



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, September 25, 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	

20 FEB 14 AM 59

BARNSTABLE
TOWN CLERK

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

Since 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.

Time Extension Requests

7:00 PM

Appeal No. 2018-045

Laham Management & Leasing Inc.

Request by Laham Management & Leasing Inc., for a six (6) month extension of time in which to exercise Appeal No. 2018-045 granted for a Variance. The Variance was granted in order to construct a new automobile dealership with accessory parking use and is currently scheduled to lapse on September 25, 2019. The extension has been requested in order to finalize contract details and construction schedules for the overall process which involves the demolition and construction of a new Class I Automobile Dealership. The subject property is located at 105 Bassett Lane, Hyannis, MA as shown on Assessor's Map 309 as Parcel 236. It is located in the Office/Multifamily (OM) Residential District.

7:01 PM

Appeal No. 2018-046

Laham Management & Leasing Inc.

Request by Laham Management & Leasing Inc., for a six (6) month extension of time in which to exercise Appeal No. 2018-046 granted for a Modification of Variance No. 2015-025. The Variance was granted to modify Conditions No. 4 and No. 5 of Appeal No. 2015-025 in order to update plans and to redevelop the area in conjunction with Appeal No. 2018-045. This Variance is currently scheduled to lapse on September 25, 2019. The extension has been requested in order to finalize contract details and construction schedules for the overall process which involves the demolition and construction of a new Class I Automobile Dealership. The subject property is located at 157 Stevens Street, Hyannis, MA as shown on Assessor's Map 309 as Parcel 240. It is located in the Office/Multifamily (OM) Residential District.

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

Representative: Michael Ford, Esq. Attorney Ford explains that they are here under 40A regarding time extensions. He explains that the lot on which the Salvation Army building existed was part of the overall plan which included the construction of a new Mazda dealership. He shows a plan of the new dealership and explains that Joe Laham had to go to Planning Board and received a Special Permit which has 13 months left on that permit. In the past couple of weeks, they have moved forward and have demolished the Salvation Army structure. He also explains that part of the project included a parcel to be used for parking which consisted of a house and another structure. The relief for a modification of the previous relief on that that lot was granted in 2015 before the Zoning Board of Appeals out of caution in order to amend the new site plan. A time extension for that relief is also here before the board tonight.

No questions from the Board.

2018-045

Motion is made by Paul Pinard to grant a 6-month time extension.

Vote:

All in favor

2018-046

Motion is made by Paul Pinard to grant a 6-month time extension.

Vote:

All in favor

6 MONTH TIME EXTENSION GRANTED FOR 2018-045 and 2018-046

Old Business

7:00 PM

Appeal No. 2019-046

Harbor Health Services, Inc.

Harbor Health Services, Inc., has petitioned for a Variance pursuant to Section 240.33.F – Special Screening Standards in the IND Zoning District. The Petitioner is proposing to expand the existing parking lot by constructing approximately twenty-six (26) new parking spaces in the northeast corner of the lot for employee use. The proposed parking spaces require relief from the required fifty (50) foot front and thirty (30) foot side buffer strip depths. The subject property is located at 735 Attucks Lane, Hyannis, MA as shown on Assessor's Map 295 as Parcel 017. It is located in the Industrial (IND) Zoning District.

Continued from August 21, 2019. No members assigned – No testimony taken.

Members assigned: Herb Bodensiek, Jake Dewey, Paul Pinard, Todd Wilantis, Mark Hansen

Representative: John Kenney, Esq.

Attorney Kenney gives summary of relief regarding additional parking. Ed Pesce, Jeff Lambert from Harbor Health as well as Todd Murphy – CFO of Harbor Health are here tonight also. Mr. Murphy explains the services given at Harbor Health Services. They have 120 employees and over 11,000 patients with close to 48,000 visits per year. They provide primary care and are expanding their behavioral health care and are looking to apply for federal grants in order to expand their substance abuse program. This facility provides dental and medical to an underserved population. These patients can't get private providers which is why that is their mission and what they do. They would like to be able to accommodate and better assist the community.

Ed Pesce of Pesce Engineering shows the site plan and additional parking spaces proposed and explains that towards the back of the lot there are extreme topographical challenges and wetlands which is why the only other site on the lot for parking is in the northeast corner. He states that Harbor Health has met with the Zion Union Church who abuts this property and with whom they have entered an agreement about sharing 30 parking spaces during the week to be used by employees only. He notes that there is a walking path built years ago that adjoins these lots which is owned by Independence Park who did not want people utilizing it. What they are proposing to do to improve the safety and parking is to build a sidewalk along Attucks Lane layout in order to get connected to Zion Union Church parking lot. The people at Independence Park asked them to paint a crosswalk and to install a slow crosswalk sign to alert drivers leaving the site that it is a sidewalk. Another thing they are proposing to do is to remove the path and replace with shrubs in order to provide a landscape deterrent. Harbor Health's employees will also be instructed where to park and given instructions not to walk through the parking lot. They will provide arborvitae screening along that property line that they will encroach and are asking to reduce the front landscape requirement. He explains that the plan on file shows everything except the topography and wetland and has copies to be handed out to the board members tonight (Exhibit A).

Attorney Kenney goes over the variance requirements in accordance with Chapter 40A. As for the topographical features the subject property fronts two ponds which gives the lot an irregular shape and a significant amount of wetlands frontage which limits the use of the site due to Conservation Commission (ConComm) regulations, and that the back of the lot has a significant drop off. There is a parking area in the back, however, even if they could get ConComm approval, which he doubts because it is within the 50 foot buffer zone, they would have to put up a retaining wall and bring in significant amount of fill and have to deal with a 30 foot buffer and would not be enough room to warrant parking back there. Also, they would lose business which would be a hardship to the community. What triggered this was an agreement between the two growing businesses and they but has impacted the parking for Cape Cod Cooperative Banking customers.

They have also agreed to give employees stickers to note that they are employees of Harbor Health who park in the Zion Union Church parking lot. He thinks that the intent for the 60 foot buffer is for unsightly industrial uses and that Harbor Health has met the criterion for a variance.

Mark Hansen asks if the agreement with the Zion Union Church is in perpetuity. Mr. Murphy says it is in perpetuity for the existing 15 parking spaces and to increase it to 30 parking spaces. Mr. Hansen asks if there is a definitive border between Cape Cod Cooperative Bank and Harbor Health. Pesce explains that there are borders on either side or parking signs for the use of the perspective owners of the spaces. Mr. Murphy also states that, in accordance with the agreement, they would give a 60 day notice should they sell the property.

Bob Twiss asks for the current amount of parking spaces. Mr. Pesce states there are approximately 130 without the build-out being proposed. Mr. Pesce also states that there are approximately 120 employees which aren't all there at the same time and thinks that the amount of spaces will meet the demand. Bob Twiss has crunched the numbers and estimates that 2/3 of the parking would be for employees and 1/3 for patients. Attorney Kenney notes that half of the employees will be parking on the Zion Union Church premises. Mr. Twiss has noticed that people park on the grass and asks what would happen should the business grow. They discuss the purpose of the front buffer and Attorney Kenney doesn't think that the intent of the buffer is being nullified. Ed Pesce explains that this lot works with the help of parking from the Zion Union Church. Jake Dewey asks how many spaces they are losing by terminating the agreement with the Bank. Attorney Kenney states that it will be fifteen (15) parking spaces.

Herb Bodensiek asks for public comment.

Attorney Michael Ford is representing the Cooperative Bank of Cape Cod. For a long time there has been a license agreement and in the early days the meetings were held at that branch in the afternoon. However, recently the joint parking became a problem and the bank found it difficult to accommodate the needs of the bank's customers. It became an untenable situation for the bank. Therefore, the bank exercised the rights to terminate, wished there was an option but had to recapture the parking before the bank operations were compromised. They support and would like to see them succeed. The bank is considering some sort of physical barrier but after years of trying to make it work, it hasn't worked and it has become a one way situation. It will involve the town and emergency personnel if they do put something in place. Jake Dewey asks if there was a discussion of using the spaces on Sundays. Attorney Ford states that he has not seen anything regarding that.

Attorney Kenney notes that Charles Sabatt, Esq., submitted a letter of support dated September 23, 2018 (Exhibit B).

Jake Dewey 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:

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 applicant has presented that there is a topo
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and we determined that loss of business and loss of abutters business
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. **Determined that it is not a detriment**

Attorney Kenney corrects that there will be 27 parking spaces and notes that the plan also says 27. Jake will amend that it will be 27 spaces and not 26 and will reference the plan provided by Ed Pesce dated 09-25-19 handed in tonight.

Vote:

All in favor

Variance Conditions

1. Variance No. 2019-046 is granted to Jeff Lambert/Harbor Health Services, to allow the expansion of the parking lot to encroach into the front and side buffer depths at 735 Attucks Lane, Hyannis, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Proposed Parking Lot Expansion for the Pond View Professional Building at 735 Attucks Lane" dated July 18, 2019, drawn and stamped by Pesce Engineering & Associates.
3. The above-described expansion shall represent full build-out of the lot. No further alterations, additions or accessory structures 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 variance must be exercised within one year, unless extended.

Attorney Kenney notes that from Sabatt's letter there are additional conditions that the board may want to accept which are:

- “1. A painted crosswalk at the entrance to 765 Attucks Lane;**
- 2. Installation of two yellow pedestrian crossing signs as shown;**
- 3. Planting of arborvitae screening at the common westerly boundary line;**
- 4. Removal of the existing walkway on the westerly side of 765 Attucks Lane with the replanting of the area as indicated;**
- 5. Removal of the existing walkway on the easterly side of 765 Attucks Lane with the replanting of the area as indicated.**

Additionally, Harbor Health Services, Inc. has agreed to restrict its additional parking at the Zion Union Church, 805 Attucks Lane to employee parking and to require that employees be provided with decal permits to be displayed on their vehicles.”

Attorney Kenney asks time for Attorney Ford to review the conditions. Attorney Ford is okay with the conditions.

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex returns to the dais

Alex reads the following into the record:

7:01 PM

Appeal No. 2019-048

Shea/Blake

Kevin Shea and Kimberly Blake are applying for a Modification of Special Permit 2016-045. The Applicants are requesting to modify Condition No. 1 and Condition No.2 in order to facilitate changes to the original building plans submitted with Appeal No. 2016-045. The Applicants are proposing to downscale the structure as previously approved; remove the proposed dining room and kitchen expansion and in its place extend the covered porch the entire length of the structure and eliminate the small porch on the east facing side of the structure and replace with a small bay window. The subject property is located at 19 Vine Avenue, Centerville, MA as shown on Assessor's Map 226 as Parcel 027. It is located in the Craigville Beach Zoning District and Craigville Village Overlay Zoning District.

Continued from September 11, 2019. No members assigned, no testimony taken.

Hearing Due Date: 10-02-19. Decision Due: 11-20-19.

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

Representative: David Lawler, Esq. Lawler explains that his clients initially received a Special Permit from the ZBA. However, they entered into a situation with a builder who did some demo and construction, which was neither in the plan nor in accordance with the building permit. Because of health issues, the applicants were not able to oversee the project closely and therefore a cease and desist was issued by the Building Commissioner. He clients currently want to reduce everything that was previously approved by this board and has letters of support from four (4) abutters which he hands to the Chair. (Exhibit A)

He is asking to reduce the project and asks if the board has any questions. No questions from the board.

Alex asks if there is anyone from public who would like to speak. No one speaks. Alex notes that there is a letter from the Christian Meeting Camp Association, the Craigville Cottage Owner's Association, from Fred B. Williams and Lorraine A. Williams of Prospect Avenue and from Nancy and Roger Hansen of Vine Avenue.

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.

Staff has outlined all of the findings required by the DCPC ordinance.

- ☐ 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 change/alteration/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.

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

- ☐ 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 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:

- ☐ The alteration 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 § 240-131.7 D.(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.
- ☐ The redevelopment complies with the height limitations set forth herein.¹
There is no change to the existing height of 31.5 feet.
- ☒ 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. - n/a
- ☒ 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. - n/a
- ☐ 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

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

- ☐ Preserve the original massing of historic structures.
- ☐ Additions should be attached to secondary or less prominent facades of the building, 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.
- ☐ Works 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.
- ☐ The roof pitch on new construction and additions should complement the roof pitch of the historic structure and should maintain a pitch of at least six over twelve.
- ☐ Retains original architectural details and unique forms.

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)

The following are standards under Section 240-131.4.D.(2):

- ☐ Do not entail an increase in gross floor area or footprint for voluntary demolition of a single-family residence. – n/a
- ☐ 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
 - The GFA was originally 7,715 square feet. Special Permit No. 2016-045 allowed the GFA to 6,827 square feet. The current proposed GFA is 5,950 square feet, a reduction of 877 square feet from what was permitted in 2016.
- ☐ 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 proposed building coverage does not exceed 10% beyond what was existing on November 6, 2009; the total building coverage is not proposed to increase.
 - The proposed lot coverage (impervious surface) does not exceed 10% beyond what was existing on November 6, 2009; the total lot coverage is not proposed to change.
- ☐ Does not increase flood hazards in the neighborhood.
- ☐ Maintains or enhance views to Nantucket Sound and/or the Centerville River where applicable in accordance with § 240-131.5, Note 4.

Attorney Lawler discloses that they also have to go through ConComm

Vote:

All in favor

Alex makes a motion to grant the relief being sought with the following conditions:

Conditions

1. Special Permit No. 2019-048 is granted to Kevin Shea and Kimberly Blake to modify Special Permit No. 2016-045 to allow the applicants to downscale the structure as previously approved at 18 Vine Avenue, Centerville, MA.
2. The site development shall be constructed in substantial conformance with the conceptual plans by Atelier R Design dated June 19, 2019.
3. The proposed redevelopment shall represent full build-out of the lot. Further alteration or expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
4. All mechanical equipment associated with the dwellings (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.

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex recuses himself from the Hilton appeal, leaves the room and Herb Bodensiek takes over as chair:

7:02 PM

Appeal No. 2019-049

Hilton

Frederick S. & Judith A. Hilton have applied for a Special Permit pursuant to Section 240-91(H)(3) – Nonconforming Lot. The Applicants are proposing to demolish an existing 1,762 square foot dwelling and construct a new, single-family, four-bedroom dwelling which does not comply with the required fifteen (15) foot rear yard setback requirement. The subject property is located at 114 Harvey Avenue, Barnstable, MA as shown on Assessor's Map 319 as Parcel 103. It is located in the Residence F-1 (RF-1) Zoning District.

Continued from September 11, 2019. No members assigned, no testimony taken.

Hearing Due Date: 10-03-19. Decision Due: 11-20-19.

Members assigned: Herb Bodensiek, Jake Dewey, Paul Pinard, Todd Walantis, Bob Twiss

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.

Representative: Michael Schulz, Esq. explains the relief being sought. He did submit a memo to the board (Exhibit A). He gives the dimensions of the existing house when it was constructed. Since they cannot meet the as-of-right provision, they are seeking the dimensional setback for the front and back yard setback. The proposed construction is consistent with the neighborhood, has the support from direct abutters and based on the evidence, it fulfills the intent of the bylaw and would not be a detriment to the neighborhood and will answer any questions from the board.

Todd notes that the lots are challenged and a new more modern take would be appealing. Paul asks if the new house will conform to the building code in reference to the flood elevations in reference to the utilities. Jimmy Bose explains that the elevation is at 18' and at the front left hand corner, water can flow in and out and will comply. Pinard notes that the new construction is better for the flood zone.

Herb Bodensiek asks if there is anyone from the public who would like to speak either in favor or in opposition. No one speaks.

Herb notes that there are letters of support in the file (Exhibit B) and an email from Deidre Detjens which has been addressed.

Paul Pinard 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 where the proposed setbacks are lesser, not greater than the existing setbacks.
- 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 will meet the building code**

Further, Section 240-91(H)(3) requires the Board to find that if the proposed demolition and rebuilding cannot satisfy the criteria established is 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 **not** comply with the requirements of the Residence F-1 Zoning District.
- The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 9.8%.
- 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 .13 or 13%.
- 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 25 feet to the top of the plate (30 feet maximum to the plate) 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.

Jake Dewey asks about the setbacks and if they are getting closer. Attorney Schulz states that they do not comply with the RF-1 zoning district requirements but what is required for this relief is this special permit.

Pinard wants to amend and that the setbacks will not comply with the RF-1 district.

Vote:

All in favor

Paul Pinard asks Attorney Schulz if he has seen the staff report. Attorney Schulz answers yes. Paul makes a motion to grant the relief being sought with the following conditions:

Conditions

1. Special Permit No. 2019-049 is granted to Frederick S. & Judith A. Hilton for the demolition of an existing dwelling and construction of a 3,713 gross floor area dwelling at 114 Harvey Avenue, Barnstable, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan for #114 Harvey Avenue, Barnstable, MA" prepared by Down Cape Engineering, Inc., dated July 5, 2019 with a revision date of August 5, 2019 and design plans by Cotuit Bay Design LLC., dated August 8, 2019.
3. The total lot coverage of all structures on the lot shall not exceed 9.8% and the floor-area ratio shall not exceed 13%.

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/Land Court and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of the building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex returns to the dais and reads the following into the record:

7:03 PM

Appeal No. 2019-051

Hyannis Rotary, LLC.

Hyannis Rotary, LLC., has applied for a Special Permit pursuant to Section 240-34.N – Floodplain District. The Applicant is proposing alterations to a structure listed on the National Register of Historic Places. The alterations to the northerly “Carriage House” shown as the Garage/2 BR Studio will include the removal and replacement of all stucco, replacement of windows, sashes, and other miscellaneous work. A Special Permit under Section 240-34. N. is required for alterations to a structure located in the Velocity Zone on the FEMA Flood Insurance Rate Maps and is also on the National Register of Historic Places. The subject property is located at 10 Hyannis Avenue, Hyannis (Hyannisport), MA as shown on Assessor’s Map 287 as Parcel 131. It is located in the Residence F-1 (RF-1) Zoning District.

Hearing Due Date: 10-16-19. Decision Due: 11-20-19.

Continued from September 11, 2019. No members assigned, no testimony taken.

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

Representative: Michael Ford, Esq. Also with him tonight is Tim O’Neill from E.B. Norris. He hands in a plan (Exhibit A). Attorney Ford explains that they are here tonight regarding the carriage house and have been working with the local historical board as well as the Massachusetts Historical Commission. They have received a tax credit which is pending before Massachusetts Historical Commission for the reconstruction of all 3 structures in order to bring them back to their original condition as when constructed which includes the stucco on the exterior. He states that all the stucco is being replaced. However, the carriage house is in the V Zone, which has certain zoning requirements, which he reads. He also reads Section N regarding the house being on the National Register of Historical Places

He states that the Barnstable Historical Commission supports this as well as the Massachusetts Historical Society. He states that this would be detrimental if only one of the buildings could be lifted.

**Alex asks for public comment. No one speaks.
Board has no questions.**

Todd 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.
2. Site Plan Review is not required for single family residential dwellings.
3. 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.

Vote:

All in favor

Attorney Ford would like to see Condition #3 removed regarding full buildout of the lot. He explains that they are not planning to expand anything, however, they are in the process of doing the water tower and will part of it will change in some respect and would suggest that they consider the proposed redevelopment shall be for the carriage house.

Alex accepts that amendment.

Todd Walantis makes a motion to grant with the following conditions on staff report dated August 27, 2019: However, he would like to amend and limit Condition #3 to the carriage house

Conditions

1. Special Permit No. 2019-051 is granted to Hyannis Rotary LLC to allow alterations to a structure listed on the National Register of Historic Places. The alterations to the northerly "Carriage House" shown as the Garage/2 BR Studio will include the removal and replacement of all stucco, replacement of windows, sashes, and other miscellaneous work at 10 Hyannis Avenue, Hyannis, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan of 10 Hyannis Avenue Hyannisport, MA" prepared by Down Cape Engineering, Inc., dated November 12, 2018 with a last revision date of March 28, 2019.
3. The proposed redevelopment shall represent full build-out of the lot. Further alteration or expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
4. All mechanical equipment associated with the dwellings (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.

Vote:

All in favor

GRANTED WITH CONDITIONS

Alex calls the Fieber appeal and reads it into the record:

7:06 PM

Appeal No.2019-053

Fieber

Jessica L. Fieber has applied for a Special Permit pursuant to Section 240-47.1 – Family Apartments. The Applicant is proposing to demolish an existing single-family dwelling and garage and construct a single family dwelling and a detached family apartment. The applicant is proposing to replace the detached garage with a detached family apartment therefore a Special Permit is required pursuant to Section 240-47.1, Subsection B. The subject property is located at 180 Baxters Neck Road, Marstons Mills, MA as shown on Assessor's Map 075 as Parcel 022. It is located in the Residence F (RF) Zoning District.

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

Representative: Michael Ford, Esq. with him is Gerry Durr with Polhemus Savery Dasilva (PSD) architect builders.

Ford gives summary of relief being requested. Notes that this lot has an existing single family home and a garage which he points out on the overhead. He also notes that it is waterfront and has a pier. He states that the lot is nonconforming in reference to two perspectives: while it is in the RF zone whose basic requirement is one acre, it would be nonconforming because it is also in the Resource Protection Overlay Zoning District (RFOD) which requires two acre zoning which this does not meet, also, the lot width is currently 125' which, at the time of development met the requirement but which currently does not meet the 150' requirement. The house, as he can surmise from the Assessor's record was built in the 70's and meets the current setback requirement. He then goes over the requirements of the demo-rebuild requirements. It meets that but they are here for the family apartment because it is detached which requires a special permit. He goes over the criteria for a family apartment. He states that the apartment will be 1974 square feet which includes a storage area and will be less than 50% of the square footage of the proposed new single family dwelling. The proposed occupant is her son and is a graduate of the Riverview School but because it is detached is the only reason they are here tonight. They have been to the Conservation Commission (ConComm) and have an order of conditions and approval of the project.

Anyone from board have questions. Pinard asks if the existing garage will come down. The new structure (apartment will only have an open air carport.

Alex asks for public comment. No one speaks.

Attorney Ford also notes that the owner has been informed about the affidavit that must be filled out yearly because of the family apartment component.

Mark Hansen asks if it will comply with the number of bedrooms limited by the special permit. Attorney Ford states that it will.

Mark Hansen 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. *Section 240-47.1. B. allows a Special Permit for a Family Apartment in a detached structure.*
2. Site Plan Review is not required for single-family residential dwellings.
3. 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 Board is also asked to find that:

4. The proposed family apartment in detached structure would not be substantially more detrimental to the neighborhood than the existing dwelling.
5. The single-family nature of the property and of the accessory nature of the detached structure are preserved.

Vote:

All in favor

Mark Hansen makes a motion to grant relief being sought with the following conditions: Alex recommends striking Condition #3 in its entirety.

Attorney Ford suggests putting expansion of the family apartment prohibited without prior approval from the ZBA. Alex wants to strike the first sentence in #3 and amend as stated in #3.

Conditions

1. Special Permit No. 2019-053 is granted to Jessica L. Fieber, to create a Family Apartment in a detached structure at 180 Baxters Neck Road, Marstons Mills, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan of 180 Baxters Neck Road Marstons Mills, MA" by Down Cape Engineering, Inc., dated August 21, 2019 and design plans by Polhemus Savery Dasilva dated August 14, 2018.
3. ~~The proposed development shall represent full build-out of the lot.~~ Further expansion of the detached family apartment is prohibited without prior approval from the Board.
4. The Applicant must comply with the restrictions in Section 240-47.1 Family Apartments C. Conditions and Procedural Requirements 1-4 of the Ordinance (see above).
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 the 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

Alex calls for a five minute break.

Back in session at 9:02 pm.

7:05 PM

Appeal No. 2019-052

Jennings

Donna M. Jennings has petitioned for a Variance in accordance with Section 240-11.E – Bulk Regulations. The Petitioner is proposing to construct a two-car garage approximately 8.1 feet from the required 10 foot side yard setback. The subject property is located at 128 Connemara Circle, Hyannis, MA as shown on Assessor's Map 290 as Parcel 148. It is located in the Residence B (RB) Zoning District.

Members assigned: Alex Rodolakis, Herb Bodensiek, Paul Pinard, Mark Hansen, Todd Wilantis

Representative: Chris Kenney from Kenney Builders is representing the Jennings who are also here tonight. He explains that Mrs. Jennings works for the school department and must leave early in the morning and her husband must leave early in the winter to do snow removal. They both have to leave the house at different times which is problematic. He did come up with a design that would've met the required setback. However, the Jennings realized that it wouldn't accommodate both their vehicles and that they couldn't get out of their cars. They also couldn't park on the street and is a reason why they are proposing and going for the variance. The variance is needed for a small corner of the garage and not the whole structure. He states that the neighbors most affected have written a letter of support (Exhibit A). Alex notes that, in reference to meeting the criteria of the 3 prong test, that the lot is unusually shaped and fairly flat.

Alex asks if the board members have any questions. Mark Hansen notes that the extra footage is needed if you have a truck or a SUV.

Alex asks for public comment. No one speaks. Alex does note that Leslie MacKarren of 120 Connemara Circle has written a letter of support (Exhibit A). Patricia Lopes of 104 Connemara Circle speaks in favor from the audience.

Alex 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:

4. 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; **Alex states that the lot is an unique trapezoidal lot and pinches towards the front where the garage would be located**
5. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; **Alex states that the circumstances in not having a practical garage would be a substantial hardship and is only a few feet on the side yard**
6. 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. **Alex states that there has been support from direct abutters and another neighbor here tonight.**

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 asks Mr. Kenney if he has seen the conditions in the staff report dated September 11, 2019. Mr. Kenney says no. Alex reads the conditions to him:

Variance Conditions

1. Special Permit No. 2019-052 is issued to Donna M. Jennings in order to construct a two-car garage approximately 8 feet 1 inch from the easterly property line where 10 feet is required.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan of #128 Connemara Circle, Hyannis, MA" prepared for Kenney Builders by Down Cape Engineering dated August 12, 2019.
3. The reconstruction shall be in conformance with any applicable Board of Health and Title V requirements.
4. The above-described construction shall represent full build-out of the lot. No further additions or accessory structures shall be permitted without approval from the 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:

All in favor

GRANTED WITH CONDITIONS

Alex calls the 100 Main Street appeal and reads it into the record:

New Business

7:04 PM

Appeal No. 2019-050

1000 Main, LLC.

1000 Main LLC., has applied for a Special Permit pursuant to Section 240-20.B – West Barnstable Village Business District. The Applicant is seeking relief in order to store small traditional sailboats and to continue the pre-existing use of three residential units in the dwelling. The subject property is located at 1000 Main Street, West Barnstable, MA as shown on Assessor's Map 179 as Parcel 002. It is located in the West Barnstable Village Business District (WBVB) and the Residence F (RF) Zoning Districts.

Members assigned: Alex Rodolakis, Herb Bodensiek, Paul Pinard, Todd Walantis, Bob Twiss

Representative: Peter Eastman who reads the letter he submits this evening (Exhibit A). He also notes that he has archival photos of previous owner's boats shrink wrapped but doesn't have them with him tonight. He states that in reference to the housing component, he keeps the

lot well maintained, has upgraded the heating system and has installed a new well. As for the residential level, affordable housing is in need and thinks that he is contributing to the community in a positive manner.

Alex notes that they are permitted to do artisan work and boat work and asks if he is looking to do that. Mr. Eastman says no and the primary reason he purchased the property was for boat storage. The board members discuss the boat storage component.

Paul Pinard asks Alex if they can vote separately vote on the boat issue and then the housing issue. Alex states yes.

Alex asks for public comment.

Sherry Greenstarr lives in Barnstable and thinks boat storage is okay and the fact that these are sailboats doesn't see this as an issue.

Mark Hansen asks if the complaint from the abutter was the number of boats or the storage of boats. Mr. Eastman isn't sure what the complainants issue is with this property but they are the only abutters who have an issue.

Nancy Trafton of 995 Main Street lives directly across the street for 26 years and gives background of the subject property (Exhibit B). In 2008 the Birdsey's son rented apartments in the house and there was sporadic use of the barn by Birdsey's son. A previous property listing stated that it contained 3 apartments which was in contradiction to the previous special permit granted. Her and her husband thought they should bring this to the attention of the Building Inspector and Mr. Birdsey. Her husband, Attorney Sundelin submitted, in detail, his opinion why the multifamily was extinguished with the issuance of the '87 special permit. Mr. Birdsey gave copies of that opinion to the selling agent, met with Art Traczyk from the Town of Barnstable who thanked her and which resulted in the removal of the listing of the 3 apartments. At that time they assumed that the issue was settled. However, Mr. Eastman utilized the same broker and it follows that Mr. Eastman was given the same information in 2013. Sometime in 2014, Eastman started filling the yard with shrink wrapped boats (20). Boat storage was not allowed under the old permit and not allowed under current zoning. In April of 2016 Eastman listed the property for sale as unique with endless possibilities, 3 income producing units, offices or both and a boat storage and repair business.

She did not share the West Barnstable Village Local Comprehensive Plan Committee and didn't work for years with the Civic Association and the town's Planning Department on updating the comprehensive plan and the business district zoning to hear that land uses in her predominately residential district has endless possibilities. She is confident that the board will review all the information and take it under advisement. She is not trying to complain but wants to point out that boat storage is not allowed in this district. She was on the committee to bring back the artisans and it was important to the committee that there be no outdoor storage of boats. She includes articles about zoning, a letter from a town councilor and knows there is also a need for affordable housing. However, Mr. Birdsey relinquished the use.

Chloe Starr is one of the residents at 1000 Main, LLC. She lived in the first floor apartment and works on an oyster farm in Barnstable. She is thankful that this apartment exists, in terms of the boats, she sees someone maybe once a month dropping off boats. They are only 2 cars at the house right now. He is a good landlord. Doesn't think there is anything industrial about the boat storage.

Eastman states that there was a need for the local comprehensive plan but if you look at 1000 Main Street from Google Earth, there is a high volume liquor store and a hair salon in a strip mall nearby. There is also an old car garage and a house that is in disrepair. On the east is a yoga studio showing that this is clearly not a residential neighborhood.

Peter Sundelin lives across from 1000 Main Street and has submitted a memo (Exhibit B). To the north, east and south of Mr. Eastman's property is residential. In terms of zoning itself, he wants to be here not as a NIMBY (not in my backyard) but thinks he should be complying and has other avenues of relief. In the 1987 special permit, Mr. Charles Birdsey was confronted with a choice (see his memo) and if you wanted to expand a prior nonconforming use, it had to be that same use. Birdsey wanted a boat building business and came under a different part of the ordinance. There was a discussion between Birdsey's attorney and the board at that time. What Birdsey ended up with after his special permit was a single family dwelling, an office and a boat building business allowed by the special permit and only one boat stored outside. He suggests that it is not coherent to think that the old pre-existing nonconforming use sought to survive. The problem happened when Christopher Birdsey took it over and reverted it to the multi-family use. He is asking that Mr. Eastman comply with the zoning ordinance and that what he is allowed to have, under the 1987 special permit, is one unit, an office and a boat building business. Birdsey knew there was a problem with multifamily and so does Eastman. He thinks he should be required to comply. He would suggest that it be taken under advisement.

Mr. Eastman would recommend that this be taken under advisement and asks for a continuance in order to hire counsel.

Mark Hansen asks if the units are registered. Eastman says yes.

Herb asks Mr. Eastman if he lives at the premises. Eastman says no.

Alex, after being asked, will not close public comment. They discuss hearing dates.

Motion to continue to December 11, 2019 at 7:00 PM is made by Herb Bodensiek and seconded by Paul Pinard. Mr. Eastman is advised that he will need to sign a time extension which he agrees to.

CONTINUED TO DECEMBER 11, 2019 AT 7:00 PM

Correspondence

Matters Not Reasonably Anticipated by the Chair

Review and/or approval of Hearing dates for 2020

Upcoming Meetings

October 16th, October 30th, November 13th, December 11, 2019

Adjournment

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

Vote:

All in favor

