



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, June 12, 2019

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

Alex Rodolakis - Chair	Absent
David Hirsch – Vice Chair	Present
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 Anna Brigham – Principal Planner and Carol Puckett – Administrative Assistant

As a quorum has been met, David Hirsch opens the hearing at 7:01 PM

Call to Order

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

David Hirsch 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

March 27, 2019, April 10, 2019

Motion to approve the March 27, 2019 minutes as submitted is made by Mark Hansen and seconded by Paul Pinard

Vote:

All in favor

Motion to approve the April 10, 2019 minutes as submitted is made by Mark Hansen and seconded by Paul

Vote:

All in favor

David Hirsch reads the following into the record:

New Business

7:00 PM

Appeal No. 2019-030

Carig

Joseph and Suzanne Carig have applied for a Special Permit in accordance with Section 240-91.H (3) – Nonconforming Lot. The Applicants are proposing to demolish an existing single-family dwelling and construct a new, 2,696 square foot, single-family dwelling on a lot consisting of 9,000 square feet, less than the required 10,000 square feet. The subject property is located at 136 Scudder Road, Osterville, MA as shown on Assessor’s Map 140 as Parcel 031. It is located in the Residence C (RC) Zoning District.

Members assigned: David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard, Mark Hansen

Representative: John Kenney, Esq.

Attorney Kenney gives summary of relief being sought and refers to his memo about the special permit requirements. He also touches base on the highlights of that memo. It is both in the RB and RC zoning districts. Back in 1950 it was only in the RB but was changed in 1956. This project does not exceed lot coverage or building height. The existing structure is very dated and is the reason for the demo/rebuild. There are letters from eleven neighbors. Of the eleven, six are in support. New house will be conforming to existing setbacks.

David Hirsch asks for public comment. No one speaks

No questions from the board.

Paul Pinard makes findings:

Proposal & Relief Requested

The Applicants are seeking to demolish the existing dwelling and construct a new three-bedroom, 2,696 gross square foot single family dwelling on a 9,000 square foot lot, under the required minimum 10,000 square feet as required under Section 240-91 H. (1) “As of Right”.

The existing lot coverage is 2,453 square feet or 27% and proposed lot coverage is 19.9%, under the threshold of 20%. The existing FAR is 3,681 square feet or 40%, and the proposed FAR is 2,696 square feet or 29.9%, under the 30% threshold allowed.

Section 240-91(H)(3) requires a special permit for all demolition and rebuilding projects if the proposed demolition and rebuilding cannot satisfy the criteria under Section 240-91(H)(1) “As of Right”, but the following criteria must be met:

- Lot Coverage: 19.9% (20% maximum) – 1,791 square feet (1,800 square feet allowed)
- Floor-Area Ratio: 29.9% (30% maximum) – 2,691 square feet (2,700 square feet allowed)
- Building Height: 18 feet to top of plate (30 feet maximum)

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.

- **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. It would be an improvement to the neighborhood.**

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 C 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 29.9%.
- **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 18 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. It would be an improvement to the neighborhood**

Attorney Kenney wants to correct the zoning district from his memo to the RC zoning district and the original house is smaller which comes from the Assessor’s record which included the garage however, the but that the new house will be bigger but still meets the requirements. Jakes asks if they plan on finishing the basement. Mr. & Mrs. Carig state that it will be unfinished.

Vote:

All in favor

Paul Pinard asks Attorney Kenney if he has seen the staff report with conditions and if he is okay with it. Attorney Kenney is okay with the conditions. Paul Pinard makes a motion to grant with the following conditions:

Conditions

1. Special Permit No. 2019-030 is granted to Joseph and Suzanne Carig for the demolition of an existing dwelling and construction of a 2,696 gross floor area dwelling at 136 Scudder Road, Osterville MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Plot Plan Showing proposed Conditions Lot 19B. #136 Scudder Road, Osterville, Massachusetts" prepared by Canal Land Surveying and Permitting, Inc., dated April 26, 2019 and design plans by Cotuit Bay Design, LLC dated April 17, 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 29.9%
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

David Hirsch reads the following into the record:

7:01 PM Appeal No. 2019-031

O'Brien

Ann Marie and Mark O'Brien have applied for a Special Permit in accordance with Section 240-92.B – Nonconforming Buildings or Structures Used as Single and Two-Family Residences. The Applicants are proposing to construct a 21 foot by 22.6 foot, two-car garage and a 5.6 foot by 7 foot front entry vestibule. The proposed garage encroaches into the 20 foot required front yard setback for the zoning district in which it is located. The subject property is located at 25 Carl Avenue, Hyannis, MA as shown on Assessor's Map 306 as Parcel 178. It is located in the Residence B Zoning District.

Members assigned: David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard

Representative: John Kenney, Esq.

David Hirsch states that a letter has been sent to the board asking to withdraw without prejudice.

Attorney Kenney asks to withdraw without prejudice

Motion to withdraw without prejudice is made by David Hirsch and seconded by Paul Pinard

**Vote:
All in favor**

WITHDRAWN WITHOUT PREJUDICE

David reads the following in to the record:

7:02 PM Appeal No. 2019-032

879 Craigville Beach Road, LLC.

879 Craigville Beach Road, LLC., has applied for a Special Permit in accordance with Section 240-131.4 – Craigville Beach District Use Regulations and Section 240-131.5.B – Dimensional, Bulk and Other Requirements. The Applicant is proposing to elevate the principal dwelling so that the lowest structural member is 2'(two feet) above the Base Flood Elevation and to renovate the existing structure which does not meet the setback requirements of Section 240-131.5.B. The subject property is located at 879 Craigville Beach Road, Centerville, MA as shown on Assessor's Map 225 as Parcel 030. It is located in the Craigville Beach District and Craigville Beach Neighborhood Overlay (CBDCB) Zoning Districts.

Members assigned: David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard, Bob Twiss

Representative: John Kenney, Esq.

Attorney Kenney states that Tom Potti is here along with Dan Ojala who just handed a letter (Exhibit A). Attorney Kenney states that he had also submitted a memo (Exhibit B) and summarizes the memo. David Hirsch states that he is a noticed abutter and will recuse himself if Attorney Kenney sees the need. Attorney Kenney states that he had discussed it with his client and his client is okay with Hirsch sitting on this.

Attorney Kenney states that they are taking a structure which doesn't fit with the current character of the neighborhood. However, the new one will be in line. They believe they meet all the DCPC regulations. They are raising it up and putting on open piling cement reinforced system and exterior will be changed and lifted in place on same footprint. The only reason for the special permit is because of the 15 foot setback. He also states that the new building will be more compliant, less intrusion into the setback. The lower level will have wash away panels, be brought up-to-date, will meet the height requirements, and have a new septic system. Dan Ojala states that his company did the perc test and thinks it is a single cesspool. However, the town records do not confirm that and Ojala thinks that this is a failed system which requires a title 5 system. They went before the Board of Health and the Conservation Commission and received approvals. Attorney Kenney addresses the Vzone regulations. They are not changing the site or bringing in more fill. They are addressed by the letter from Ojala which he handed in tonight. They will be using non-supportive break away walls and Gordon Clark, who is here tonight, can answer any questions about the break away walls.

Mark Hansen asks when the proposed construction is going to commence and if there will be any push back during the summer months. Attorney Kenney says there are some restrictions but that his client will probably start construction in the fall. Dan Ojala states that there are piping plover restrictions.

Robert Twiss asks what the current and proposed setbacks will be. Dan Ojala explains that it is going from 5.3 to 5.5 feet on the west line and with the removal of the shed, the lot coverage will be 19.9'.

Ojala states that kayaks and equipment are allowed as storage in the V-zone.

David Hirsch asks for public comment. No one speaks

Herb Bodensiek makes findings:

Relief Requested

879 Craigville Beach Road, LLC., has applied for a Special Permit in accordance with Section 240-131.4 – Craigville Beach District Use Regulations and Section 240-131.5.B – Dimensional, Bulk and Other Requirements. The Applicant is proposing to elevate the principal dwelling so that the lowest structural member is 2' (two feet) above the Base Flood Elevation and to renovate the existing structure which does not meet the setback requirements of Section 240-131.5.B. The subject property is located at 879 Craigville Beach Road, Centerville, MA.

Under Section 240-131.4. E In granting such Special Permit, the SPGA may provide relief from minimum yard setbacks where such relief ensures that the relief ensures that the proposed development:

- (1) Is consistent with Section 240-131.1. Purposes and Intent;
- (2) Is consistent with the performance standards for the neighborhood district where the development is located in accordance with Section 240-131.7. Neighborhood Overlay regulations; and
- (3) The applicant demonstrates undue hardship without desired relief.

The existing gross floor area is 1,367 (first floor is 840 square feet and the second floor is 527 square feet). The existing shed will be removed. The proposed gross floor area is 1,208 square feet (first floor is 840 square feet and the second floor is 368 square feet). The proposed dwelling will have a 69% decrease in floor area. The proposed renovations include new bedrooms, new bathrooms, a new living room and kitchen, and a new balcony overlooking a portion of the first floor.

FEMA Flood Zone Findings

As noted, the property is within a FEMA "V" Velocity Flood Zone. The Board may wish to ask the Applicant to address how the alteration to the structure will comply with the standards of construction for work in the V Zone contained within the Ordinance as follows:

- Any activity or development in a V Zone that creates an adverse effect by increasing elevation or velocity of floodwaters due to a change in drainage or flowage characteristics on the subject site, adjacent properties or any public or private way is prohibited. A proposed activity shall not result in flood damage due to filling which causes lateral displacement of floodwaters that, in the judgment of the SPGA, would otherwise be confined to said area. The burden of proof for this standard rests with the applicant and shall require certification by a professional engineer.
- Open foundations shall be designed to accommodate only the height required to elevate the lowest structural member two feet above the BFE in V Zones and one foot above BFE in A Zones. For all new construction and substantial improvements within the V Zones, the space below the lowest floor must either be free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

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.

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 E allows for relief from setbacks 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 general 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.**
Setback relief is being requested for the proposed structure in accordance with § 240-131.4E. Lot coverage requirements are met.
- The redevelopment complies with the height limitations set forth herein.¹**

Under Section 240-131.7.F Craigville Beach Neighborhood, the Board must find the development meets:

- No development or redevelopment shall be permitted within V Zones, except that existing structures may be changed or altered, provided there is no increase in gross floor area, footprint, or intensity of use (including but not limited to increases in wastewater flow and impervious area) within the V Zone. The existing structure is being raised above the flood zone and altered with no increase in floor area or footprint.
- New septic systems shall be prohibited in V Zones except to upgrade existing failed systems where such systems pose a demonstrated threat to public health, water quality, or natural resources. On September 12, 2016, the Board of Health issued an approval for a conditional variance to install an onsite sewage disposal system with conditions. The Board should note that the existing dwelling has a cesspool which is an automatic failure under Board of Health regulations.
- Any activity or development in a V Zone that creates an adverse effect by increasing elevation or velocity of floodwaters due to a change in drainage or flowage characteristics on the subject site, adjacent properties or any public or private way is prohibited. A proposed activity shall not result in flood damage due to filling which causes lateral displacement of floodwaters that, in the judgment of the SPGA, would otherwise be confined to said area. The burden of proof for this standard rests with the applicant and shall require certification by a professional engineer.

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)

- Open foundations shall be designed to accommodate only the height required to elevate the lowest structural member two feet above the BFE in V Zones and one foot above BFE in A Zones. For all new construction and substantial improvements within the V Zones, the space below the lowest floor must either be free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

Vote:

All in favor

Herb Bodensiek makes a motion to grant the relief being requested with the following conditions:

Conditions

1. Special Permit No. 2019-032 is granted to 879 Craigville Beach Road, LLC to allow the elevation of the principal dwelling so that the lowest structural member is 2' (two feet) above the Base Flood Elevation and to renovate the existing structure which does not meet the setback requirements of Section 240-131.5.B. at 879 Craigville Beach Road Centerville, MA pursuant to Section 240-131.4 of the Craigville Beach District.
2. The proposed alteration shall be constructed in substantial conformance with the site plan entitled "Title 5 Site Plan of #879 Craigville Beach Road, Centerville, MA" prepared for Thomas Poti, by Down Cape Engineering, Inc., dated June 27, 2016 with a last revision date of April 29, 2019.
3. There shall be no further expansion of the structure, construction of accessory structures, or impervious surface coverage on the lot.
4. The Applicant shall comply with decisions and conditions issued by the Board of Health and Conservation Commission.
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 special permit must be exercised within two years, unless extended.

Vote:

AYE: David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard, Bob Twiss

NAY: None

GRANTED WITH CONDITIONS

David Hirsch reads the following in to the record:

7:03 PM

Appeal No. 2019-033

Ferrill

Forrest and Linda K. Ferrill, II, are appealing a decision from an Administrative Official which was a denial of a building permit. The Building Commissioner has denied the issuance of a building permit in reference to Section 240-43 citing that the request for the 40 foot by 60 foot metal pole barn is not customary or incidental to a single-family dwelling and that the structure becomes predominant and thus the principal use. The subject property is located at 34 Cammett Road, Marstons Mills, MA as shown on Assessor's Map 079 as Parcel 020. It is located in the Residence F (RF) Zoning District.

Members assigned: David Hirsch, Herb Bodensiek, Jake Dewey, Paul Pinard, Mark Hansen

Representative: James McMahan from Buzzards Bay representing the appellant Mr. Ferrill.

Attorney McMahan states that the proposed garage will be constructed on a concrete slab, will have appropriate setbacks and because of the location on the lot will not be visible. It will be used for the storage of personal property which includes two boats and a homemade, fold-up airplane. Also with him tonight is Mr. Ferrill who will answer any questions.

David Hirsch informs the attorney and client that he was only informed this afternoon that Brian Florence had planned on being here but due to s family emergency cannot be here and asks if they would like to proceed. Mr. Ferrill wants to proceed.

Robert Twiss asks if he was going to keep the existing garage and what the dimensions are. Mr. Ferrill states that he will be demolishing the 25' X 25' garage and building an approximate 2400 square foot structure. He plans on redoing his house in the future which is currently a cottage. Twiss asks if the neighbors behind him are okay with this proposal. Mr. Ferrill states that his neighbor, Rudy, does not have any issues with the project. Twiss also noticed on the other side of his house, another smaller house abutting his property and asks if he has spoken with that neighbor. Mr. Ferrill has not. Robert Twiss also asks if he has a letter from his neighbor, Rudy. Mr. Ferrill does not but states he can get one.

Jake asks if there are any building plans with elevations. Mr. Ferrill says that he had some plans in the application but the detailed plans and elevations were submitted with the Building Department. Paul Pinard clarifies that a picture included with the application is a picture of a structure similar to what he wants to build.

Mark Hansen asks if this was a flat out denial just because of the application or were other alternatives given to him. Mr. Ferrill states that the first denial was because they didn't have the foundation plans which they then submitted for the second time. Hansen asks if there was any discussion about the size of the structure. Mr. Ferrill states no, and that after he submitted the plans it was still denied for a different reason. Mr. Ferrill then states that when the inspector spoke to him initially, the size wasn't mentioned.

The board discusses. Pinard and Hansen would like to hear from the Building Commissioner about this.

Attorney McMahon and Mr. Ferrill agree to continue this.

Motion to continue to June 26, 2019 at 7:01 PM is made by Jake Dewey and seconded by Paul Pinard

Vote:
All in favor

CONTINUED TO JUNE 26, 2019 AT 7:01 PM.

Correspondence

Letter of complaint received April 12, 2019 from Michael P. Shea regarding the Cotuit Center for the Arts, Inc.

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

June 26, July 10, 2018, July 24, 2019 August 7, August 21

Adjournment

Motion to adjourn is made by Mark Hansen and seconded by Paul Pinard

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