

BARNSTABLE
TOWN CLERK



JUL 25 2019



Town of Barnstable

Zoning Board of Appeals

Board Members:

Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek - Clerk
 Jacob Dewey – Regular Member Paul Pinard – Regular Member
 Todd Walantis – Associate Member Mark Hansen – Associate Member Robert Twiss – 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 8, 2019

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

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

Also present were Paul Wackrow – Senior Planner and Carol Puckett – Administrative Assistant

As a quorum has been met, Alex opens the hearing at 7:02 PM

Call to Order

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

Alex reads the following with no response:

Notice of Recording

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

Minutes

February 13, 2019, February 27, 2019 (Notes)

Motion to approve the February 13, 2019 minutes made by Mark Hansen and seconded by Jake Dewey

Vote:

All in favor

Alex reads the following into the record:

Old Business

7:00 PM

Appeal No. 2019-023

Zaino

Scott J. and Nadine A. Zaino have petitioned for a Variance in accordance with Section 240-14 E – Bulk Regulations in the RF Zoning District – Minimum side yard setbacks. The Petitioner is proposing to construct a 10 foot by 12 foot pool shed approximately 1 foot from the northerly lot line. The property is located at 68 Indian Spring Road, West Barnstable, MA as shown on Assessors Map 133 as Parcel 036. It is located in the Residence F (R-F) Zoning District.

Continued from April 24, 2019. Members assigned: Alex Rodolakis, Jacob Dewey, Herbert Bodensiek, Paul Pinard, Mark Hansen

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

Mr. & Mrs. Zaino state that since the last hearing, they have spoken with David Stanton from the Board of Health regarding how far from the septic system the shed could be placed. Mr. Zaino states that Mr. Stanton said that it is not acceptable to put anything on top of the system and that there is no setback requirement from the septic for the shed that they are proposing. Mr. Zaino also notes that since the last hearing, they are proposing to reduce the size of the shed from 10' X 12' to 10' x 10' to fit in the limited area. They are going to kitty corner the shed and move further off the property line. Mr. Zaino states that the closest proposed setback from the property line will be five (5) feet. As for hardship, Mr. Zaino states that they have a limited area due to wetlands and the brook at the back of their property and with the location of the pool; they only have room for a shed in the corner. Also, they are trying to avoid being on top of the septic and is a detriment due to weight, etc. He states that this will not affect the abutters and mentions a letter from the abutter in support.

Alex reads letter from the abutter in support (Julie A. Grady) who is a direct abutter.

Alex asks if there is a sketch to look at and asks Mr. Zaino to point out on the plan where the shed will be placed. Paul Pinard asks how far off from Indian Spring Road the shed will be. Mr. Zaino explains that his parcel is approximately one (1) acre and that his house currently sits approximately seventy-five (75) feet from the front property line. Jake Dewey asks how far from the leaching field the proposed location of the shed will be. Mr. Zaino says the right rear will be 5 feet from the property line and the front right corner of the shed will be ten (10) feet off the property line. Jake clarifies that the shed will be approximately 1 foot from the leaching field.

Alex asks for public comment. No one speaks. Herb Bodensiek would be comfortable with ten (10) feet from the property line whereas fifteen (15) feet is required. Jake clarifies that everything will be inside the pool shed including pool equipment. Zaino says everything except for the heat pump will be inside.

The closest corner shall be no closer than 5 feet and the other corner shall not be closer than 10 feet. Alex also wants to make a condition that this will be considered full buildout and no further expansion/structures without coming back to this board.

The discussion is that Mr. Zaino will need to get a plan approved by the Building Commissioner.

Alex makes findings:

Variance Findings

That after opportunity for public comment and a continued hearing including a letter of support from the abutter that the applicant has satisfied the statutory requirements for a variance and:

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:

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; **the lot has significant land area but falls off dramatically in the back yard and is a unique location to put it and based on the septic location**
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; **and the septic system prohibits some of the location of the shed and moving it to the back portion of the lot would be a detriment to the petitioner because of the cost**
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. **The direct abutter has filed a letter of support; the structure is a shed and not an addition to the structure itself and satisfies that condition**

Vote:

AYE: Alex Rodolakis, Jacob Dewey, Paul Pinard, Mark Hansen

NAY: Herbert Bodensiek

Alex makes a motion to grant with the following conditions:

Variance Conditions

1. The shed shall be no greater than ten (10) feet by ten (10) feet
2. The closest corner of the shed shall be no closer than five feet from the northerly side yard setback. The other corners of the shed shall be no closer than ten (10) feet from the northerly side yard setback.
3. The applicant shall submit plans in conformance to what is granted tonight to the Building Department
4. This shall represent full buildout of the lot. No further additions or accessory structures shall be permitted without approval from this Board

5. 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 variance must be exercised within one year, unless extended.

Vote:

AYE: Alex Rodolakis, Jacob Dewey, Paul Pinard, Mark Hansen

NAY: Herbert Bodensiek

GRANTED WITH CONDITIONS

New Business

7:00 PM

Appeal No. 2019-025

Riedell

Sharon E. Riedell, as Trustee, has applied for a Special Permit in accordance with Section 240-93.B – Nonconforming Building or Structures Not Used as Single or Two-Family Residences. The Applicant is proposing to demolish an existing accessory structure (garage) and construct a new, 34'x34' garage approximately 11 feet from the front setback along Tower Hill Road. The subject property is located at 778 Main Street, Osterville, MA as shown on Assessor's Map 117 as parcel 084. It is located in the Business A (BA) Zoning District.

Alex Rodolakis states that a letter was submitted from Attorney Michael Schulz asking that this be continued to May 22, 2019.

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

Motion is made by Mark Hansen and seconded by Herb Bodensiek to continue to May 22, 2019 at 7:00 PM

Vote:

All in favor

CONTINUED TO MAY 22, 2019 AT 7:00 PM

Alex reads the following into the record:

7:01 PM

Appeal No. 2019-026

Stafford

Richard and Carla Stafford have applied for a Special Permit in accordance with Section 240-91 H. Nonconforming Lot. The Applicants are seeking to demolish the existing dwelling and construct a new three-bedroom, 1,785 square foot, single family dwelling on a lot less than 10,000 square feet. The subject property is located at 86 Seventh Avenue, Hyannis, MA as shown on Assessors Map 246 as parcel 142. It is located in the Residence B (RB) Zoning District.

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

Representative: Jim Hegarty from Reef Builders. The applicants, the Staffords, are also with him tonight. Mr. Hegarty gives summary of existing conditions and zoning requirements of what is being proposed. The proposal will eliminate the rear encroachment of the northern lot line and will meet all other setback requirements. If the room over the garage were to be include it would still be under the Gross Floor Area. It would not be more detrimental to the neighborhood, meets all yard setbacks and under area ratio and less than required building height. The proposed structure will be a modest 1785 square foot dwelling with one car garage, new septic and will be removing a home that is an eyesore and thinks it will not be more detrimental to the neighborhood.

He shows pictures of surrounding larger homes.

Mark Hansen asks if there will be a deck or patio. Mr. Hegarty states that there will be a patio.

Alex notes that he had asked about the bonus room above the garage and whether or not that is habitable space. Hegarty confirms that there are no plans for the walk out section to be habitable space as there are no windows.

Alex asks about height. Mr. Hegarty says it will be twenty-six (26) feet to ridge and maybe twenty-two (22) feet to plate.

Alex asks for public comment. Alex asks if Mr. Hegarty has seen the Crane's letter submitted. Mr. Hegarty has seen the letter.

Chris Crane lives at 85 Sixth Avenue which directly abuts the Stafford's home. He thinks that the proposal will eliminate any privacy at his property. Under the proposed construction, the dwelling will be twelve (12) feet from the property line. The entire left side of the proposed house looks down onto his shower station, patio and recreation area. He has a problem with the encroachment and the side yard. What he is asking is that the proposal be rejected and that a buffer be created on the side where the driveway is and to place the bonus room.

Alex asks if he has spoken with the Staffords previously. Mr. Crane states that he has only met the Staffords tonight.

Hansen asks if there is anything with the topography that would prevent the applicants from switching the floor plan. Mr. Hegarty states that it is a flat lot but in terms of layout, their address is on Seventh Avenue and not on Pine, the septic system runs across the whole face of the house, and the driveway would be over the septic which the Staffords would not prefer to have.

Alex asks Hegarty why the existing distance went from twenty-five (25) feet to twelve (12) feet and if the Staffords could slide the house further away from the concerned abutter's property. Hegarty states that they thought about it but that the Staffords think there would be a problem with parking in the driveway.

Jake confirms that the access is from Seventh Avenue. Herb Bodensiek suggests a curved drive-through. Mark asks if the septic will be new and suggests that they could install an H2O septic system which could be driven over.

Matt Teague wants to clarify that in terms of setbacks; they are meeting setbacks in their plan and are not asking for setback relief.

Nancy Greenburg lives with her sister Donna Miller directly across the street at 98 Seventh Avenue. The property in question has been deteriorating and rotting and an eyesore. She understands the privacy issue and would hope that it would be worked out and she suggests evergreens be planted against the fence. She states that another neighbor that has lived there for over 60 years also sent her an email which she reads from her phone. This neighbor is in support.

Alex closes public comment. The board deliberates. Alex thinks that something could be done on the 12 foot side yard setback and that there is room to move it on the lot a little bit. Todd would be in support of this. Jake says that it is within the setback requirements. Herb says fences make good neighbors.

Jake Dewey 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.

- **The application falls within a category specifically excepted in the ordinance for a grant of a special permit.** Section 240-91(H)(3) allows for the complete demolition and rebuilding of a residence on a nonconforming lot containing less than 10,000 square feet by Special Permit.
- **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.**

Further, Section 240-91(H)(3) requires the Board to find that if the proposed demolition and rebuilding cannot satisfy the criteria established in H(1) As-Of-Right, then the Board may allow the demolition and rebuilding by Special Permit provided the Board finds that:

- **The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building.** The proposed setbacks will comply with the requirements of the Residence B Zoning District.
- **The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater.** The proposed lot coverage is 19.9%.
- **The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished, whichever is greater.** The proposed FAR is within the 30%
- **The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 ½ stories.** The proposed height is 26 feet to top of plate (30 feet maximum) and the proposed dwelling is 2 stories.

The Board is also asked to find that:

- **The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.**

Vote:

All in favor

Jake makes a motion to grant with the following conditions:

Conditions

1. Special Permit No. 2019-026 is granted to Richard and Carla Stafford for the demolition of an existing dwelling and construction of a 1,785 square foot dwelling at 86 Seventh Avenue, Hyannisport (Hyannis).
2. The site development shall be constructed in substantial conformance with the plan entitled "Stafford Residence, Proposed Zoning Site Plan" prepared by J.M. O'Reilly & Associates, Inc., dated April 11, 2019 and design plans by Reef Builders dated February 3, 2019.
3. The total lot coverage of all structures on the lot shall not exceed 19.9% and the floor-area ratio shall not exceed ~~22.3%~~30%

4. The proposed redevelopment shall represent full build-out of the lot. Further expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
6. 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.

Vote:

All in favor

GRANTED WITH CONDITIONS

Correspondence

Received April 11, 2019 from the Cape Cod Commission – Chapter H Revised Mandatory DRI Thresholds 3(e) and 3 (f) for the Economic Center and Industrial Service and Trade Area in Greater Hyannis.

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

May 22, 2019, June 12, 2019, June 26, 2019

Adjournment

Motion to adjourn by Alex Rodolakis and seconded by Todd Walantis

Vote:

All in favor

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