225 Iyannough Road (Route 132), Hyannis, MA and is shown on Assessor’s Map 273 as parcel 023. The property is in the Highway Business, B Business, and Groundwater Protection Overlay Zoning Districts.

**Appeal 2008-015 - New**

**Cape Codder Resort**

**Use Variance**

Zoning Board of Appeals - Agenda - February 13, 2008
Cape Codder Resort has applied for a Variance from Section 240-14.A - Principal Permitted Uses. The applicant seeks the variance in order to use a land locked vacant parcel consisting of 0.56-acres that is zoned residential as accessory to the hotel for parking and drainage. The subject vacant parcel is addressed as 0 Settlers Lane, Hyannis, MA, and is shown on Assessor’s Map 273 as parcel 122. The property is in the Residence C-1 and Groundwater Protection Overlay Zoning District.

Attorney Michael Ford is representing the applicant. Also present are Greg Siroonian, the architect from RESCOM Architectural, and Bill Catania, whose family are the owners.

Attorney Ford indicates that this is an effort to upgrade the hotel in order to be competitive. He points out a blue area on the plans and indicates that this area is currently the outdoor recreation area over which is proposed a retractable roof. He indicates that there will be additional water features proposed to be placed in that area. Currently, there is an indoor wave pool and an outdoor volleyball court and other outdoor recreational activities and it is hoped by having the retractable roof that some of those amenities will be available year round and expand some of the water facilities that currently take place inside. That particular improvement doesn’t need zoning relief but thought since it was all in the business zone, a permitted use, it obtained site plan review and has been before the CCC and received an exemption he would mention it. The portion of the project that is before the ZBA is that colored in red on the plan. That portion of the project is where the 15 new hotel units are proposed on the third level and an adjoining spa building attached to them that is also proposed to have a third level and will be attached to the existing hotel building. The spa building has a new footprint but is to be constructed as part of the hotel building so that you do not have to go outside, corridors will connect into that spa building.

Dan Creedon asks to clarify the elevations.

Attorney Ford indicates that the site will be upgraded, a new bio-retention system and the area of the site plan in light brown is an area that is currently zoned RC-1 which abuts the hotel area and they are proposing to put parking and drainage on that parcel. He points to a new outdoor swimming pool.

Dan Creedon asks where the retractable roof is going to be placed and is informed by Attorney Ford that it doesn’t need relief under the zoning bylaw.

Dan Creedon asks for clarification on unit levels and is told that the units on the second floor facing the street will have two floors and that nothing will be higher than what is already out there for the building.

Gail Nightingale asks if they are required to have those parking spaces or are they beyond what is required. Attorney Ford indicates there might be 5 more than needed but because of the location to the spa is the reason for locating them. He indicates that they owned the lot when it was rezoned in 2004, but that they did not have an ANR plan and therefore require a use variance.

James Hatfield asks what is on the lot now. Attorney Ford indicates that it is vegetated and 70 feet wide. He indicates that they are proposing to leave 40 feet as vegetated and use 30 feet.
Dan Creedon asks how close the nearest neighbor is. Attorney Ford indicates that he believes there is a subdivision road but no homes.

Attorney Ford then goes on to give a summary of what groups and applications they had submitted and the results of those meetings. He indicates they had received a favorable DRI decision and a site plan approval letter. He indicates that they would be conducive to having the concerns of the site plan review as conditions in the decision.

He then gives a history of the hotel. He indicates that 1985 was the last time improvements had been made which dealt with the HB district. In 1987 the overly district came into view with the GP zone. He suggests it predated the GP district. He suggests that the use variance in 1971 is moot but that the variance and special permit in 1985 are still in play. He suggests that the site coverage is around 59% and is seeking to increase to 61%. He indicates that he had questions because it was in the Business zone if they needed height relief but decided to bring it to the Board to see if they are pre-existing. He indicates that the height to ridge is less than 30 feet and they are not seeking to go higher than 30 feet. Attorney Ford then talks about lot coverage and the stormwater system which is in the CCC staff report for which they have gotten kudos for. Greg Siroonian, the architect, shows the elevations on the easel and the retractable roof.

Attorney Ford indicates that the site is on sewer and that there is no effect on wastewater. They are in a GP zone and the hotel is switching to ozone and ultraviolet and carbon dioxide treatment system which will allow them to use less chlorine and have less chlorine on site and was suggested in their DRI exemption. They had a transportation study done and the results were that the new units would increase the vehicle trips at the site by 142, in the peak hours it is only 6 to 8 new trips, which is below the 25 new trips by the CCC and therefore they felt didn't need any further mitigation.

He then gives a summary of relief being sought and suggestions for conditions and what the Board needs to find.

He indicates that through a series of permits tied into one permit that this is a unique building as to where it sits on the lot. He also indicates that they are seeking special permit relief as it pertains to the use in the HB zone. The last is the residential portion which is landlocked, unbuildable, vacant, and because there isn't an ANR they cannot use the 30 foot incursion right under the ordinance.

Gail Nightingale asks if the smaller lot is under the same ownership as the bigger lot. Attorney Ford indicates yes and indicates that the smaller lot is proposed to be part of the hotel lot and is being used for parking and is critical to their new stormwater bio-retention system. It is 70 feet in width and they are using 30 feet of it and will abide by a condition that the 40% will be left as a buffer. Gail clarifies that this is not landlocked. Attorney Ford indicates it is landlocked in a zoning manner.

Gail Nightingale then asks if they have received Mass Aeronautical approval. Attorney Ford indicates that it is a condition of the site plan and that they have not gotten it as of yet.

John Norman asks if the east elevation is exceeding 30 feet to the ridge. Attorney Ford indicates that the height requirement is to the plate, not ridge. Greg Siroonian indicates that the ridge height is not restricted to 30 feet. John then asks how many rental rooms there are currently and Attorney Ford indicates 258 and indicates that the proposal is for 283.

Dan Creedon asks if the proposed units can be mixed and matched as the 2 bedroom unit looks like it could be rented as a regular room and a 1 bedroom suite-type. Bill Catania indicates that
they have set it up so that there is a lock off so that one of the rooms could be separated and used as a rental.

Bill Catania indicates that could be done and that 30 is the maximum lock off. John Norman asks what percentage is ground cover. Attorney Ford indicates that it will be 61% and they have included everything.

Dan Creedon asks what the maximum combination of these 15 new rooms would be. Bill Catania indicates 30. Dan then asks for figures on the east side for the proposed and existing height to the ridge. Greg Siroonian indicates he doesn't have the exact calculations but indicates that it is approximately 4 to 5 feet above the ridge. Dan asks what the height is to the ridge of the retractable roof. Greg Siroonian indicates 45 feet and shows a realistic rendering photo to the Board. The Board and Attorney Ford discuss relief regarding the third floor. Gail Nightingale asks if there are elevators and is told yes.

James Hatfield asks him to go over the additional parking configurations. Greg Siroonian shows that the parking had to be reconfigured because of the spa and bio-retention area. Attorney Ford indicates that they have gone from 435 parking spaces to a total of 440 spaces.

Dan Creedon asks about the spa. Bill Catania indicates that the existing spa is approximately 6,000 to 7,000 feet and that they are moving it. He indicates that the proposed spa will be 15,000 square feet. Bill also indicates that some of the existing spa is going to be made back into guest rooms and a children's spa. Attorney Ford indicates that they would live with a condition limiting the guest rooms in this area. Attorney Ford indicates that the spa is open to the public and the new one will also be.

Gail Nightingale asks if there is anyone here either in favor or in opposition.

Patty Daley, Director of Growth Management, indicates that their major concerns was that it is in the Groundwater Protection Overlay District and is happy with the stormwater improvements which will increase groundwater quality. She indicates that she has also worked with the applicant regarding extending the multi-modal path which will be part of the improvements on Route 132. She indicates that the applicant is willing to continue this path along the front of his property for bike and pedestrian as well as landscaping this area and is pleased. Dan Creedon asks if she has suggestions for conditions regarding this path. Patty Daley indicates that they do not have anything as of yet but suggests a general condition consistent with the Route 132 path improvements to be approved by Staff at some future point and supports their proposal.

Dan Creedon asks Attorney Ford if his client is in agreement with a condition regarding the path and answers yes.

Gail Nightingale then asks again if there is anyone else from the public either in favor or in opposition. No one speaks. Gail asks Art Traczyk if there are any letters in the file either in favor or in opposition and is told no.

Gail Nightingale asks where the dumpsters are located. Bill Catania indicates there is one near the loading dock, another one near the laundry area that is screened, and a cardboard dumpster. He indicates he may even be able to remove it or screen it.

Dan Creedon and Gail Nightingale discuss the residential subdivision plan.

Dan Creedon and Art Traczyk discuss what constitutes a story according to zoning or building code. Dan indicates that he would like to defer it to the Building Commissioner but thinks that it should be better handled with a variance.
Gail Nightingale asks if these are apartment units and not hotel rooms. Attorney Ford indicates that these are considered hotel rooms and have to be used on a transient basis and as part of the hotel. Gail asks even though they have kitchenettes? Attorney Ford indicates that the kitchen facility is a question of use and can only be used on a transient basis. He indicates that they do intend to sell tenth shares in those units for a maximum of 7 days at a time and that the 15 units will be fractional time shares. Bill Catania explains that the limit to use is 5 weeks and a maximum of 7 days at a time. Attorney Ford indicates that they will submit documents to the Building Commissioner indicating such. Attorney Ford also explains that when it is not being used for time share the hotel will rent it out as a hotel unit and managed as a hotel unit. Gail asks Art if it will be inclusionary zoning. Art indicates that he understands that because of the agreement of one week stays it won’t be.

Gail Nightingale asks the Board if they are ready to vote. Dan Creedon asks Art if he has gone over the findings and conditions that Attorney Ford had submitted which he indicates that he hasn’t.

At 8:39 PM, Gail calls a recess so that Art can read over the draft conditions submitted by Attorney Ford.

Back in session at 8:45 PM

Dan Creedon does findings:

In appeals 7, 13, 14 and 15 of 2008 the petitioner is Cape Codder Resort and addressed as 1225 Iyannough Road (Route 132) and 0 Settlers Lane Hyannis, MA on Assessor’s Map 273 as parcels 023 and 122. It is in a Highway Business, Business B, Residence C-1, & Groundwater Protection Overlay Zoning Districts.

The applicant has applied for a special permit under Section 240-93.B to expand existing structures by adding a third floor to part of the hotel and to increase a nonconforming lot coverage from 56.4% to 61.9%.

The applicant has applied for a variance under section 240-21E Bulk Regulation Maximum Building Height to add a third floor as part of the hotel.

The applicant has applied for a Conditional Use Special Permit for a hotel use in the Highway Business Zoning District and has applied for a variance under 240-14.A to use a .56 acre parcel zoned residential as accessory to the hotel for parking and drainage.

Lot 23 of the property is located in the B and HB zoning district in the GP Overlay District. A portion of the locus was formerly located in RC-1 district and in November of 2004 the locus was rezoned and most of the RC-1 locus became part of the B District. Lot 122 is a .56 acre non-buildable land locked parcel that is located in the RC-1 district.

The subject property is a 13.1 acre with a 215,124 square foot, 258-room hotel and its accessory uses and parking. Accessory uses include a restaurant, spa, function rooms, indoor pool, an outdoor tennis court, and associated landscape.

The applicant seeks to alter and expand the existing motel by adding 24,000 square feet (a 6,000 s.f footprint) to the southeast of the main building where the spa will be relocated; in addition, 15 new hotel units (nine two-bedroom and six three-bedroom) are proposed to be
constructed in a proposed third floor should that relief be granted; the proposal also includes the enclosure of the 19,000 square foot atrium/swimming pool area, to be used for an indoor water park. Site improvements include a new outdoor pool, expanded and adjusted on-site parking, and incorporation of landscaped bio-retention areas for collection of surface run-off.

The site, as presently developed, is nonconforming to the Groundwater Protection Overlay District regulations, because more than 50% of the site is impervious. The applicant will expand the existing footprint of the buildings as well as increase the ground pavement associated with the motel and its proposed expansion. This will extend non-conforming site coverage from 56.4% to 61.9%. The proposal includes mitigation through the adoption of and initiation of a bio-retention storm water management program that is designed to reduce the impact of impervious coverage

This property and its development had the benefits of prior zoning relief. Use Variance No. 1971-4, initially allowed for the motel use in the than Residence C-1 Zoning District part of the lot. That decision refers to 160 total units. In November 2004, the Barnstable Zoning Map was amended to rezone that portion of the property from RC-1 to Business B Zoning District where hotel use is permitted as-of-right.

In 1985, Appeal 1985-33, registered with the Land Court as Document #362949-1, allowed a 95-foot front yard setback from Route 132 where 100 feet is required. The appeal also approved a one-story addition to the existing building in the Highway Business zoned portion of the property for new function rooms, an enlarged kitchen, exercise room, second lobby, and elevator. Those improvements resulted in a 22.1% building coverage (based on 11.43 acres of total lot area), 261 total units, and 350 total parking spaces referenced in the decision.

The applicant seeks relief by variance to add a third story to the existing building as well as to the new proposed building.

Cape Cod Commission’s Decision dated January 10, 2008, granted a Development of Regional Impact (DRI) Exemption, concluding that the location, character, and environmental effects of the project will prevent its having any significant impacts on the values and purposes outside the Town of Barnstable.

Applicant seeks to increase the existing nonconforming lot coverage from 59% to 61.9%. Maximum lot coverage in the GP district is 50%. The drainage plans for the expansion include nitrogen mitigation improved stormwater run-off control through the adoption of an initiation of a stormwater bio-retention program that is designed to reduce the impact of impervious coverage

The landscaping will be designed to improve stormwater management. The bio-retention areas are sized to meet or exceed the water quality storm first flush.

The enhanced filtering of the runoff by the bio-retention system will correlate to 25.9% impervious lot coverage.

The building will be on public sewer and will not have an adverse effect on public health.

The continued use of this building as a motel/hotel will not have a negative impact on the safety, welfare, comfort or convenience of the community.
Expansion is needed to keep this property vital and competitive with other resorts in the area. The additional rooms in the hotel will generate revenues that will finance the new roof, spa, and new pool. These improvements will elevate the level of service to attract visitors to this facility.

The landscaping and parking, as shown on the plan, will improve the appearance of the property to passersby on Route 132 and to other businesses and residences in the neighborhood.

The variance is sought from section 240-21E Bulk Regulations Minimum Lot Size Requirements to permit a third story over two of the existing buildings as well as on the proposed new structure. The proposed new 3 story building will continue the hotel/motel in accessory usage. The building height will be less than 30 feet and the variance relief is sought only for the number of stories. The building already has a third level and meets the 30 foot height requirement so improvements would not generally affect the zoning district in which it is located. The additional rooms to be built in the third story of the hotel will generate revenues that will finance the new roof, spa, and new pool. The additional rooms to be built in the third story of the motel will generate revenues that will finance the new roof, spa, and new pool.

These improvements will elevate the level of services provided in this facility and establish this property as a tourism destination in the area. A literal enforcement of the provisions of the Zoning Ordinance will involve substantial hardship to the applicant by limiting the improvements that can be made to the property.

The expansion and improvements to this property will result in an attractive, well-maintained, up-to-date facility that will be an asset to the neighborhood and community without derogating from the intent or purpose of the Zoning Ordinance.

The applicant also seeks variance relief for the .56 acre parcel which is Lot 122 which is in the District which is to be used as accessory parking, drainage and landscaping.

Lot 122 is located 488 feet from Route 132 at its closest point, and is completely landlocked

Development for parking and landscaping will enhance the appearance of this property and improved drainage will be an asset to the neighborhood and to the expansion of the motel/hotel.

A literal enforcement of the ordinance will negatively affect the applicant's ability to expand the hotel and spa by limiting parking, impeding stormwater drainage, and detracting from the landscaping plan. This hardship results from the unique shape of the buildings on this lot, which directly affects creation of new units within the two-story limitation

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 ordinance, in that the third story units will not exceed the 30 foot height requirement nor will they be visual to the general public as they are located behind the third level façade of the existing building. The property is already nonconforming as to the impervious coverage. The petitioner seeks to mitigate that with improved landscaping and stormwater management.
A literal enforcement of the ordinance would also prohibit the use of Lot 122 (zoned Residential) for any purpose since the lot is currently unbuildable. This hardship results from the shape of the parcel and the fact that it is landlocked.

As a further finding, Dan Creedon would like to add that as to the request for a variance to add the third story, there is a unique condition that exists that pertains to this property which is the structures on the property and the shape of those structures and the location of the structures on the lot which would make a literal enforcement of the ordinance a hardship to the applicant.

James Hatfield seconds.

No discussion. Gail Nightingale clarifies with Dan Creedon that these findings pertain to 2008-013, 2008-014, 2008-015 and 2008-007.

Vote:
AYE: James Hatfield, Dan Creedon, John Norman, Sheila Geiler, Gail Nightingale
NAY: None

Dan Creedon makes a motion based on the positive findings to grant the special permit requested under 2008-007 and that portion of the special permit that would allow the impervious coverage to increase from 56.4% to 61.9%. He would also move to grant the variance requested under 240-21E to permit the addition of a third story over an existing portion of the hotel and the third story on a proposed new story, the spa building. He would also move to grant under section 2008-014 under that section Condition Use Permit to allow a hotel use in a HB zoning district and move to grant the variance requested under 2008-015, Section 240-14A to use a .56 acre parcel zoned residential to use accessory to the hotel for parking and drainage subject to the following conditions:

1. Improvements to this lot shall be as per plans submitted and entitled: “Cape Codder Resort & Spa, 1225 Iyannough Road, Hyannis, MA” dated September 24, 2007, as prepared by Holmes and McGrath, Inc., and Rescom Architectural, Inc. The site area architectural plan set includes 12 sheets:

   - Title Page
   - Plan of Existing Conditions revised 12/23/07 - Sheet 1 of 2 (Holmes & McGrath, Inc.)
   - Site Plan of Proposed Development revised 12/23/07 - Sheet 2 of 2 (Holmes & McGrath, Inc.)
   - Stormwater Management dated September 2007 - Sheet 1 of 1 (Horsley Witten Group)
   - Existing Footprint Plan dated 09/24/07 - EX1 (Rescom Architectural, Inc.)
   - Existing Elevations dated 09/24/07 - EX2 (Rescom Architectural, Inc.)
   - Proposed Footprint Plan dated 09/24/07 - SP1 (Rescom Architectural, Inc.)
   - Proposed First Floor Plan dated 10/12/07 - A1 (Rescom Architectural, Inc.)
   - Proposed Second Floor Plan dated 10/12/07 - A2 (Rescom Architectural, Inc.)
   - Proposed Third Floor Plan dated 10/12/07 - A3 (Rescom Architectural, Inc.)
   - Proposed Unit Plans dated 09/24/07 - A4 (Rescom Architectural, Inc.)
   - Proposed Lighting Plan dated 09/24/07 - LT1 (Rescom Architectural, Inc.)
2. The applicant shall be responsible for securing approvals from Massachusetts Aeronautics Commission and Federal Aviation Administration prior to the issuance of any building permit.

3. All on-site storage trailers shall not be permitted.

4. The location and size of all on-site water lines will need to be provided.

Dan Creedon indicates we don’t have that in our plans right now. Attorney Ford indicates that they hadn’t been developed to that point and the Site Plan Review wanted that in there.

5. 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 in the stair wells in the three story sections, fire hydrant locations within 100 feet of the back of the building with connection, and interior building sprinkler system. Dan then questions where the sprinkler system is to be located. Greg Sironian indicates that it is for the new improvements and for the existing structure supporting the new improvements. There is a discussion and Attorney Ford suggests that maybe the condition could read that the building will be sprinkled with direction from the Fire Department. Dan Creedon agrees and makes amendment as follows: “As to the safety sprinkler system shall be installed per Fire Department Code and stipulation and will be administratively reviewed for compliance therewith by the Fire Department.”

6. All on-site dumpsters shall be screened and shall meet all Board of Health regulations.

7. Chemical storage shall be separated from all electrical utilities and all pool pumping equipment. A plan for that separation shall be developed and approved by the Fire Department and Building Division prior to the issuance of any building permit. That plan shall be fully implemented prior to the issuance of any occupancy permit for any new building area authorized in this permit.

8. The applicant shall construct a continuation of the multi-modal path and corresponding landscaping along the portion of its property adjacent to Route 132 in coordination with the Town.

Attorney Ford indicates that most of the improvements will be in the layout of the road, the state land, and so they are not necessarily involved in the construction but they are involved in the financing of it and doesn’t know what kind of permissions he will be given but they will work with the Town on that. Dan asks if they put “either will be constructed on the applicant’s property or if it is to be continued in the layout then the applicant will fund the construction of that on the state road layout or in the state road layout”. Attorney Ford agrees.

9. The area from the entrance at Bearses Way to the front of the hotel shall be designated and marked as a fire lane. A plan for the demarcation shall be developed and approved by the Fire Department prior to the issuance of a Building permit regarding improvements and shall be made prior to any occupancy permit. Any required on-site drainage improvements needed in this area shall also be completed prior to the issuance of an occupancy permit.

10. The applicant must obtain all other applicable permits, licenses, and approvals as required in addition to the relief being granted by this Board.

11. The applicant will submit a final set of plans to Site Plan Review reflecting this decision.

12. Upon completion of all work, a registered engineer or land surveyor shall submit a letter of certification made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the approved site plan (Zoning Section 240-104 (G). That document shall be submitted prior to the issuance of the final certificate of occupancy.
13. The applicant shall comply with all conditions of the Cape Cod Commission decision which was a DRI exemption. The new 15 units to be added will be hotel units which will be used for transient use only. Total number of units resulting in the complex will not exceed 276.
14. There will be no more than 450 parking spaces.
15. The balance of the residential lot, Lot 122, that is not being developed will be maintained in its natural state and condition.

Gail Nightingale wants to correct that to the rear 40 feet as the 30 feet is going to parking and the rear 40 is going to be in a natural state.

James Hatfield seconds.

No discussion.

Vote:

AYE: Sheila Geiler, John Noman, James Hatfield, Dan Creedon, Gail Nightingale
Nay: None

GRANTED WITH CONDITIONS

Attorney Ford would like to withdraw 2008-007 as sought to expand the hotel to a third floor by way of a special permit.

Dan Creedon makes a motion to grant the withdrawal without prejudice.

James Hatfield seconds.

Vote:

AYE: Sheila Geiler, John Noman, James Hatfield, Dan Creedon, Gail Nightingale
Nay: None

PART OF APPEAL 2008-007 IS WITHDRAWN WITHOUT PREJUDICE

Gail Nightingale then indicates that she would like to read the Berkshire Development/Circuit City appeals in to the record.

**Appeal 2008-010 - New Berkshire Development - Circuit City**

**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 - New

Berkshire Development - Circuit City
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 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 2008-012 - New

Berkshire Development - Circuit City
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 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.

Gail Nightingale then states that she would request that the attorney for those appeals, Attorney Michael Ford, continue these as the Cape Cod Commission had only recently approved this matter and the Zoning Board had only received copies of that approval two days prior to this hearing and that they also do not have a staff report and finds it too soon to be put on this agenda. Attorney Ford indicates he would like to confer with his clients who are here and also indicates that there are a fairly complicated set of conditions that have been set up between the Town, the Commission, and the applicant in order to allow this project to proceed. He indicates that one of those conditions requires the purchase of the Chili’s restaurant parcel which the Town Council voted last Thursday unanimously to fund not only their portion of the acquisition, but the funds to take down the building and landscape that area. He indicates that when they negotiated for the piece of the Chili’s parcel, there were tight time tables in which to perform in order to make all of this happen. Therefore, the reason that this Board was asked to place this on their agenda when you did was because they have windows of opportunity to that purchase that will be prejudice if they are off another couple of weeks. Dan Creedon asks if this is not contingent upon approval of this Board and the CCC. Attorney Ford indicates there are contingencies but there are time lines in which they have to perform regardless of the contingencies in order to keep the agreement in effect. Dan asks if the contingencies themselves have deadlines notification dates as well. Attorney Ford indicates that they do and if they are not heard for another couple of weeks it places them outside of their window and that is their dilemma and that is the reason it has been put forward.

Dan Creedon comments that this property has been vacant for approximately 3 years.
Gail Nightingale reads them into the record and indicates that she won’t assign any members yet. Gail indicates that she is not ready to go forward as they have only received the CCC decision two days prior.

The Board and Attorney Ford discuss and agree to continue this to February 27, 2008 at 7:00 PM.

**CONTINUED TO FEBRUARY 27, 2008 AT 7:00 PM**

Motion to adjourn.
Motion seconded.
Meeting adjoumed at 9:22 PM.