



Town of Barnstable

Zoning Board of Appeals



www.town.barnstable.ma.us/ZoningBoard

Board Members:

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

Staff Support

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

Minutes

Wednesday, May 9, 2018

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

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

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

As a quorum is present, Alex Rodolakis opens the hearing at 7:03 PM

Call to Order

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

Alex reads the following with no response:

Notice of Recording

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

Alex reads the following into the record:

7:04 PM Appeal No. 2018-028

Deyton

Patricia H. Deyton, Trustee of the Patricia H. Deyton 2010 Family Trust, and C. Edward Deyton, Trustee of the C. Edward Deyton 2010 Family Trust, has applied for a Special Permit pursuant to Section 240-131.4(D)(2), or in the alternative, Section 240-131.4(E) of the Ordinance. The Applicant seeks to expand an existing second floor deck approximately 22 square feet that will not conform to the applicable front yard setback. The property is located at 58 Vine Avenue, Centerville MA as shown on Assessor’s Map 226 as Parcel 038. It is located in the Craigville Beach District (CBD), Craigville Village (CV) Neighborhood Overlay.

Members assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey, Kyle Evancoe

Representative: Jennie Kampus, Esq. gives summary of relief. Mr. Deyton is here with her tonight. The proposal to extend the deck is so that they can fit a modest table and enjoy the view. The setback will be 8.7 feet from front yard setback. Current setback requirement in the district is 15 feet. She goes over the requirements for a special permit. No impact on the environment or historic element of the neighborhood. There will be no visible impact to the appearance of the house. Does not change lot coverage or gross floor area and has no effect on scenic views. Attorney Kampus requests that this be granted. She has reviewed the staff report but doesn’t think that Condition #3 is necessary and would like it stricken. She reports that there are neighbors here in support of the proposal.

Alex believes that Condition #3 is standard text and his preference is to keep it.

Jim Lang, neighbor and president of the Christian Camp Association speaks in favor of the proposal.

Reverend Joanne Hartoonian – chair of the Historic Craigville Tabernacle and applicant’s neighbor, is in support and submits a letter of support (Exhibit A).

Kyle Evancoe makes findings:

Relief Requested

Patricia H. Deyton, Trustee of the Patricia H. Deyton 2010 Family Trust, and C. Edward Deyton, Trustee of the C. Edward Deyton 2010 Family Trust are seeking a Special Permit under Section 240-131.4(D) or, in the alternative, ~~Section 240-131.4 (E)~~ of the Craigville Beach District use regulations for the expansion of a second floor deck approximately 22 square feet that will encroach into the front yard setback.

Under Section 240-131.4. D. (2) (a) In granting such Special Permit, the SPGA shall find that the proposed alterations or expansions are not substantially more detrimental to the neighborhood...comply with guidelines for the neighborhood overlay...do not exceed 25% of the gross floor area or do not exceed 10% of the gross floor area ...do not increase flood hazards in the neighborhood and maintain or enhance views to Nantucket Sound and/or the Centerville River

Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

Staff has outlined all of the findings required by the DCPC ordinance. Those findings which are not applicable to the project are demarcated with a “■” symbol and noted as not applicable (n/a).

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit:**
Section 240-131.4(D)(2) allows for an alteration 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.**

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

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

Comply with § 240-131.1, Purposes and intent:

The purpose and intent of §§ 240-131 through 240-131.8 are to guide development in the Craigville Beach District pursuant to the Guidelines of Barnstable County Ordinance 09-10 to ensure that development and redevelopment meets the following standards:

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

and with the performance standards and design guidelines for the neighborhood overlay area in which the development is located, in accordance with § 240-131.7, Neighborhood District Overlay regulations, with the exception of the dimensional requirements of § 240-131.7D(1):

General performance standards:

- 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 the alteration of the structure in accordance with § 240-131.4D.

- The redevelopment complies with the height limitations set forth herein.¹
- Exposed foundation walls for raised septic systems and/or elevated structures are prohibited; foundation walls shall be screened through the use of foundation plantings and/or the use of other natural materials.
- Stormwater management and erosion control for nonresidential uses comply with best management practices through low-impact development or other adaptive management practice - n/a
- Up to 50 square feet of roof deck may be allowed atop the first or second floor of a structure if the railing and support structure for the roof deck are constructed fully below the tallest part of the roofline they are contained within. - n/a
- All new non-water-dependent development shall be set back at least 50 feet from the top of the coastal bank resource area. Change, alteration, or expansion of existing structures shall not be sited closer to the top of the coastal bank resource area than the existing development to the maximum extent feasible.
- Existing natural vegetation within the fifty-foot buffer area to salt marsh and undisturbed buffer areas 50 feet landward of the mean high-water mark of coastal water bodies shall be preserved to the maximum extent feasible.
- No direct untreated stormwater discharges shall be permitted into any coastal waters or wetlands, including discharges above or below the mean high water level. Stormwater discharge shall be located and treated the farthest practicable distance from wetlands and water bodies and shall be located a minimum of 50 feet from wetlands or water bodies. n/a

Under Section 240-131.7.H Craigville Village Neighborhood performance standards. All development and redevelopment shall meet the following standards:

- Preserve the original massing of historic structures (pre-1945).
 - Additions should be attached to secondary or less prominent facades of the building (the side or rear facades), and should be stepped back from the front and rear corners of the building so as to preserve the original massing of the structure, including its roof form.
 - Work with modest massings. Additions should be scaled to be consistent with or smaller than the size of the original historic structure, following the neighborhood tradition of expanding small cottages incrementally with modest additions. Additions should generally have a lower roofline than the original structure to maintain the prominence of the original building, though some additions may be slightly taller than the original structure if attached to the original structure with a smaller connecting mass.
 - Roof forms. The roof pitch on new construction and additions should complement the roof pitch of the original historic structure and should maintain a pitch of at least six over 12.
 - Retain original architectural details and unique forms. Additions should be placed so as to limit the removal of distinctive architectural trim and features that are unique to the building. Additions and alterations should not interfere with character-defining features, such as open porches, steeply pitched roof forms, unique windows, and carpenter gothic trim along eaves and entries. Siding materials used on the original structure should be retained, though other regional siding materials may be appropriate on additions.
- ■ ■
- 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

There will be no change to the gross floor area.

- 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.

The existing and proposed lot coverage is 2,811square feet or 48%.

¹ BUILDING HEIGHT: The vertical distance from the grade plane to the highest point of a gable, hip or gambrel roof and the highest point of the coping of a flat roof. These height limitations shall not apply to chimneys cupolas, flagpoles or other similar appurtenances as approved by the Building Commissioner.) (Gable roofs having a slope of 7/12 or greater allowed maximum height; hip and other sloped roofs with a slope of 4/12 or greater are allowed five feet less than the max)

² Gross floor area is defined as “the sum of all floor areas within a building or structure, measured from the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features. It shall include all areas capable of being used for human occupancy, including all basement floor areas, mezzanine and attic space and enclosed porches.

- 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.
- In V Zones, do not increase south-facing building surfaces so as to limit the adverse effect of increasing elevation or velocity of floodwaters due to a change in flowage characteristics on the subject site, adjacent properties, or any public or private way. n/a

Vote:
All in favor

Kyle makes motion to grant per staff report conditions 1 through 4:

Conditions

1. Special Permit No. 2018-028 is granted to Patricia H. Deyton, Trustee of the Patricia H. Deyton 2010 Family Trust, and C. Edward Deyton, Trustee of the C. Edward Deyton 2010 Family Trust, for the expansion of a second floor deck approximately 22 square feet that will encroach into the front yard setback at 58 Vine Avenue, Centerville pursuant to Section 240-131.4 of the Craigville Beach District.
2. The alteration shall be constructed in substantial conformance with the site plan entitled "Certified Plot in Barnstable, MA" prepared for Patricia H. Deyton by Shane M. Mallon PLS, dated August 8, 2017 and design plans by Greywing Design dated March 28, 2018.
3. The above-described alterations shall represent full build-out of the lot. No further alterations shall be permitted without approval from the Board.
4. This 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 of a building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Vote:
All in favor

GRANTED WITH CONDITIONS

Attorney Kampus asks to withdraw without prejudice the relief being sought pursuant to 240-131.4.E.

Motion is made to Withdraw without Prejudice, relief sought pursuant to 240-131-4.E

Vote:
All in favor

WITHDRAWN WITHOUT PREJUDICE

Alex recuses himself from the Berkery appeal.

David Hirsch takes over as chair and reads the following into the record:

7:01 PM Appeal No. 2018-024 Berkery

Andrew M. and Joan W. Berkery have applied for a modification of Special Permit 2014-050, Conditions No. 4 and 7 in order to finish the basement area of the main dwelling for use as a laundry room, bathroom and open bonus room and to construct an outdoor shower. Condition No. 4 requires prior approval from the Board for any expansion in gross square footage or footprint and Condition No. 7 prohibited an outdoor shower. The subject property is located at 49 Lafayette Avenue, Hyannis, MA as shown on Assessor's Map 287 as Parcel 047. It is located in the Residence F-1 Zoning District.

**Members assigned: David Hirsch, Herb Bodensiek, Jake Dewey, Kyle Evancoe, Paul Pinard
Representative: Mark Boudreau, Esq.**

Attorney Boudreau gives summary of relief and notes that this was before the board in 2014 at which time it was granted. When constructed, the applicants finished the basement as a large open room and intended to put in a bathroom and laundry room. They were then informed that it was living space and that full buildout had been determined by this board (in the previously granted decision). They are asking that the full buildout be revised in order for them to have the bonus room, bathroom and laundry room. At the previous hearing to this one, there was one neighbor who objected based on the fact that the landscape plan was not done properly. Since then they have reached a negotiation and have agreed to a landscape plan and would like it part of the requirements should the board approve. He submits to the Board (Exhibit A).

The plan is complete and his clients will take out a parking on the left/south side and replace it on the right side or north side. One final request, in 2015, one of the neighbors complained about the outdoor shower. Since then, that woman has passed on and there was a question as to whether the new owners are in opposition. However, the new neighbors would like the shower on the opposite side of the house. He submits another plan as to where the outdoor shower is proposed (Exhibit B).

He would submit that none of the work in the basement is visible and would not be detrimental to the neighborhood and the outdoor shower will be hidden.

David Hirsch states that one of the letters submitted in support indicates that this work has already been done. Attorney Boudreau confirms that the work has been done and that the applicants stopped when told by Jeff Lauzon – Building Inspector, that this was living space. He has spoken with Mr. Lauzon and agreed that it was living space. If this Board approves this, he will be asking to put in a 3'X3' window as another means of egress. He states that his clients live there 2 months of the year and was surprised to find out that they couldn't do this.

Mark Hansen asks if the Building Inspector, Jeff Lauzon, outlined a plan of what it would take to bring it up to code. Attorney Boudreau indicates that it needs egress and has to pull an electric permit. Attorney Boudreau confirms that the shower that exists on the outside will be taken down and put down on the right side of the house. He clarifies that it will be a rinse station.

Mark Hansen asks who will do the landscaping. Attorney Boudreau states that Joyce Landscaping will be doing the landscaping.

David Hirsch asks if there is anyone here from the public who would like to speak.

Bob Fitzgerald, the neighbor with whom they negotiated, is here to support the new provisions.

David Hirsch asks Attorney Boudreau if he has read the conditions, which he responds yes.

Paul Pinard makes findings:

Proposed Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

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

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

2. After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.

Section 240-92 requires the Board to find:

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

Vote:

All in favor

Paul Pinard makes a motion to grant relief being sought with the following conditions per staff report dated April 9, 2018:

1. Special Permit No. 2018-024 is granted to Andrew M. and Joan W. Berkery, to allow for the modification of Special Permit 2014-050, Conditions No. 4 and 7 in order to finish the basement area of the main dwelling for use as a laundry room, bathroom and open bonus room and to construct an outdoor shower. The property is located at 49 Lafayette Avenue, Hyannis (Hyannisport), MA.
2. The proposed alterations will be in substantial conformance with the plan entitled "Plan of Land in Hyannisport, MA" prepared for M/M Berkery dated September 29, 2014 and revised March 25, 2015 drawn and stamped by Down Cape Engineering Inc.
3. All conditions of Variance No. 2007-103/2008-001 shall remain in full force and effect. The property shall be for single-family use only and the lot shall not be sold or deeded into separate ownership or further divided based on the presence of two structures that predate the adoption of Subdivision Control Law in Barnstable.
4. Landscape screening shall be provided along the ~~southern~~ northern property line, in substantial conformance with the landscape plan prepared by Peter Hanson, dated ~~September 15~~ **May 8, 2018**.
5. This alteration/construction shall represent full build-out of the lot. No additional increase in building coverage or gross square footage shall be permitted without prior approval of this Board.

6. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be located so as to conform to the required setbacks for the district and screened from neighboring homes and the public right-of-way.
7. 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.
8. **To demolish the existing outside shower and relocate shower as proposed on plan dated 09-29-14 with handwritten changes by Attorney Boudreau**

Vote:
All in favor

GRANTED WITH CONDITIONS

Alex comes back to the dais and takes over as Chair.

Alex reads the following into the record:

New Business

7:02 PM Appeal No. 2018-026

Mayflower Cape Cod, LLC

Mayflower Cape Cod, LLC has petitioned for a Variance from Section 240-39.K(2) – Shopping Center Redevelopment Overlay District. The Petitioner is seeking to increase the total number of wall signs on the Cape Cod Mall, bringing the total number of wall signs to 20, where 15 is the maximum allowed. The property is located at 793 Iyannough Road, Hyannis MA as shown on Assessor’s Map 293 as Parcel 024. It is located in the Business (B), Highway Business (HB), and Shopping Center Redevelopment Overlay District (SCROD) Zoning Districts.

7:03 PM Appeal No. 2018-027

Mayflower Cape Cod, LLC

Mayflower Cape Cod, LLC has applied for a modification of Special Permit 1998-31 pursuant to Section 240-39.M – Shopping Center Redevelopment Overlay District to reflect revised site plans and elevations. The Applicant is seeking to demolish the existing 13,250 square foot Sears Auto Service Building in order to expand parking and further seeks to modify a curb cut. The property is located at 793 Iyannough Road, Hyannis MA as shown on Assessor’s Map 293 as Parcel 024. It is located in the Business (B), Highway Business (HB), and Shopping Center Redevelopment Overlay District (SCROD) Zoning Districts.

Members assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey, Mark Hansen

Representative: Michael Ford, Esq. wonders if the board will consider hearing the special permit first and then the variance. They agree. Also with Attorney Ford tonight is Griffin Ryder from VHB Engineering, Tim Fox – Development Director with Simon Companies. Attorney Ford gives a summary of relief being requested and of the existing site conditions. He also notes that the Cape Cod Mall has a Development of Regional Impact (DRI) decision from the Cape Cod Commission. They are seeking a modification of the previously issued decision by this board from 1998 since they are making changes to the site plan. They have met with Cape Cod Commission staff regarding this project on several occasions and were instructed by their Chief Regulatory Officer, Jonathan Idman, on how to proceed with permitting. The Cape Cod Commission (CCC) has taken the position in regards to modifications that they can go to the Town first. Once completed by the Town, they would then seek relief at the Cape Com Commission level for whatever relief is necessary. He also notes that at the formal Site Plan Review (SPR), CCC did participate. They are now here to modify the existing special permit and request variance relief from the sign code and from the Shopping Center Redevelopment Overlay District (SCROD) which has a separate sign code. He addresses the special permit first. They will be demolish and remove the Sears auto service building, and in its place, extend the parking on the easterly side of the Mall which will be redone and which will add 41 spaces. In addition, the modification is sought to change the façade in the Sears portion. No increase in gross floor area but a reduction. The most easterly curb cut on the site, in this configuration (which Griffin points out), will be a right-in and right-out. This was discussed at SPR. The town suggests that the median strip they have proposed be extended seventy-five (75) feet from where it is now unless the proposed and approved renovations at the adjacent hotel take place. He states that the stormwater system is being upgraded and will be less impervious than what is current. More trees and green space are also proposed. They will be updating the stormwater because of the Groundwater Protection (GP) Overlay District. There will also be changes to the elevations. There could be a tweak to the façade when they go to the CCC. They did file a traffic analysis at the SPR from VHB who produced a traffic memo which concluded that the traffic impacts to this area will be neutral since they will not be increasing square footage. There is some pedestrian safety measures proposed. He suggests that the traffic study relating to the 75 foot extension of the median strip could be a condition which they would agree to.

Questions from the board: Mark Hansen asks about considering a barrier during inclement weather at the right-in, right-out point. Griffin Ryder states that they have created a smooth transition as they have done for similar sites and have looked at the radius to prevent high speeds. He also notes that they will remove the speed humps as there will be a 3 point control stop. They discuss the throughway.

Alex is concerned about the façade and what is allowed compared to what is actually going to be there. He is not sure about giving ZBA authority to CCC to approve the alterations.

Attorney Ford suggests that in reference to the façade renovation plan, Condition #3 that he would suggest except to the extent that the facade renovation plans are modified by the CCC and that a copy of such modification is filed with the ZBA and that this board has the ability under this section to do modifications of the Special Permit without the benefit of a full public hearing. The board could decide then if it would need a full public hearing. He would suggest that under Section 240-39.M(1)(d) of the ordinance they are to give due regard to the design guidelines for the Cape Cod Commission in light of the design constraints and those guidelines speak to what the façade needs to be like. This ordinance does not lay out performance standards for the façade. This issue is more in their jurisdiction more than it is in ZBA's jurisdiction. They discuss project timelines.

Jake asks how far away from the GP standards percentage/wise this proposal would make it. They conclude that it is 4% better than what it is currently.

Alex asks for public comment. No one speaks.

In reference to Condition #4, Attorney Ford would like to add **"Except as modified by the granting of this Special Permit"** to the beginning of it. Also, in Condition #3 after the word architects **"except to the extent that the façade renovation plans are modified by the Cape Cod Commission" and that any such modification shall be filed with the Zoning Board of Appeals for their approval."**

Attorney Ford suggests that Condition #3 state that it be modified by CCC and filed with ZBA for their approval

Jake Dewey makes Special Permit Findings:

Proposed Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit:
The Board has authority to modify Special Permit No. 1998-31 under Section 240-39 M. (1) (c).
2. After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.
3. A site plan has been reviewed and found approvable (See letter dated April 11, 2018).

Vote:

All in favor

Jakes makes a motion to grant with the following conditions: 2 through 5 will apply to the Special Permit and #3 & 5 as modified by Attorney Ford:

Conditions

1. Variance No. 2018-026 is granted to Mayflower Cape Cod LLC to allow a total of 20 wall signs at the Cape Cod Mall, 793 Iyannough Road, Hyannis, MA.
2. Special Permit No. 2018-027, a modification of Special Permit No. 1998-31, is granted to Mayflower Cape Cod, LLC, to allow the demolition of the existing 13,250 square foot Sears Auto Service Building in order to expand the parking and to modify a curb cut. The property is the Cape Cod Mall located at 793 Iyannough Road, Hyannis, MA.
3. The proposed alterations will be in substantial conformance with the plan entitled "Sears Redevelopment, Cape Cod Mall" prepared for Mayflower Cape Cod LLC dated April 4, 2018, drawn and stamped by VHBC-1, C-2, C-3.1, C-3.2, C-4.2, C-5.1, C-5.2, L-1.1, L-1.2, and L-2.1 and Façade Renovation Plans by Herschman Architects **except to the extent that the façade renovation plans are modified by the Cape Cod Commission" and that any such modification shall be filed with the Zoning Board of Appeals for their review and approval".**
4. **"Except as modified by the granting of the Special Permit", all conditions set forth in Special Permit No. 1998-31 shall remain in full force and effect**
5. This decision shall be recorded at the Barnstable County Registry of Deeds and copies filed with the Zoning Board of Appeals and Building Division. The rights authorized by this special permit must be exercised within two years, unless extended.

As amended.

Vote:

All in favor

As for the Variance request:

Same members assigned as for the Special Permit

Attorney Ford gives background and summary of relief requested. He states that only the major stores get the 150' signage. Rather than linear frontage, the mall, according to the ordinance is restricted to this 15'. He states that there is a new retail environment and the trend is that the larger box stores are disappearing from the malls. In order to keep the mall occupied they are running into larger spaces being cut up into smaller stores. They are seeking to go from 15' to 20'. In regards to the three prong test he would suggest that it is unique as to its shape and size of structure. If the bylaw is applied literally, it creates a hardship (wall signs) because of the change and trend in the retail market today. There is a need to attract tenants which means that this would be a financial hardship to the mall if they cannot. As for desirable relief, he doesn't think it would affect the area should there be more signage and that the signs could direct pedestrians. Also, given the change in conditions from 1998 to 2018 in the retail market and trying to keep the mall viable, this is not a substantial derogation from the intent of the ordinance. More realistic limitation given what the retail market is now. The mall has agreed to work with Planning & Development staff to look at all sections of the signage code.

Attorney Ford and Alex discuss the 20 wall signs and Alex would feel comfortable with what the signs would look like and refers to the comprehensive sign plan. David Hirsch thinks that perhaps that they could have 4 signs and perhaps come back for the others. Alex asks Attorney Ford to consider the four (4) signs and to consult with his client.

Motion is made to take a five minute break.

Vote:

All in favor

Back in session at 8:59 pm.

Attorney Ford states that he has spoken with client and would hope to an agreement tonight and thanks the board. He would like Mr. Fox to speak to the board.

Timothy Fox with Simon Property Group feels like the prominence of the two proposed retail stores overshadows the other tenants. There is an added tenant and two additional tenants and the request is for an added sign. There would be a problem with an outfacing tenant if they couldn't have a sign and he wanted to clarify that it wasn't a simple 1 for 2 conversion.

Attorney Ford asks for the consideration as presented. However, if not, to give relief for the easterly side so that they would have 3 signs for the red tenant and 1 for the green tenant where only 2 currently exist which would be an increase to 17 and if that is as far as the board would go tonight, they would withdraw the rest with the understanding that they would have to make it work but would come back and have discussions with staff and amendments to the ordinance.

Alex would be more comfortable with an updated comprehensive sign ordinance. The board discusses. Herb would be in favor of all 5 signs.

Attorney Ford and Alex discuss where the signs are to be placed.

Alex Rodolakis makes findings:

Variance Findings

The statutory requirement of MGL Chapter 40A, Section 10 for granting a variance is a three-prong test. The Board is required to find that each of the following three requirements has been met in order to consider granting the variance: from 15 to 17, unique to the cape

1. Owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located has been satisfied;
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and changing nature of retail and diminution of larger retailers
3. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance
4. An application for a variance that has met all three requirements "does not confer ... any legal right to a variance." The Board still has the discretionary power to grant or not to grant the variance.

Vote:

All in favor

Alex would provide them with an increase in signage to be allocated among the Sears space from the existing to add 17 signs with at least 4 of the signs allocated on the Sears space allocated in no particular order.

Mr. Fox and the board discuss where the signs will be.

Motion is made by Alex Rodolakis to allow the total of 17 signs 15 at the Cape Cod mall and that they can come back to go to the board for further relief.

Attorney Ford wants to clarify that the three other signs they are asking for is not denied, rather that they would not be prohibited from coming back for additional signs. Alex agrees and would like to add another condition that the applicant can come back before this board for further increase in signs:

Vote:
All in favor

Conditions

1. Variance No. 2018-026 is granted to Mayflower Cape Cod LLC to allow a total of 20 wall signs at the Cape Cod Mall, 793 Iyannough Road, Hyannis, MA.
2. Special Permit No. 2018-027, a modification of Special Permit No. 1998-31, is granted to Mayflower Cape Cod, LLC, to allow the demolition of the existing 13,250 square foot Sears Auto Service Building in order to expand the parking and to modify a curb cut. The property is the Cape Cod Mall located at 793 Iyannough Road, Hyannis, MA.
3. The proposed alterations will be in substantial conformance with the plan entitled "Sears Redevelopment, Cape Cod Mall" prepared for Mayflower Cape Cod LLC dated April 4, 2018, drawn and stamped by VHBC-1, C-2, C-3.1, C-3.2, C-4.2, C-5.1, C-5.2, L-1.1, L-1.2, and L-2.1 and Façade Renovation Plans by Herschman Architects.
4. All conditions set forth in Special Permit No. 1998-31 shall remain in full force and effect
5. This decision shall be recorded at the Barnstable County Registry of Deeds and copies filed with the Zoning Board of Appeals and Building Division. The rights authorized by this special permit must be exercised within two years, unless extended.
6. The applicant can come back before this board for further increase in signs:

Vote:
All in favor

GRANTED WITH CONDITIONS

Alex reads the following into the record:

Old Business

7:00 PM Appeal No. 2018-015 Amended

JNJ Holdings, LLC

JNJ Holdings, LLC have applied for a Special Permit under Section 240-25 HB Conditional Use, Section 240-35 Well Protection Overlay District, Section 240-53 Landscape Requirements for Parking Lots and Setbacks, Section 240-54 Location of parking lot in relationship to building, and Section 240-57 Circumstances Warranting Reduction of Requirements. The Applicant is proposing to demolish the existing structure, remove the underground tanks, and construct quick change oil and auto repair facility building of 6,324 square feet, nine service bays, with paving and landscaping. There will be three bays for oil changing, one bay for alignments, one bay for inspections, and four bays for auto repair. The property is located at 326 West Main Street, Hyannis, MA as shown on Assessors Map 269 Parcel 159. It is located in the Highway Business (HB) and Residence B (RB) Zoning Districts and Well Protection (WP) Overlay District. **This Appeal was continued for re-advertising.**

Continued from April 25, 2018. No testimony taken.

Members assigned tonight: Alex Rodolakis, David Hirsch, Kyle Evancoe, Paul Pinard, Herbert Bodensiek

Representative: Benjamin Losordo, Esq., also with him tonight is Kristen Tobias who is the manager of the site. Ms. Tobias addresses the board. She says that the owner is committed and cannot attend meeting because of another commitment. He has good intentions and runs a good business. Will remove underground tanks and put above ground, in 12 inches of reinforced concrete, sprinklers, etc. Wants to address the issue of the 9 bays and thinks that there is confusion, there are 5 doors. She points out the inspection bays and alignment bay: there will be 3 oil change car repair bays and 1 inspection bay.

Attorney Losordo states that they will limit the auto repair and has suggested language from the Site Plan Review (SPR) letter. **(Exhibit A)** At the back of the building they will put 18 more evergreen trees, has a new landscape plan, raising fence from 6 to 8 feet, will keep the rear doors closed, their proposed hours are 7:30 am to 5:30 pm. He shows pictures. Will have 6 lights on poles directed inward on the perimeter. Fire Chief had asked about hazardous waste at SPR. They also looked at parking and traffic. He looked at the ITE trip manual and maximum for what they are doing is 38 per hour whereas the gas station would do 125 visits per hour. Traffic should be about 1/3 for what it would be as a gas station. ITE manual didn't have exactly what they did so he compared it to a tire store and looked at other facilities on the Cape. He gives stats on what the West Yarmouth facility does. Most employees on-site will be 6 at any time. He talks about parking spaces. As for the hazardous waste, will be stored indoors and recycled and refers to his memo **(Exhibit B)**. Parts will be on time delivery. As for signs, they are not anticipating a road sign but a sign on the building that says Mobil 1 Lube Express. Their proposal is to put signs on the bays: oil change, alignment, vehicle repair, etc., and exceed the signage allowed. As for the auto repair, it is nonconforming, pre-existing in the Wellhead Protection (WP). They are eliminating one of the three nonconformities: the underground tanks.

Kyle asks if they have addressed concerns of the neighbors. Attorney Losordo says that they added 18 evergreens, raised the fence and will keep the back doors closed. Attorney Losordo explains the traffic flow.

Mark clarifies that there are 3 bays for auto repair and one for alignment.

Kyle asks about the reinforced concrete for the tanks as this has been a concern. Attorney Losordo explains that they would defer to what the Fire Chief wants and that the worst leak they could have is 1000 gallons of oil.

Jake asks if the West Yarmouth facility has a rear door. Attorney Losordo states it does not. Ms. Tobias states that the work in West Yarmouth is closed because of the the type of the building it is.

Alex states that Brian Florence – Building Commissioner sent an email requesting a full second containment system.

Alex asks for public comment

Hans Keijser – Supervisor of DPW water system would like to state his opposition. He doesn't think this would be good because

- o customers of water system, the EPA, DEP and water suppliers rely heavily on your judgement and commitment to support and uphold the zoning laws relative to groundwater and drinking water protection
- o the argument that the choice in front of you is to allow an oil change/car repair facility or a refurbished gas station is a false choice and in his opinion the option in front of you is only one of many possibilities for this parcel of land and is a detriment to the drinking water supply of Hyannis
- o the potential approval of the replacement of one grandfather nonconforming use with two different nonconforming expanded uses seems to be contrary to the spirit of the zoning law and its purpose and in his opinion that this potential approval would be precedent setting in a detrimental manner and not in the interest of the Hyannis water customers
- o also the eagerness to resolve the visual blighted site should not override the added danger to the water supply of Hyannis. The Straightway drinking water wells are only 1250 feet downstream from this location. The Hyannis water system just received permission from DEP to increase water production out of this area by means of reactivation of the Straightway #1 well. They are part of a cluster of four drinking water supply wells serving the Hyannis area
- o the groundwater in this area flows from north to south and the property at 326 West Main street is directly in line with the water drinking wells and if anything goes wrong, the water drinking supplies to the Hyannis area will be immediately and severely impacted and in his opinion the project does substantially and adversely affect the public health and safety of the village

He asks that this proposal be denied.

Thomas McKean – Director of the Town of Barnstable's Health Department speaks and refers to his email that he had sent (Exhibit B) in opposition. He states that the applicant also hasn't provided the Board of Health (BOH) with a complete list of hazardous materials, and is concerned about spillage outside of the tanks by employees doing oil changes and using solvents, etc.

Alex notes to the members that the board could get an environmental consultant and have a traffic study performed if so inclined. The board discusses.

Attorney Losordo says they can seal the concrete and goes over his memo again.

Alex makes findings:

Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

1. **The application falls within a category specifically excepted in the ordinance for a grant of a special permit.**
The proposed use is allowed under Section 240-25 with a Conditional Use Special Permit but prohibited under Section 240-35 WP.
2. **After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.**
3. **A Site Plan has been reviewed and found approvable with conditions. (Received today).**
Further, Section 240-25 (C) (1) (a) requires the Board to find that:
4. **Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.**

Vote:

AYE: Alex Rodolakis

NAY: David Hirsch, Herb Bodensiek, Paul Pinard, Kyle Evancoe

Motion is made by Herb Bodensiek and seconded by David Hirsch to deny the request

Vote:

AYE: Alex Rodolakis

NAY: David Hirsch, Herb Bodensiek, Paul Pinard, Kyle Evancoe

DENIED

Correspondence

- Received 04-24-18 from Cape Cod Commission – RE: Modification Type 1 to the Development of Regional Impact Decision for the Cape Cod Five Hyannis Banking Center approved on April 23, 2018.
- Received 04-24-18 from Cape Cod Commission – RE: Decision for the re-designation of the Downtown Hyannis Growth Incentive Zone (GIZ) that was approved by the Commission on April 19, 2018.

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

May 23, 2018, June 13, 2018, June 27, 2018

Adjournment

Motion is made by David Hirsch and seconded by Paul Pinard to adjourn

Vote:

All in favor

All exhibits are filed in their respective ZBA folders located at the ZBA Office, 200 Main Street, Hyannis, MA.

Please Note: The list of matters are those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the Board may go into executive session. The Board may also act on items in an order other than they appear on this agenda.

* Public files are available for viewing during normal business hours at the Zoning Board of Appeals office located at 200 Main Street, Hyannis, MA