

Town of Barnstable

Zoning Board of Appeals

www.town.barnstable.ma.us/ZoningBoard

Board Members:

Brian Florence – Chair Alex Rodolakis – Vice Chair George Zevitas - Clerk
David A. Hirsch – Associate Member Herbert Bodensiek – Associate Member Robin Young – Associate Member Matthew Levesque – Associate Member
James Tinsley – Town Council Liaison

Staff Support

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

Minutes

Wednesday, March 9, 2016

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

| | |
|-----------------------------|---------|
| Brian Florence - Chair | Present |
| Alex Rodolakis - Vice Chair | Present |
| George Zevitas - Clerk | Present |
| David Hirsch | Present |
| Herbert Bodensiek | Absent |
| Robin Young | Absent |
| Matthew Levesque | Present |

Also present were Elizabeth Jenkins – Regulatory Design/Review Planner and Carol Puckett – Administrative Assistant.

Call to Order

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

Brian Florence reads the following with no response:

Notice of Recording

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

Approval of Minutes

Minutes of January 13, 2016

Motion is made by David Hirsch and seconded by Matt Levesque to accept the minutes as submitted.

Vote:

All in favor

Brian Florence reads the following into the record:

New Business

7:00 PM Appeal No. 2016-011

King

Charles R. King, Jr. and Nicole C. King of 273 Regency Drive, Marstons Mills, MA are appealing the Building Commissioner’s denial of a request for enforcement action under Section 7 of the Zoning Act. The appellants are seeking enforcement of the zoning ordinance with respect to a dog breeding, dog training, grooming and kennel business operating in a residential zone without a

Special Permit, located at 295 Regency Drive, Marstons Mills, MA. The property is shown on Assessor's Map as 064 Parcel 040. It is located in the Residence F Zoning District.

Alex Rodolakis recuses himself.

Attorney Daniel Larkosh is here representing the appellants. He is made aware that there are only 4 members and that a vote must be unanimous. Attorney Larkosh agrees and gives a brief summary of their request before the board. He states that he was handed a memo tonight from the homeowner's attorney and has letters of his own. (Memo = Exhibit A, Three (3) Letters = Exhibit B). The property in question directly abuts his client's property who claims that there are lights, dogs barking at all hours, odors and traffic. He states that they have attached to the appeal, a copy of the website that the owner's of the subject property have, Ventura Australian Shepherds. He claims that they are doing business under this fictitious name and that the website claims that it is a kennel and that they sell dogs under contract. He would encourage, if the board is so inclined, to do a site review because this activity is inappropriate for the neighborhood. It does have a significant impact on his client's property caused by the noise and lights and is clearly a commercial activity and at a minimum be required to apply for a special permit.

The board discusses. George asks for pictures or audio. Attorney Larkosh states that they did submit a plan with the application and have audio as well. The board asks for photos. He submits photos (Exhibit C)

David Hirsch asks how the lighting affects the appellants. Attorney Larkosh states that the light shines into the appellant's bedroom. Nicole King, the appellant, states that the light is off the back of the barn and lights up their entire back yard more than their own backyard.

Brian Florence asks for public comment.

Heidi Grinsell, Esq. is here representing the owners of the property in question, Howard Hinckley & Kathy Pelaquin. She states that their position on this is that they comply with the rules and regulations of the Town of Barnstable's Chapter 403 as well as the State of Massachusetts. She states that the home owners have six (6) licensed dogs and that the dog officer has been to the premises to clarify that. She explains the state definition in reference to commercial kennels which are having animals outside of the owner's ownership. (See her Memo – Exhibit A). She states that they can do a personal kennel in order to take care of their own animals. She believes that the hospice care for the owner's father has created the traffic which Attorney Larkosh refers to.

Brian Florence notes the letters in support: in Attorney Grinsell's memo (Exhibit A) from: Jonathan Leach, Cheryle Marchetti, Sheila, David, Summer & Beasley Stagnan, Meg Smith, Leona & Bob Bertrand, Jeffrey & Lisa Harper, Jane Small, Dr. Leach, Cheryle Marchetti, Sheila Stagnan, Meg Smith, Leone and Bob Bertrand, Jeffrey & Lisa Harper, Jane Small, and a letter from Emerald Physicians from Debra Landry.

Brian Florence also notes the three (3) letters in opposition from Attorney Larkosh from: Jessica Avitabile, Deborah Wagner and Jessica Pisacano (Exhibit B)

Brian Florence asks if there is anyone from the public who would like to speak: Cheryle Marchetti of 311 Regency Drive, a direct abutter has no issue with odors and is in support. George Zevitas asks Ms. Marchetti if she believes this is a commercial use. Ms. Marchetti replies no.

Jeffery Hill of 310 Regency Drive does not notice odors and is in support.

Tom Bednark, not a resident of the neighborhood but a friend of Pete Hinckley and Kathy Peloquin thinks this is the most clean, efficient and unassuming operation of dog training and is in support.

The appellant, Nicole King, notes that Cheryl Marchetti's house is 219 feet at the edge of her house to the closest edge of the dog pen where the dogs are predominately stationed and from her yard it is only 20 feet off the property line and 60 feet from their bedroom. As for the other letters that were submitted in their attorney's memo, those were submitted at a meeting of the association from Hinckley/Peloquin when asked to stop their dogs from barking. She states that they are the closest abutters, and that the pen is closer to their house than to other neighbors. She has a website where they are selling dogs and believes that this is a commercial use. She also states that there is a large barn with an exhaust fan and trough.

George Zevitas asks Mrs. King about the exhaust fan: how long it runs, etc. Mrs. King states it is on for hours and can hear from all portions of her yard and from her bedroom.

Kathy Peloquin speaks and states that she has bred and showed dogs successfully since 2006. She has bred two litters: one in 2012 and 2015. The exhaust fan was installed in 2015 in order to remove moisture from the structure. The fan runs in the daytime but is shut off at night. She states that her dogs do not live in the barn and that the barn consists of 3 means of egress and 3 stalls for feeding stations. Her dogs are very clean and are on a grooming schedule must be done every 10 to 12 days. Brian Florence asks if the fan is on a timer. Ms. Peloquin states no but that it is turned off daily. She states that there was condensation in the floor of the barn that needed repair and that an insurance adjuster made the suggestion in order to aid airflow. As for the kennel name, they must register a kennel name in order to show her dogs.

Christine Bednark, speaks and states that it is very well landscaped and that Ms. Peloquin has kept it very clean, that the dogs are pristine and do not live in the barn but in the house with the homeowners.

Nancy Benton, is a friend of the homeowners, owns one of the puppies and is in support of them.

The board discusses.

George Zevitas makes findings:

Charles R. King, Jr. and Nicole C. King of 273 Regency Drive, Marstons Mills, MA are appealing the Building Commissioner's denial of a request for enforcement action under Section 7 of the Zoning Act. The appellants are seeking enforcement of the zoning ordinance with respect to a dog breeding, dog training, grooming and kennel business operating in a residential zone without a Special Permit, located at 295 Regency Drive, Marstons Mills, MA. The property is shown on Assessor's Map as 064 Parcel 040. It is located in the Residence F Zoning District.

Findings

In making such findings, the Board should consider if there is evidence to support a violation of the Zoning Ordinance occurring at 295 Regency Drive. The alleged violation of the zoning ordinance is the operation of a commercial kennel as a home occupation.

Since this is an appeal of the Building Inspector, George Zevitas makes a finding that they uphold the Building Inspector based on the evidence that was provided to this board tonight and that no evidence to overthrow what the Building Inspector apparently found as well as the dog officer concerning violations.

Vote:

All in favor

Based on those findings, a motion is made by George Zevitas and seconded by David Hirsch to Uphold the Building Inspector

Vote:

All in favor

UPHELD THE BUILDING COMMISSIONER

Brian Florence reads the following into the record:

7:01 PM Appeal No. 2016-012

O'Connor

Adam O'Connor has petitioned for a variance to Section 240-14.E – Bulk Regulations. The petitioner is proposing to construct an addition to the existing dwelling located sixteen (16) feet from the property line, where a thirty (30) foot front yard setback is required from Gristmill Path. The property is located at 390 Jones Road, Marstons Mills, MA as shown on Assessor's Map 047 as Parcel 093. It is located in the Residence F Zoning District.

Brian Florence notes that there is correspondence from Adam O'Connor asking for a continuance

Motion is made by Alex Rodolakis and seconded by David Hirsch to continue to March 23, 2016 at 7:00 pm.

Vote:

All in favor

CONTINUED TO MARCH 23, 2016 AT 7:00 PM

Brian Florence reads the following into the record:

7:02 PM Appeal No. 2016-013

Elms

Annette S. Elms, Trustee of the S. Annette Elms Living Trust, has applied for a Special Permit in accordance with Section 240-92.B – Expansion of Nonconforming Buildings or Structures Used as Single or Two Family Residences. The applicant is proposing to expand an existing apartment by approximately 144 square feet. The proposed addition will be located 7.5 feet from the property line, but will not be located any closer to the property line than the existing building. The property is located at 156 Chase Street, Hyannis, MA as shown on Assessor’s Map 307 as Parcel 152. It is in the Residence B Zoning District.

**Members assigned tonight: Brian Florence, Alex Rodolakis, George Zevitas, David Hirsch, Matt Levesque
Representative: Mark Boudreau, Esq.**

Attorney Boudreau gives a summary of relief and that the applicant wants to construct a 12 x 12 addition for additional living space and will not consist of a kitchen. He states that this property was part of a subdivision and is looking to add on as many of the neighbors have also.

Brian Florence asks for public comment.

Irene Aylmer of 154 Chase Street, is an abutter is concerned about parking and traffic. She states that this is a corner lot, there is a lot of traffic and people don’t usually park in front of the applicant’s property.

Attorney Boudreau states that since his client bought the property, she has built a two-car garage and that there is a driveway. He also states that the main house has three (3) bedrooms and the apartment has one and doesn’t believe there will be an increase in traffic from the usual and customary traffic. Brian Florence asks if Attorney Boudreau would be okay with a condition restricting that all resident parking be on the property. Attorney Boudreau is okay that all residents will park on the property.

They discuss the number of structures on the site. Alex Rodolakis asks if there could be a condition that any further addition of structures on the property be done with approval from this board. Attorney Boudreau concurs.

Alex Rodolakis makes findings:

Annette S. Elms, Trustee of the S. Annette Elms Living Trust, has applied for a Special Permit in accordance with Section 240-92.B – Expansion of Nonconforming Buildings or Structures Used as Single or Two Family Residences. The applicant is proposing to expand an existing apartment by approximately 144 square feet. The proposed addition will be located 7.5 feet from the property line, but will not be located any closer to the property line than the existing building. The property is located at 156 Chase Street, Hyannis, MA as shown on Assessor’s Map 307 as Parcel 152. It is in the Residence B Zoning District.

Special Permit Findings

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit:
Section 240-92 allows for the expansion a pre-existing nonconforming structure used as a two-family residence with a Special Permit.
- Site Plan Review is not required for single-family residential uses.
- Demonstrated that the two family structure and use are pre-existing and nonconforming
- 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:

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

Vote:

All in favor

Alex Rodolakis makes a motion to grant subject to Conditions 1, 2 & 3 in staff memo dated 02-29-16 (Exhibit A) with the addition that

4. **there will be no further improvements or structures without further relief from this board**
5. **all resident parking shall be on the property**

Conditions

1. Special Permit No. 2016-013 is granted to Annette Elms, Trustee of the S. Annette Elms Living Trust, to allow the expansion of a preexisting nonconforming two-family dwelling at 25 Chase Street, Hyannis. This permit shall allow for the construction of an approximately 144 square foot addition located 7.5 feet from the northerly side lot line.
2. The addition shall be constructed in substantial conformance with the plan entitled "Site Plan of 156 Chase Street, Hyannis" dated January 28, 2016, drawn and stamped by Down Cape Engineering, Inc and the elevations entitled "Proposed Elevations – New Addition/Renovations for: Annette Elms, 156 Chase Street, Hyannis, MA 02601" dated December 4, 2015, drawn by Derek Ryone Design Company, Sheet A-1.
3. 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.
4. **there will be no further improvements or structures without further relief from this board**
5. **all resident parking shall be on the property**

Seconded by Matt Levesque

Vote:

All in favor

GRANTED WITH CONDITIONS

Brian Florence reads the following into the record:

7:03 PM Appeal No. 2016-014

Bergeron/Crowley

Jay Bergeron and Joanne Crowley have applied for a Special Permit pursuant to Section 240-131.4D(2) – Change, expansion or alteration of uses and structures. The applicants are seeking to construct a deck and stairs providing for a second means of egress within the required side and rear yard setback areas, but no closer to the property lines/wetlands than the existing dwelling. The property is located at 59 Short Beach Road, Centerville, MA as shown on Assessor Map 206 as Parcel 034. It is in the Craigville Beach District, Long Beach/Short Beach Neighborhood Overlay.

Members assigned: Brian Florence, George Zevitas, Alex Rodolakis, David Hirsch, Matt Levesque

Representative: Bill Crostin – Contractor. Mr. Crostin gives summary of relief being requested stating that the house had been raised in order to comply with the rules and regulations of the flood zone which created a problem with the patio. In order to have another means of egress, they are requesting to build a deck which will not extend any further than the house.

Brian Florence asks for public comment. No one speaks.

Matt makes findings:

Jay Bergeron and Joanne Crowley have applied for a Special Permit pursuant to Section 240-131.4D(2) – Change, expansion or alteration of uses and structures. The applicants are seeking to construct a deck and stairs providing for a second means of egress within the required side and rear yard setback areas, but [located] no closer to the property lines/wetlands than the existing dwelling. The property is located at 59 Short Beach Road, Centerville, MA as shown on Assessor Map 206 as Parcel 034. It is in the Craigville Beach District, Long Beach/Short Beach Neighborhood Overlay.

Special Permit Findings

Section 240-131.4(D)(2) allows for expansion of an existing lawfully established structure in existence as of January 19, 2011 with a special permit from the Board.

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

Comply with § 240-131.1, Purposes and intent:

- The addition 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
- The development complies with the setbacks and lot coverage requirements set forth herein, and is in character with surrounding structures, particularly structures that predate it. *Relief is being requested for expansion of the structure in accordance with § 240-131.4D.*
- The redevelopment complies with the height limitations set forth herein.¹



- Do not entail an increase in gross floor area or footprint for voluntary demolition of a single-family residence.

Do not exceed 25% of the gross floor area of structures in existence as of July 1, 1989, or do not exceed 10% of the gross floor area of structures in existence as of November 6, 2009.²

- Do not increase lot coverage over what is allowed under § 240-131.6, Coverage limitations, or by more than 10% over what was existing on November 6, 2009, whichever is greater.
- Do not increase flood hazards in the neighborhood.

Maintain or enhance views to Nantucket Sound and/or the Centerville River where applicable in accordance with § 240-131.5, Note 4.

Vote:
All in favor

Based on those findings, Matt Levesque makes a motion to approve the special permit with the following conditions:

Conditions

1. Special Permit No. 2016-014 is granted to Jay Bergeron and Joanne Crowley for the alteration and expansion of the dwelling by the addition of a deck and stairs at 59 Short Beach Road, Centerville pursuant to Section 240-131.4 of the Craigville Beach District.

2. The alterations and expansions shall be constructed in substantial conformance with the site plan entitled Foundation Certification Plan, stamped by Stephen Doyle, PLS, dated (revised) March 2, 2015 and the elevations and floor plans entitled "Proposed Residence – Crowley/Bergeron Residence" drawn by Northside Building Consultants, Inc. dated (last revised) February 22, 2016, sheets A1-5 and A2-5.
3. The deck shall not be located closer to the side lot line than the existing dwelling (4.6 feet) or closer than 16 feet to the sea wall.
4. The Applicant shall comply with decisions issued by the Conservation Commission.

Seconded by David Hirsch

Vote:

All in favor

GRANTED WITH CONDITIONS

Brian Florence reads the following into the record:

7:04 PM Appeal No. 2016-005

Tuepker

James and Bonnie Tuepker have applied for a Special Permit pursuant to Section 240-91(H)(3) – Demolition and rebuilding on nonconforming lots. The applicants are seeking to reconstruct a single-family dwelling that will be located within the required front yard setback, but will be no closer to the property line than the previous dwelling. The property is located at 51 Conners Road, Centerville, MA as shown on Assessors Map 251 as Parcel 028. It is located in the Residence D-1 Zoning District.

Members assigned: *Brian Florence, Alex Rodolakis, George Zevitas, David Hirsch, Matt Levesque*

Representative: *James Tuepker, property owner. Mr. Tuepker states that the demolition is complete and that they had the foundation o. However, when getting the building permit the setbacks were found to be insufficient. He states that it does not comply with the current setback requirement of 30 feet. .*

Brian Florence asks how this would not be detrimental to the neighborhood. Mr. Tuepker states that it was a cottage and that they are trying to build a larger, 2 story colonial home. He clarifies that they did receive the appropriate permits for the demo, foundation and building of the structure. Brian Florence asks for public comment: Mr. Bowers, the contractor, clarifies that the original structure was approximately 23.3 feet from the property line and the current foundation is 24.4 feet from the property line

Fred Ward, an abutter who lives across the street, is in favor of this proposal.

David Hirsch makes findings:

James and Bonnie Tuepker have applied for a Special Permit pursuant to Section 240-91(H)(3) – Demolition and rebuilding on nonconforming lots. The applicants are seeking to reconstruct a single-family dwelling that will be located within the required front yard setback, but will be no closer to the property line than the previous dwelling. The property is located at 51 Conners Road, Centerville, MA as shown on Assessors Map 251 as Parcel 028. It is located in the Residence D-1 Zoning District.

Proposed Special Permit Findings

Section 240-91(H)(3) allows for the complete demolition and rebuilding of a residence on a nonconforming lot by Special Permit where the setback of the proposed dwelling does not conform to current requirements, but where the setback are equal or greater than the setback of the existing dwelling.

The previously existing dwelling was located 24.3 feet from the front property line. The proposed front yard setback of the new dwelling is 24.4 feet.

- Site Plan Review is not required for single-family residential dwellings.
- 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 proposed floor-area ratio is 12%; the maximum permissible FAR is 30%.
- The proposed lot coverage is 10.4%; the maximum permissible coverage is 20%.
- The proposed building height is approximately 25.5 feet to the highest plate and two stories; the maximum permissible building height, is 30 feet to the highest plate and 2 ½ stories.
- The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

Vote:

All in favor

Motion is made by David Hirsch to grant the relief being sought with the following conditions:

Conditions

1. Special Permit No. 2016-015 is granted to James and Bonnie Tuepker for the reconstruction of a 2,080 gross square foot dwelling located 24.4 feet from the front property line at 51Connors Road, Centerville.
2. The dwelling shall be constructed in substantial conformance with the plan entitled “Site Plan of 51 Connors Road, Centerville” dated September 9, 2015, drawn and stamped by Down Cape Engineering, Inc.; and the floor plans and elevations entitled “Two-story three bedroom home, 51 Connors Road” dated February 12, 2016, drawn by Edwin E. Bowers, seven sheets.
3. Any further expansion of the dwelling or additional accessory structures shall conform to current setback requirements and Section 240-91(H)(1)(c).
4. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
5. 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 issuance building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Seconded

Vote:

All in favor

GRANTED WITH CONDITONS

Correspondence

Letter dated February 12, 2016 from Bateman Law Offices, PC., requesting an amendment to the Town of Barnstable’s Zoning By-Law, Chapter 240, Article VIII. Nonconformities

Matters Not Reasonably Anticipated by the Chair

Adjournment

Motion is made by Matt Levesque and seconded by Alex Rodolakis to adjourn.

Vote:

All in favor

Upcoming Regularly Scheduled Hearings

March 23

April 13 & April 27

May 11 & 25