



Town of Barnstable Zoning Board of Appeals Agenda

Wednesday, December 11, 2013

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

Call to Order

Introduction of Board Members

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.

Approval of Minutes

Minutes from September 25, 2013 and October 9, 2013

Executive Session Minutes

The Chair will announce action taken on the following executive session minutes:

- February 28, 2007 - Tonsberg v. Zoning Board of Appeals;
- May 23, 2007 - Nolan v. Zoning Board of Appeals;
- September 26, 2007 - Cotuit Oyster v. Zoning Board of Appeals, Martin v. Zoning Board of Appeals
- April 11, 2007 - Ellis v Zoning Board of Appeals, Rolling Hitch v. Zoning Board of Appeals
- April 16, 2008 - Bay Point v. Zoning Board of Appeals
- March 9, 2011 - Limoncelli v. Town of Barnstable
- April 27, 2011 - Limoncelli v. Town of Barnstable
- June 27, 2012 - Bonner v. Zoning Board of Appeals
- April 28, 2004 - Settlers Landing v. Zoning Board of Appeals
- August 22, 2012 - Marvin v. Zoning Board of Appeals and Gregory v. Zoning Board of Appeals
- March, 27, 2013 - Dupuy v. Zoning Board of Appeals
- October 9, 2013 - Marvin v. Zoning Board of Appeals and Gregory v. Zoning Board of Appeals

Old Business

7:00 PM

Appeal No. 2013-039

Swann

Dr. Marcus Swann, as lessee, has applied for modification of Special Permit No. 2007-070-A to allow one of the four professional office suites to be utilized as a dental office. Condition No. 3 of the permit currently prohibits use of the building for medical or dental offices. Special Permit 2007-070 modified Permit Nos. 1984-92 and 1980-35 and allows for pre-existing nonconforming use of a pre-existing nonconforming structure. The property is located at 2957 Falmouth Road (Route 28), Marstons Mills, MA as shown on Assessor's Map 121 as Parcel 009. It is in a Residence F zoning district and the Groundwater Protection Overlay District.

Opened: July 24, 2013, continued to September 11, 2013, Continued to October 9, 2013 and to December 11, 2013. No members assigned. No testimony taken

The Applicant has requested to withdraw this appeal without prejudice.

New Business

7:00 PM Appeal No. 2013-070**Cumberland Farms, Inc.**

Cumberland Farms, Inc. has petitioned for a Special Permits to completely demolish an existing multi-tenant building, convenience store/kiosk, canopy and six fuel dispensers and reconstruct a new 4,426 square foot convenience store, a canopy (reduced in area), and three fuel dispensers. The Applicant seeks Special Permits pursuant to §240-93B and §240-94 for a preexisting nonconforming gas station use in the Wellhead Protection Overlay District. A Conditional Use Special Permit is requested to allow retail use in the Highway Business District. A Special Permit is requested pursuant to 240-93(B) to alter lawfully preexisting nonconforming structures. The existing and proposed structures do not conform to the current setback requirements in the HB District. The property is located at 395 West Main Street, Hyannis, MA as shown on Assessor's Map 269 as Parcel 116. It is in the Highway Business Zoning District and Wellhead Protection Overlay District.

7:05 PM Appeal No. 2013-071**Reed/Bergervine**

Melvin K. & Virginia M. Reed, as Trustees of the Reed Real Estate Trust and owners of 159 Donegal Circle, and Debra I. & Michael E. Bergervine as owners of 171 Donegal Circle have applied for a variance from §240-13.E – Bulk Regulations, Minimum Lot Area and Side Yard Setback and §240-36D, the two-acre minimum lot area requirement of the Resource Protection Overlay District (RPOD). Applicant Reed discovered a garage constructed on their property many years ago was built partially on their neighbor's property creating an encroachment and sideline setback violation. The Applicants seek to reconfigure the lot line to create two new lots. The lots are nonconforming to the minimum lot area requirements of the RC District and RPOD. The land swap would increase the extent of the lot area nonconformity for 171 Donegal Circle. The properties are located at 159 and 171 Donegal Circle, Centerville, MA as shown on Assessor's Map 169 as parcels 035 and 036. They are in the Residence C Zoning District and Resource Protection Overlay District.

7:05 PM Appeal No. 2013-072**Reed**

Melvin K & Virginia M. Reed, as Trustees of the Reed Real Estate Trust have applied for a variance pursuant to §240-13.E – Bulk Regulations, the 10 foot rear yard setback requirement. The Applicants seek relief from the setback requirements as they recently discovered a small portion of their existing garage is built as close as 6.5 feet from the rear lot line. The property is located at 159 Donegal Circle, Centerville, MA as shown on Assessor's Map 169 as parcel 035. It is in the Residence C Zoning District and Resource Protection Overlay District.

Other Business**Appeal No. 2013-016 – Peck Appeal of the Building Commissioner**

Appeal of a Cease and Desist Order for automotive repair business. Appellants contend operation is a preexisting nonconforming use. 3800 Falmouth Road/Rte 28, Marstons Mills, MA. Map 058 Parcel 001.

Appeal No. 2013-069 – Peck Special Permit to Expand a Preexisting Nonconforming Use

Request for a Special Permit pursuant to 240-94B to expand existing boat maintenance and repair business to allow for repair and service of automobile engines. 3800 Falmouth Road/Rte 28, Marstons Mills, MA. Map 058 Parcel 001.

The Applicant has requested to withdraw these appeals without prejudice. This request was received prior to notice of the public hearing. These appeals were not advertised/noticed.

Correspondence

Received November 12, 2013 from Cape Cod Commission regarding Minor Modification - Type #1 for Cape Cod Hospital

Received November 13, 2013 from Cape Cod Commission regarding Minor Modification - Type #1 for OCW Retail/Whole Foods

Letter dated November 15, 2013 from Office of Town Attorney RE: AMA Nantucket, Inc., dba Marvin Design Gallery. SJC Joint motion to continue from January 9, 2014 to January 13, 2014.

Other Business

Next Regularly Scheduled Hearings: January 8, 2014; January 22; February 12; February 26

Adjourn

JOHN W. KENNEY
ATTORNEY AT LAW
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CENTERVILLE, MASSACHUSETTS 02632

PHONE: 508-771-9300
FAX: 508-775-6029

via E-mail: Elizabeth.Jenkins@town.barnstable.ma.us

December 3, 2013

Craig G. Larson, Chairman
Town of Barnstable
Zoning Board of Appeals
200 Main Street
Hyannis, MA 02601

Re: **Appeal No. 2013-039**
297 Old Falmouth Road, Marstons Mills
Dr. Marcus Swann

Dear Mr. Chair and Members of the Zoning Board:

I am writing to request that the above-referenced appeal be withdrawn without prejudice.

Thank you for your attention and assistance in this matter.

Very truly yours,


John W. Kenney, Esq.

JWK/mmc

cc: Dr. Marcus Swann

Town of Barnstable
Growth Management Department
Jo Anne Miller Buntich, Director
Staff Report



Special Permit 2013-070 – Cumberland Farms, Inc.
Section 240-93(B) & 240-94 – Alteration of Preexisting Nonconforming Use in WP
Section 240-25(C) – Conditional Use Special Permit
Section 240-93(B) – Alteration of a Preexisting Nonconforming Structure

To demolish and rebuild a preexisting nonconforming gas station

Date: December 4, 2013
To: Zoning Board of Appeals
From: Elizabeth Jenkins, AICP, Principal Planner
Petitioner: **Cumberland Farms, Inc.** (100 Crossing Boulevard, Framingham, MA)
Property Address: 395 West Main Street
Assessor's Map/Parcel: 269/116
Zoning: Highway Business District, Wellhead Protection Overlay District

Filed: November 8, 2013

Hearing: December 11, 2013

Decision Due: March 11, 2014

Copy of Public Notice

Cumberland Farms, Inc. has petitioned for a Special Permits to completely demolish an existing multi-tenant building, convenience store/kiosk, canopy and six fuel dispensers and reconstruct a new 4,426 square foot convenience store, a canopy (reduced in area), and three fuel dispensers. The Applicant seeks Special Permits pursuant to §240-93B and §240-94 for a preexisting nonconforming gas station use in the Wellhead Protection Overlay District. A Conditional Use Special Permit is requested to allow retail use in the Highway Business District. A Special Permit is requested pursuant to 240-93(B) to alter lawfully preexisting nonconforming structures. The existing and proposed structures do not conform to the current setback requirements in the HB District. The property is located at 395 West Main Street, Hyannis, MA as shown on Assessor's Map 269 as Parcel 116. It is in the Highway Business Zoning District and Wellhead Protection Overlay District.

Site Plan Review Status

As of publication of this staff report, the Applicant has not yet received approval from the Site Plan Review Committee. The Applicant appeared before the Committee and received comments, but revised plans have not yet been submitted for review and approval.

Background

In Appeal 2013-070, the subject property is a 0.60 acre parcel located at the corner of West Main Street and Suomi Road. The parcel is currently improved with six fuel dispensers (twelve pumps), a 50 ft x 90 ft gas station canopy and an approximately 800 sq.ft convenience store/kiosk. A separate freestanding multi-tenant building of approximately 4,450 sq.ft sits behind the gas station. This building is currently vacant.



The parcel is located entirely within the Highway Business District and Wellhead Protection Overlay District. The property is bounded to the north and east by lots used for storage of used cars.

The property has been owned by Cumberland Farms since 1982. According to the Applicant, a "Speedy Way" station operated at the site prior to their purchase and redevelopment and use of the property for a gasoline filling station dates to as early as 1958, as evidenced by a fuel storage license. The use of the property as a gas station thus predates the adoption of the Groundwater Protection Overlay Districts in 1987. The genesis of the retail sales on the site is less clear; however, this use also appears to be preexisting nonconforming. The existing site configuration was established in 1982-1983. The property was rezoned from a Business District to a Highway Business District in November 1983.

The multi-tenant building to the rear has three tenant spaces. A Cumberland Farms sign is displayed above one space, but it appears to be largely vacant, used perhaps for storage. In 2002, the Board issued a Conditional Use Special Permit to "Sassy Nails" for use of a tenant space for a manicurist shop. That use has since been abandoned.



Relief Requested

Cumberland Farms, Inc. is seeking to demolish all existing structures and redevelop the site with a new gas station and convenience store. To accomplish this, the Applicant has made three Special Permit requests:

- **§240-93(B) & 240-94 – Alteration of Preexisting Nonconforming Use in WP:** The use of the property for a gasoline filling station predates the adoption of the Wellhead Protection Overlay District in 1987. Staff understands that the underground storage tanks that hold the fuel were replaced in 2008 and will not be modified with this redevelopment. The number of fuel dispensers will be reduced from six (twelve nozzles) to three (six nozzles) with this proposal. The amount of hazardous materials on site will not increase and the number of fuel dispensers will decrease by half.

As the current and proposed structures housing the nonconforming use do not conform to setback requirements, the Applicants have also requested relief under 240-93(B), alteration of a preexisting nonconforming structure. Discussion of that relief is provided below.

The Wellhead Protection District also requires that "no more than 50% of the total upland area of any lot be made impervious by the installation of buildings, structures and paved surfaces." The site appears to be almost all impervious today; according to the Applicant's plans, 21,167 sq.ft of the site is covered with buildings and other impervious surfaces. The proposed plans decrease the total impervious surface area to 19,896 square feet. The new proposal includes a front yard landscape buffer of 17 feet along West Main Street, where no buffer exists now. The Applicant has provided a landscape plan proposing street trees and a mix of deciduous and evergreen shrubs and grasses.

- **§240-25(C) – Conditional Use Special Permit:** Cumberland Farms is requesting a Conditional Use Special Permit for retail sales in the Highway Business District. Currently, limited retail sales occur out of the approximately 800 sq.ft kiosk as a preexisting non-conforming use. The Applicant is proposing a new 4,426 sq.ft convenience store. The floor plans indicate they will sell typical convenience food and beverage items, such as coffee and fountain drinks, and prepackaged or pre-prepared food and beverages.

The new store will be a colonial-style pitched-roof structure. Building materials include a base of cultured stone, clapboards, and shingles on the front- and side-facing gables. A small patio area with decorative lighting is shown along the Suomi Road frontage. Wall and freestanding signage is proposed to be externally illuminated.

- **§240-93(B) – Alteration of a Preexisting Nonconforming Structure:** The existing structures on the site do not conform to the front, side, or rear yard setbacks in the Highway Business District. The bulk and dimensional regulations in the HB District are as follows:

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
HB	40,000	20	160	60 ²	30 ³	20	30 ¹	30

¹ Or two stories, whichever is lesser

² One hundred feet along Route 28 and 132.

³ The minimum total side yard setback shall be 30 feet, provided that no allocation of such total results in a setback of less than 10 feet, except abutting a residential district, where a minimum of 20 feet is required.

NOTE: Front yard landscaped setback from the road lot line:
 HB 45 feet.

The proposed structures do not comply with the front or rear yard setback requirements. The Applicant is requesting Special Permits pursuant to Section 240-93(B) – Special Permit for alterations or expansions of nonconforming buildings or structures not used as single- or two-family dwellings. The building houses a non-conforming use, so a Special Permit is required.

Front Setbacks: The existing gas station canopy is located 25 feet from the front property line along West Main Street. The proposed gas station canopy is set back 53 feet from that property line.

Along the Suomi Road frontage, the buildings are located a maximum distance of 24.2 feet from the property line. At the southern portion of the Suomi Road layout, along the right-of-way flare, the canopy setback ranges from 13.6 feet to 17 feet. The proposed setback of the new canopy and convenience store are 17 feet and 22 feet, respectively.

Rear Setback: The existing rear setback of the multi-tenant building is 5.8 feet at the narrowest point. The proposed rear building setback is 6.0 feet.

Staff Comments

- The Board may wish to review the existing and proposed setbacks of the canopy and the convenience store along Suomi Road. If measured conservatively, the setbacks of the existing canopy and tenant building are 24.2 and 24.7 feet, respectively. If measured from the right-of-way flare, the minimum setback of the canopy is reduced to between 13.6 and 17 feet. As noted above, the setbacks of the new canopy and convenience store are 17 feet and 22 feet respectively.

Upon consideration, should the Board find that the proposed structures represent an intensification of the setback nonconformity along Suomi Road, the Board should consider the need for a variance for the proposed redevelopment. Judicial precedent¹ establishes that when nonconforming commercial structures or structures housing nonconforming uses are altered or expanded, they may not intensify the degree of a preexisting nonconformity. Such intensification would require a variance and meet the “not substantially more detrimental” standard.

- Currently, access to the site is provided by two open curb cuts on West Main Street and a large opening on Suomi Road. With this redevelopment, the curb cut onto West Main Street will be reduced to a single 30 foot opening and the curb cut onto Suomi Road will be reduced to 24 feet.
- The site does not currently conform to the 45 foot landscape setback required in the HB District. There is currently no landscaping along West Main Street; there is an open curb cut across the majority of the frontage. The Applicant is proposing a landscaped 17 foot setback, reduction in the curb cut, and a reconstructed, ADA compliant sidewalk – substantial improvements over the existing condition.
- The existing gas station/convenience store and multi-tenant building are served by ten parking spaces, where 24 spaces would be required under today’s ordinance. Seventeen parking spaces are proposed to serve the redeveloped site, including two employee spaces located in front of the trash enclosure. The number of spaces does not conform to the requirement for one space for every 200 sq.ft of retail floor area, but the ratio of spaces to gross square footage is improved (from 1:489 sq.ft to 1:260 sq.ft).
- The new canopy will include a modern fire suppression system and recessed lighting. These upgrades will improve the operational safety and appearance of the gas station.
- The development will be served by public sanitary sewer and public water.
- Section 240-94B allows the Board the following discretion in reviewing plans for nonconforming uses:

At the discretion of the Zoning Board of Appeals, improvements may be required in order to reduce the impact on the neighborhood and surrounding properties including but not limited to the following:

- (a) Greater conformance of signage to the requirements of Article VII;
- (b) The addition of off-street parking and loading facilities;
- (c) Improved pedestrian safety, traffic circulation and reduction in the number and/or width of curb cuts;
- (d) Increase of open space or vegetated buffers and screening along adjoining lots and roadways. The applicant shall demonstrate maximum possible compliance with § 240-53, Landscape Requirements for Parking Lots, Subsection F, if applicable.
- (e) Accessory uses or structures to the principal nonconforming use may be required to be brought into substantial conformance with the present zoning.

The Site Plan Review Committee has requested extension of the sidewalk on Suomi Road north to meet the walkway in front of the building. This will improve pedestrian and ADA accessibility.

¹ Rockwood v The Snow Inn Corp, 409 Mass 361, 364, 566 NE2d 608, 610-11 (1991) and Cox v. Board of Appeals of Carver, 42 MassAppCt 422, 426, 677 NE2d 699, 701-02 (1997)

Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C) that support:

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit:
 - **Cumberland Farms is requesting Special Permits under Sections 240-93B and 240-94 for alteration of a preexisting nonconforming use housed in a preexisting nonconforming structure. The Applicant seeks to alter and continue the gasoline filling station use in the Wellhead Protection District.**
 - **The proposed alteration are not substantially more detrimental to the surrounding neighborhood.**
 - **The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming. The nonconforming use is maintained on Lots 3, 4 and 34 as shown on Land Court Plan No. 11328B.**
 - **The proposed use is not expanded beyond the zoning district in existence on the date it became nonconforming. The entire parcel has been zoned WP since 1987.**
 - **Cumberland Farms is requesting a Conditional Use Special Permit pursuant to 240-25(C) for retail sales in the Highway Business District. The Applicant is proposing a new 4,426 sq.ft convenience store.**
 - **The proposed retail use will not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.**
 - **Cumberland Farms is requesting a Special Permit pursuant to Section 240-93B for alteration of preexisting nonconforming structures. The existing and proposed structures do not conform to front and rear yard setback requirements in the HB District. The proposed setback of the new canopy and convenience store are 17 feet and 22 feet from Suomi Road, respectively. The proposed rear building setback is 6.0 feet.**
 - **The proposed alterations are not substantially more detrimental to the surrounding neighborhood.**
- **The Site Plan Review Committee approved the proposed development on _____.**
- **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 following condition regarding Comprehensive Plan compliance is also suggested:

- **The West Main Street Corridor is designated as a “Redevelopment Area” on the Strategic Planning Area Map adopted with the Local Comprehensive Plan. This proposal is consistent with the Comprehensive Plan as it represents a redevelopment of an existing use and site that will result in improvements in safety, appearance, and function.**

Suggested Conditions

Should the Board find to grant the special permit, it may wish to consider the following conditions:

1. Special Permit No. 2013-070 is granted to Cumberland Farms, Inc. for the redevelopment of the existing gas station and convenience store at 395 West Main Street, Hyannis. Relief is granted as follows:
 - a. Special Permits under Sections 240-93B and 240-94 for alteration of a preexisting nonconforming use housed in a preexisting nonconforming structure to alter and continue use of a gasoline filling station use in the Wellhead Protection District.
 - b. A Conditional Use Special Permit pursuant to 240-25(C) for retail sales in the Highway Business District, specifically the operation of a 4,426 square foot convenience store.
 - c. A Special Permit for alteration of preexisting nonconforming structures to allow the setback of the new canopy and convenience store to be 17 feet and 22 feet from Suomi Road, respectively and the proposed rear building setback to be 6.0 feet.
2. The redevelopment shall be in substantial compliance with the plans entitled "Proposed Site Redevelopment – Cumberland Farms, Inc" drawn and stamped by Coastal Engineering Company, Inc. and dated _____ and the building elevations entitled "Cumberland Farms Exterior Elevations" drawn by Allevato Architects, Inc. dated October 7, 2013.
3. Landscaping shall be installed and maintained in substantial conformance with the plan entitled "Cumberland Farms, Inc. Planting Plan" drawn and stamped by Hawk Design, Inc. dated October 7, 2013.
4. The redevelopment shall be in conformance with all conditions contained in the Site Plan Review Committee's approval letter dated _____.
5. For the purposes of improved pedestrian safety, the 5 foot concrete sidewalk on Suomi Road shall be extended north to meet the walkway in front of the building.
6. Signage shall be externally illuminated and in compliance with the Sign Code as determined by the Building Commissioner.
7. The redevelopment shall be in compliance with all Board of Health regulations or with any variance issued by the Board.
8. The redevelopment shall be in compliance with all fire codes and requirements of the Hyannis Fire Department.
9. The site shall be connected to sanitary sewer and all necessary permits shall be obtained from the Department of Public Works.
10. 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 of building or demolition permits. The rights authorized by this special permit must be exercised within two years, unless extended.

Copies: Attorney E. James Veara for Cumberland Farms, Inc.

Attachments: Application
Site Redevelopment Plans (11/7/2013)
Building and Canopy Elevations (10/7/2013)
Landscape Plan (10/7/2013)
Aerial Photo

TOWN OF BARNSTABLE
2013 NOV -8 AM 10:35
GROWTH MANAGEMENT



BARNSTABLE
TOWN CLERK

'13 NOV -8 P4:22

Town of Barnstable
Zoning Board of Appeals
Petition for a Special Permit

Date Received
Town Clerk's Office:

For office use only:

Appeal # 2013-070

Hearing Date 12-11-13

Days Extended

Decision Due 03-11-14

The undersigned hereby applies to the Zoning Board of Appeals for a Special Permit, in the manner and for the reasons set forth below:

Petitioner's Name¹: Cumberland Farms, Inc. Phone: 508-270-1466

Petitioner's Address: 100 Crossing Boulevard, Framingham, MA 01702

Property Location: 395 West Main Street

Property Owner: Cumberland Farms, Inc. Phone: 508-270-1466

Address of Owner: 100 Crossing Boulevard, Framingham, MA 01702

If applicant differs from owner, state nature of interest:²

Registry of Deeds/Land Court References: Deed Ctf 89626 Plan Book 9, page 74

Assessor's Map/Parcel Number: 269/116 Zoning District: HB

Number of Years Owned: 31 Groundwater Overlay District: WP

Special Permit Requested: See attached

Cite Section & Title from the Zoning Ordinance

Description of Activity/Reason for Request: See attached

Attach additional sheet if necessary

Is the property subject to an existing Variance or Special PermitNo [] Yes ☒ -

Permit # 2002-136

¹ The Petitioner's Name will be the entity to whom the special permit will be issued to.

² If the Applicant differs from owner, the Applicant will be required to submit one original notarized letter from the owner authorizing the application to the Zoning Board, a copy of an executed purchase & sales agreement or lease, or other documents to prove standing and interest in the property.

Special Permits Requested

1. Pursuant to Sections 240-93B and 240-94, a special permit to alter a lawfully preexisting, nonconforming use of the gas station in the WP;
2. Pursuant to Section 240-25C, a conditional use special permit for the retail use in the HB;
3. Pursuant to Section 240-93B, a special permit to alter a lawfully preexisting structure - gas canopy.

Description of Activity/Reason for Request

Cumberland Farms purchased this former Speedy Way gas station in 1982, and opened a convenience store with gasoline sales operation in 1983. Cumberland now proposes to raze the existing 4,095 s.f. building to the rear of the site, formerly used as one of its Division offices with additional tenant units, the 792 s.f. convenience store/kiosk, and the gas canopy of 4,550 s.f. A colonial-style building of 4,426 s.f. is proposed to be constructed to be used solely as a convenience store. Six fuel dispensers will be replaced by three dispensers with a new gas canopy of 1,992 s.f., a reduction in canopy area of approximately 44%. Existing underground storage tanks are to remain. Parking and landscaping will be enhanced as part of the proposed site redevelopment.

Cumberland seeks a conditional use permit for its proposed retail and gasoline sales in the Highway Business District. As underground storage tanks and the storage of liquid petroleum are prohibited within the Groundwater Protection District Overlay, a special permit is required. As indicated above, the number of fuel dispensers will be reduced by 50% and no change is proposed to the existing underground storage tanks. A gas use has been in existence at this location since at least July 10, 1958, which use is supported by a fuel storage license issued by the Board of Selectmen. A special permit is also required to alter the preexisting canopy structure which, as indicated above, will be reduced by 44% in area and will be more conforming than the existing canopy.

Town of Barnstable
Growth Management Department
Jo Anne Miller Buntich, Director

Staff Report



Variance No. 2013-071 – Reed & Bergevine

Variance No. 2103-072 – Reed

§240-13 – Bulk Regulations: Minimum Lot Area & Rear Yard Setback

Lot line adjustment and setback relief for existing garage

Date: December 4, 2013
To: Zoning Board of Appeals
From: Elizabeth Jenkins, AICP, Principal Planner
Petitioners: **Melvin K. & Virginia M. Reed, Trustees; Reed Real Estate Trust
Michael E. & Debra I. Bergevine**
Property Addresses: 159 Donegal Circle, Centerville (Reed)
171 Donegal Circle, Centerville (Bergevine)
Assessor's Map/Parcel: 169/035 (Reed)
169/036 (Bergevine)
Zoning: Residence C, Resource Protection Overlay District

Filed: Nov 8, 2013/Amended Nov 18, 2013

Hearing: Dec 11, 2013

Decision Due: Feb 6, 2014

Copy of Public Notice

Appeal 2013-071: Melvin K. & Virginia M. Reed, as Trustees of the Reed Real Estate Trust and owners of 159 Donegal Circle, and Debra I. & Michael E. Bergervine¹ as owners of 171 Donegal Circle have applied for a variance from §240-13.E – Bulk Regulations, Minimum Lot Area and Side Yard Setback and §240-36D, the two-acre minimum lot area requirement of the Resource Protection Overlay District (RPOD). Applicant Reed discovered a garage constructed on their property many years ago was built partially on their neighbor's property creating an encroachment and sideline setback violation. The Applicants seek to reconfigure the lot line to create two new lots. The lots are nonconforming to the minimum lot area requirements of the RC District and RPOD. The land swap would increase the extent of the lot area nonconformity for 171 Donegal Circle. The properties are located at 159 and 171 Donegal Circle, Centerville, MA as shown on Assessor's Map 169 as parcels 035 and 036. They are in the Residence C Zoning District and Resource Protection Overlay District.

Appeal 2013-072: Melvin K & Virginia M. Reed, as Trustees of the Reed Real Estate Trust have applied for a variance pursuant to §240-13.E – Bulk Regulations, the 10 foot rear yard setback requirement. The Applicants seek relief from the setback requirements as they recently discovered a small portion of their existing garage is built as close as 6.5 feet from the rear lot line. The property is located at 159 Donegal Circle, Centerville, MA as shown on Assessor's Map 169 as parcel 035. It is in the Residence C Zoning District and Resource Protection Overlay District.

Background

The subject properties are located just north of Route 28 in Centerville, west of Lumbert Mill Road. When created by subdivision plan in 1968, 159 Donegal had .35 acres and 171 Donegal had .54 acres (all upland).² They are both corner lots and both developed with single-family dwellings built

¹ The application lists the owners of 171 Donegal as "BergERvine", whereas the name is spelled "BergEvine".

² The lots were originally created by a subdivision plan in 1968, Plan Book 223 Page 139, Lots 17 & 18.

in 1970. The property at 159 Donegal is also improved with a freestanding garage. The lots are served by on-site septic systems and public water.

The plan submitted by the Applicants shows the freestanding garage on 159 Donegal encroaching on 171 Donegal. Further, the garage is located 6.5 feet from the rear lot line. The garage is a large, one-story structure, estimated to be approximately 24' x 48' (1,152 sq.ft), with overhead doors opening onto a circular driveway.

The Building Division file for 159 Donegal contains two building permits: 1) a 1978 permit for a "breezeway – porch" addition to the rear of the principal dwelling; and 2) a 1983 permit for a 20' x 22' addition to the garage, which is listed as an existing structure. (Both permits are attached.) The garage permit indicates the addition was constructed in compliance with setback requirements.

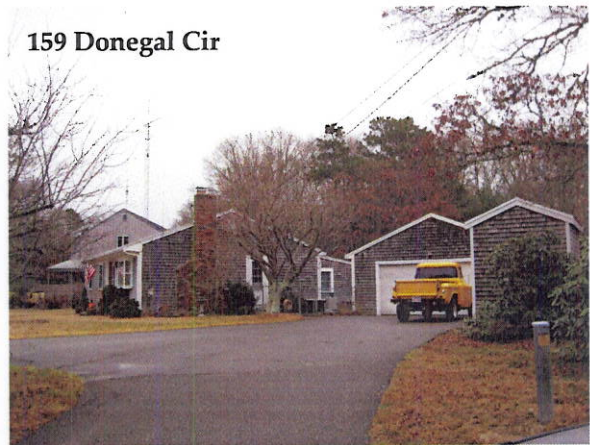
A review of the Town's aerial photos indicates the detached garage (without addition) may have been constructed as early as 1976. The Reed's are the original owners of the dwelling and may be able to provide the Board with additional details about the permit history. The Reed's also appear to have a small shed located in front of the garage.

The property at the terminus of Passamaquaddy Road, directly abutting 159 Donegal to the rear, is also owned by the Reed Trust. This property is improved with a single-family dwelling and a large, two-story, three bay, barn/garage structure. Given that the Reeds have two large garages on abutting properties, the Board may wish to inquire about the use of this significant garage space.

The plan submitted by the Applicants is an ANR Plan, endorsed by the Planning Board in 2009, and recorded at the Barnstable County Registry of Deeds (Book 635 Page 16). Although the lots meet the standard for endorsement of an ANR Plan, they are not legally created lots under zoning. The lots do not conform to the one-acre minimum lot area requirement of the RC District. Further, lots created after the November 16, 2000 enactment of the Resource Protection Overlay District must have a minimum area of two acres of contiguous upland to be considered buildable under zoning. Recording the ANR plan (after November 16, 2000) nullified the lot protection afforded in Section 240-91.G(1). It does not appear the homeowners exchanged deeds for the property.

A review of the minutes for the 2009 Planning Board meeting at which the ANR plan was endorsed shows that staff (former) indicated to the Board that the bulk requirements were not met.

159 Donegal Cir



171 Donegal Cir



Relief Requested

► In Appeal 2013-071, the Applicants Reed and Bergevine are requesting variances from the one-acre minimum lot area requirement of the RC District and the two-acre minimum lot area requirement of the Resource Protection Overlay District to adjust the common lot line. A 819 sq.ft parcel (Lot 18B) will be transferred from 171 Donegal (Bergevine) to 159 Donegal (Reed) and a 184 sq.ft parcel will be transferred from 159 to 171. As a result, 159 Donegal will consist of 16,000 sq.ft; 171 Donegal will consist of 23,091 sq.ft. The lot at 171 Donegal becomes more nonconforming as a result of the land swap. The proposed lot line adjustment results in a side yard setback of ten feet for the Reed's freestanding garage, in conformance with the requirement in the RC District.

The Applicants also requested relief from the 10' side yard setback requirement in the RC District with this application. It appears that the lot line adjustment will remedy the side yard setback violation, thus rendering this relief unnecessary.

► In Appeal 2013-072, the Applicants Reed seek a variance from the 10 foot rear yard setback requirements in the RC District. The existing garage is located 6.5 feet from the rear lot line.

Staff Comments

- The lots resulting from the proposed transfer will remain conforming to the 20 foot frontage requirement and the 120 foot lot width requirement of the RC District. Both lots will meet the lot shape factor requirements.
- The proposed plan shows all structures in conformance to setback requirements (20 foot front, 10 foot side/rear).

Variance Findings (for both appeals)

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 to consider granting each variance request:

- 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;
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
- 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.

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.

Suggested Conditions – Variance 2013-071

Should the Board find to grant the relief requested with Appeal No. 2013-071, it may wish to consider the following conditions:

1. The variance is granted from the minimum lot area requirements of §240-13(E) RC District and §240-36 Resource Protection Overlay District to allow a land swap resulting in adjustment of a common lot line between 151 Donegal Circle and 179 Donegal Circle, Centerville. The resulting lots will have 16,000.8 square feet and 23091.2 square feet, respectively.

2. The lots shall be configured as shown on the Approval Not Required (ANR) plan, entitled "Division Plan of Land for 159 & 171 Donegal Circle, Centerville, MA" dated August 10, 2009 drawn and stamped by Yankee Land Survey Co, Inc. and recorded at the Barnstable County Registry of Deeds in Book 635 Page 16.
3. There shall be no further division of the lots.
4. If the variance has not been recorded at the Barnstable County Registry of Deeds within one year from the date of issue of this variance, this variance shall expire, unless extended.

Suggested Conditions – Variance 2013-072

Should the Board find to grant the relief requested with Appeal No. 2013-072, it may wish to consider the following conditions:

1. A variance is granted from the minimum rear yard setback requirements of the RC District, §240-13(E) to allow an existing garage to be located 6.5 feet from the rear lot line of 159 Donegal Circle.
2. The Applicant shall obtain permits from the Building Division as necessary for all structures on the property.
3. This property shall be used in compliance with zoning, for single-family residential use and normal, customary accessory uses only.
4. This relief is granted for the existing garage structure only and shall not extend to any other structures or construction on the property.
5. If the variance has not been recorded at the Barnstable County Registry of Deeds within one year from the date of issuance, this variance shall expire, unless extended.

CC: Applicants (c/o Mark Boudreau)

Attachments: Variance Applications
Division Plan of Land (Book 365 Page 16)
Aerial Photo and Assessor's Records
Building Permits – 159 Donegal

§ 240-13. RC Residential Districts.

E. Bulk regulations:

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)
				Front (feet)	Side (feet)	Rear (feet)	
RC	43,560 ²	20	100	20 ³	10	10	30 ¹

§ 240-36. RPOD Resource Protection Overlay District. [Added 10-26-2000]

D. Resource Protection Overlay District regulations. Within the Resource Protection Overlay District, the minimum lot area requirement of the bulk regulations in all residential zoning districts shall be 87,120 square feet.

§ 240-91. Nonconforming lot.

G. Resource Protection Overlay District. [Amended 10-26-2000]

- (1) Any increase in area, frontage, width, yard or depth requirements of the Resource Protection Overlay District shall not apply to a lot for single- or two-family residential use which immediately prior to November 16, 2000, either:
 - (a) Conformed to the applicable bulk requirements of this chapter immediately prior to November 16, 2000: or
 - (b) Immediately prior to (on the effective date of this chapter,) was protected from the applicable bulk requirements of this subsection by the provisions of § 240-91A, B, C, D, or E of this chapter.
- (2) This protection afforded by this subsection shall be permanent.



Town of Barnstable
Zoning Board of Appeals
Application for a Variance

Date Received
Town Clerk's Office:

For office use only:

Appeal # 2013-071
Hearing Date 12-11-13
Decision Due 02-16-14

The undersigned hereby applies to the Zoning Board of Appeals for a Variance, in the manner and for the reasons set forth below:

~~171 Donegal~~ Michael E. and Debra I. Bergervine
~~159 Donegal~~ Melvin K. Reed and Virginia M. Reed, Trustees*
Applicant's Name: _____, Phone: 508 775-1085
Applicant's Address: 171 and 159 Donegal Circle, Centerville

Property Location: 171 and 159 Donegal Circle, Centerville
Property Owner: same as applicants, Phone: 508 775-1085
Address of Owner: same as applicants
If petitioner differs from owner, state nature of interest:

Registry of Deeds/Land Court References:	Deed <u>171 Donegal 4165/55</u>	Plan <u>223/139</u>
	<u>159 Donegal 13004/209</u>	<u>223/139</u>
Assessor's Map/Parcel Number:	<u>171 169/036</u>	Zoning District: <u>RC</u>
	<u>159 169/035</u>	
Number of Years Owned:	<u>171 29 years</u>	Groundwater Overlay District: <u>No</u>
	<u>159 41 years</u>	

Variance Requested: Side yard set back and minimum square footage Ch. 240 Section 13 Bulk Reg's
Cite Section & Title of the Zoning Ordinance

Description of Activity/Reason for Request: Applicant Reed discovered that a garage they had constructed on their property many years ago was actually built partially on their neighbor's property creating an encroachment and a sideline setback violation. The applicants seek to reconfigure the lot lines as per the attached plan to create two new lots.

Attach additional sheet if necessary

Does the property have any existing Variance or Special Permit issued to it? No [☒] Yes [☐]

Permit #: _____

¹ The Applicant's Name will be the entity to whom the variance will be issued to.
² If the Applicant differs from owner, the Applicant will be required to submit one original notarized letter from the owner authorizing the application to the Zoning Board, a copy of an executed purchase & sales agreement or lease, or other documents to prove standing and interest in the property.

Application for a Variance - Page 2

Existing Level of Development of the Property - Number of Buildings: One building with house and attached garage

Present Use(s): single family residence

Existing Gross Floor Area: 3,826 sq. ft. Proposed New Gross Floor Area: 3,826 sq. ft.

Site Plan Review Number: _____ Date Approved: _____ (not required for Single or Two Family use)

Is the property located in a designated Historic District?..... Yes [] No [☒]
Is this proposal subject to the jurisdiction of the Conservation Commission Yes [] No [☒]
Is this proposal subject to approval by the Board of Health Yes [] No [☒]
Is the building a designated Historic Landmark?..... Yes [] No [☒]

Have you applied for a building permit?..... Yes [] No [☒]
Have you been refused a building permit?..... Yes [] No [☒]

The following Required Information, as applicable to application, must be submitted with the application at the time of filing. Failure to do so may result in a denial of your request.

- Three (3) copies of the completed application form, each with original signatures.
- Three (3) copies of a 'wet sealed' certified property survey (plot plan) and one (1) reduced copy (8 1/2" x 11" or 11" x 17") showing the dimensions of the land, all wetlands, water bodies, surrounding roadways and the location of the existing improvements on the land.
- Three (3) copies of a proposed site improvement plan, as found approvable by the Site Plan Review Committee (if applicable), and building elevations and layout as may be required plus one (1) reduced copy (8 1/2" x 11" or 11" x 17") of each drawing. These plans must show the exact location of all proposed improvements and alterations on the land and to the structures.
- The applicant may submit any additional supporting documents to assist the Board in making its determination. Twelve copies of all supporting documents must be submitted eight days prior to the public hearing for distribution to the Board Members.

Signature: _____

Applicant or Representative's Signature³

Date: 11/7/13

Print Name Mark H. Boudreau, Esq.

Address: 396 North Street
Hyannis, MA 02601

Phone: 508 775-1085
508 771-0722

Fax No.: _____

e-mail Address: mark@boudreaulaw.net

³ All correspondence on this application will be processed through the Representative named at that address and phone number provided. Except for Attorneys, if the Representative differs from the Petitioner, a letter authorizing the Representative to act on behalf of the Petitioner shall be required.

Application for a Variance - Page 2

Existing Level of Development of the Property - Number of Buildings: three buildings including: house, garage and shed

Present Use(s): single family residence

Existing Gross Floor Area: 2,594 sq. ft. Proposed New Gross Floor Area: 2,594 sq. ft.

Site Plan Review Number: _____ Date Approved: _____ (not required for Single or Two Family use)

Is the property located in a designated Historic District?..... Yes [] No ☒
Is this proposal subject to the jurisdiction of the Conservation Commission Yes [] No ☒
Is this proposal subject to approval by the Board of Health Yes [] No ☒
Is the building a designated Historic Landmark?..... Yes [] No ☒

Have you applied for a building permit?..... Yes [] No ☒
Have you been refused a building permit?..... Yes [] No ☒

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Town of Barnstable
Zoning Board of Appeals
Application for a Variance

Date Received _____
Town Clerk's Office: _____

For office use only:
Appeal # 2013-072
Hearing Date 12-11-13
Decision Due 02-16-14

The undersigned hereby applies to the Zoning Board of Appeals for a Variance, in the manner and for the reasons set forth below:

Melvin K. Reed and Virginia M. Reed, Trustees

Applicant's Name:¹ Reed Real Estate Trust, Phone: 508 775-1085

Applicant's Address: 159 Donegal Circle, Centerville

Property Location: 159 Donegal Circle, Centerville

Property Owner: same as applicants, Phone: 508 775-1085

Address of Owner: same as applicants

If petitioner differs from owner, state nature of interest:²

Registry of Deeds/Land Court References: Deed 13004/209 Plan 223/139

Assessor's Map/Parcel Number: 169/035 Zoning District: RC

Number of Years Owned: 41 years Groundwater Overlay District: No

Variance Requested: rear setback Chapter 240 Section 13 Bulk Regulations
Cite Section & Title of the Zoning Ordinance

Description of Activity/Reason for Request: Applicants recently discovered that a small portion of their garage was built as close as 6.5 feet from the rear lot line.

Attach additional sheet if necessary

Does the property have any existing Variance or Special Permit issued to it? No ☒ Yes ☐

Permit #: _____

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² If the Applicant differs from owner, the Applicant will be required to submit one original notarized letter from the owner authorizing the application to the Zoning Board, a copy of an executed purchase & sales agreement or lease, or other documents to prove standing and interest in the property.

Application for a Variance - Page 2

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house, garage and shed

Present Use(s): single family residence

Existing Gross Floor Area: 2,594 sq. ft. Proposed New Gross Floor Area: 2,594 sq. ft.

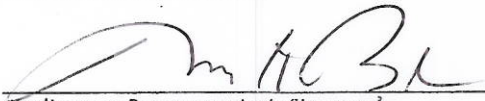
Site Plan Review Number: _____ Date Approved: _____ (not required for Single or Two Family use)

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Is this proposal subject to the jurisdiction of the Conservation Commission Yes [] No ☒
Is this proposal subject to approval by the Board of Health Yes [] No ☒
Is the building a designated Historic Landmark?..... Yes [] No ☒

Have you applied for a building permit?..... Yes [] No ☒
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Applicant or Representative's Signature³

Print Name Mark H. Boudreau, Esq.

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