

Town of Barnstable
Zoning Board of Appeals
Minutes
July 22, 2009 - 7:00 PM

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday July 22, 2009 at 7:00 PM at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. A quorum was met. Also present were Art Traczyk – Regulatory Review Design Planner and Carol Puckett – Administrative Assistant.

Laura Shufelt	Present
James McGillen	Present
Michael Hersey	Present
Craig Larson	Present
William Newton	Present
Alex Rodolakis	Present
Nikolas Atsalis	Absent
Brian Florence	Present
George Zevitas	Present

Laura Shufelt opens the hearing at 7:05 PM. She reads a summary of appeals being heard tonight. She reads the Estate of Allen Mikkonen/Hazard appeals into the record.

Appeal Nos. 2009-034 & 35 - Continued

Estate of Allen Mikkonen/ Hazard

Opened June 17, 2009, continued July 22, 2009 - Continued to allow an application for additional relief related to the continuing use of a cottage as an independent living unit (Appeal 2009-042).

Members Assigned: Michael P. Hersey, Craig G. Larson, James F. McGillen, William H. Newton, Laura F. Shufelt – Associates Present: Nikolas J. Atsalis, Brian Florence, George T. Zevitas

Appeal Nos.2009-034 & 035 Staff Report and Application Materials previously transmitted to Board

Appeal No. 2009-034 - Continued

**Estate of Allen Mikkonen
Bulk Variance to Adjust Lot Lines**

Marla Rocha as Administratrix of the Estate of Allen Mikkonen has applied for a variance to Section 240-13.E, Bulk Regulations, Minimum Lot Area for a proposed "Lot 2" of 62,598 sq.ft., shown on a plan submitted and not in conformity to the 2-acre minimum lot area requirement for the Resource Protection Overlay District. The proposed Lot 2 is to be created by combining 52,466 sq.ft., of the existing lot addressed 540 Old Stage Road, Centerville, MA with 10,132 sq.ft., of the

abutting lot addressed 530 Old Stage Road, Centerville, MA. The subject lots are shown on Assessor's Map 190 as parcels 074-001 and 074-002. They are in a Residence C Zoning District and a Resource Protection Overlay District.

Appeal No. 2009-035 – Continued

**Seth & Kristina Hazard
Bulk Variance to Adjust Lot Lines**

Seth W. & Kristina I. Hazard have applied for a variance to Section 240-13.E, Bulk Regulations, Minimum Lot Area for a proposed "Lot 1" of 47,044 sq.ft., shown on a plan submitted and not in conformity to the 2-acre minimum lot area requirement for the Resource Protection Overlay District. The proposed Lot 1 is to be created by combining 36,288 sq.ft., of the existing lot addressed 522 Old Stage Road, Centerville, MA with 7,289 sq.ft., of the abutting lot addressed 530 Old Stage Road, Centerville, MA and 3,467 sq.ft., of the abutting lot addressed 540 Old Stage Road, Centerville, MA. The subject lots are shown on Assessor's Map 190 as parcels 074-003, 074-002 and 074-001. They are in a Residence C Zoning District and a Resource Protection Overlay District.

Appeal No. 2009-042 - New

**Hazard & Estate of Allen Mikkonen
Variance – Principal Permitted Use**

Seth W. & Kristina I. Hazard and Maria Rocha as Administratrix of the Estate of Allen Mikkonen have applied for a variance to Section 240-13.A, Principal Permitted Uses. The applicants are requesting the variance for a proposed reconfigured lot shown on a plan submitted as Lot #2. Lot #2 is to be a combination of parts of two existing developed lots and once reconfigured, will result in two single-family dwellings on the new Lot #2. The Variance is requested to permit the continuation of the two dwellings on the single lot. The subject property is a combination of parts of the existing parcels addressed 540 and 530 Old Stage Road, Centerville, MA, and shown on Assessor's Map 190 as parcels 074-001 and 074-002. They are in a Residence C Zoning District and a Resource Protection Overlay District.

Members assigned tonight: Craig Larson, Michael Hersey, William Newton, James McGillen, Laura Shufelt

Attorney Stuart Rapp is representing the Estate of Allen Mikkonen. Also with him are the Hazards. He refers to 540 Old Stage Road. He gives a summary of what had existed on the site. The cottage has been traditionally used as a rental cottage. Mr. Mikkonen has passed away and part of the estate is to sell. There is a driveway that goes over the cottaged lot which is now owned by Seth & Kristina Hazard. The driveway would be required if it were to be left as is, reconfigured to take off the cottaged lot. The family would like to avoid the possibility of a future building being built on the cottaged lot. What the family decided was to divide the cottaged lot to allow a buffer for the Hazard's and as well to provide for the cottage to go with the home farm. He gives a summary of what is being sought for relief. He indicates that the hardship would be the reconfiguration, the cost and the diminished value if the cottage is not allowed to be rented to a stranger.

James McGillen asks if he has read the conditions. Attorney Rapp indicates that he has no problems with the conditions.

The Board discusses one of the conditions concerning the expansion as it applies to the principal buildings.

William Newton points out the intended division on a plan from Attorney Rapp and suggests another configuration.

Attorney Rapp indicates that the consensus of the family is to provide the Hazards with a buffer and indicates that there is also a slope of the lot.

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

James McGillen does findings: from the staff report

On Appeal No. 2009-034 the estate of Allen Mikkonen Bulk Variance to adjust lot lines. Marla Rocha as Administratrix of the Estate of Allen Mikkonen has applied for a variance to Section 240-13.E, Bulk Regulations, Minimum Lot Area for a proposed "Lot 2" of 62,598 sq.ft., shown on a plan submitted and not in conformity to the 2-acre minimum lot area requirement for the Resource Protection Overlay District. The proposed Lot 2 is to be created by combining 52,466 sq.ft., of the existing lot addressed 540 Old Stage Road, Centerville, MA with 10,132 sq.ft., of the abutting lot addressed 530 Old Stage Road, Centerville, MA. The subject lots are shown on Assessor's Map 190 as parcels 074-001 and 074-002. They are in a Residence C Zoning District and a Resource Protection Overlay District.

Appeal No. 2009-035 - Hazard - Seth W. & Kristina I. Hazard have applied for a variance to Section 240-13.E, Bulk Regulations, Minimum Lot Area for a proposed "Lot 1" of 47,044 sq.ft., shown on a plan submitted and not in conformity to the 2-acre minimum lot area requirement for the Resource Protection Overlay District. The proposed Lot 1 is to be created by combining 36,288 sq.ft., of the existing lot addressed 522 Old Stage Road, Centerville, MA with 7,289 sq.ft., of the abutting lot addressed 530 Old Stage Road, Centerville, MA and 3,467 sq.ft., of the abutting lot addressed 540 Old Stage Road, Centerville, MA. The subject lots are shown on Assessor's Map 190 as parcels 074-003, 074-002 and 074-001. They are in a Residence C Zoning District and a Resource Protection Overlay District.

Appeal No. 2009-042 Seth W. & Kristina I. Hazard and Maria Rocha as Administratrix of the Estate of Allen Mikkonen have applied for a variance to Section 240-13.A, Principal Permitted Uses. The applicants are requesting the variance for a proposed reconfigured lot shown on a plan submitted as Lot #2. Lot #2 is to be a combination of parts of two existing developed lots and once reconfigured, will result in two single-family dwellings on the new Lot #2. The variance is requested to permit the continuation of the two dwellings on the single lot. The subject property is a combination of parts of the existing parcels addressed 540 and 530 Old Stage Road, Centerville, MA, and shown on Assessor's Map 190 as parcels 074-001 and 074-002. They are in a Residence C Zoning District and a Resource Protection Overlay District.

James McGillen makes the following findings:

- 1. The proposed petitions reduces 3 lots into 2 lots each exceeding one acre and the frontage on Old Stage Road for both lots is increased on each of the two remaining lots**
- 2. Owing to the shape of Lot 2 and 3, especially with an existing lot between them and the topography sloping and the topography existing on the location of the existing buildings that this conditions especially affects said lots and does not affect generally the zoning district in which they are located**

- 3. Only dimensional and use variances are involved and that a literal enforcement of the provisions of the law would create a hardship of expense and difficulty in moving a building. Hardship is also established in the bylaw where it creates an undue burden on owners of developed lots, adjusting lot lines that do not substantially derogate from the intent of the zoning law or does not affect the abutting property. Hardship is not self imposed by the petitioners**
- 4. The desirable relief results in both lots to be in excess of one acre as nonconforming lots and maybe be granted without substantial detriment to the public good. It does not nullify or substantially derogate from the intent of the zoning bylaw.**
- 5. The allowance of the two existing long established residence on a single lot present no greater burden to the property or results in no detriment to the public good and does not substantially derogate from the intent of the zoning bylaw**

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, Laura Shufelt

NAY: William Newton

Based on those positive findings, James McGillen makes the motion as to the individual petition and will read the conditions only once.

Motion that Appeal No. 2009-034 be granted in a variance issued subject to the following conditions: The use variance and the bulk variances be granted to allow 2 independent single-family dwellings to exist on a single lot and two lots of 47,044 sq. ft and 62,598 sq.ft., be granted subject to the following conditions:

- 1. The referenced approved Approval Not Required (ANR) plan shall have a note on it that states 'Lot #2 is subject to the grant of Use Variance No. 2009-042 to allow two single-family dwellings on that lot subject to restrictions'. The ANR Plan shall then be submitted to the Barnstable Planning Board for endorsement and thereafter the plan and this variance shall be recorded at the Barnstable Registry of Deeds.**
- 2. Any further expansion of the principal buildings located on Lot #2 shall require Zoning Board of Appeals approval prior to any building permit applications. Expansion shall include building footprint, gross building area and number of bedrooms.**
- 3. There shall not be more than two curb-cuts on Old Stage Road for Lot #2.**
- 4. The relief authorized in this decision must be executed within one year by recording this decision at the Barnstable Registry of Deeds with the endorsed Approval Not Required Plan. A copy of the recorded plan and variance must be submitted to the Zoning Board of Appeals Office for the relief authorized herein to be in effect and implemented.**

Seconded.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, Laura Shufelt

NAY: William Newton

James McGillen makes a motion that Appeal 2009-035 variance be approved subject to the afore mentioned conditions

Seconded.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, Laura Shufelt

NAY: William Newton

James McGillen makes a motion that Appeal 2009-042 be granted for the reconfiguration and placement of two principal buildings subject to the afore mentioned conditions.

Seconded.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, Laura Shufelt

NAY: William Newton

GRANTED WITH CONDITIONS

Laura Shufelt then calls the Mill Pond Estates and indicates there is a letter from Attorney Schulz requesting a continuance to August 5th at 7PM

Comprehensive Permit No. 2005-013 - Continued

Mill Pond Estates

Modify House Designs & Allow Model Unit

Opened June 10, 2009, continued June 17, 2009, and to July 22, 2009

No Members Assigned - No Testimony Taken

Mill Pond Osterville Associates LLC, has requested a modification of Comprehensive Permit No. 2005-013 issued pursuant to MGL Chapter 40B for the development of 11 single-family dwellings. The modifications seek to change the design of the homes authorized for the development and permission to build one model home for the purposes of marketing the development. The property is addressed as 459 and 449 Old Mill Road, Osterville, MA and is shown on Assessor's Map 166 as parcel 001 and on Assessor's Map 143 as parcel 040. It is in a Residence C Zoning District.

Motion is made to continue this to August 5, 2009 at 7:00 PM

Seconded

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, William Newton Laura Shufelt

NAY: None

CONTINUED TO AUGUST 5, 2009 AT 7:00 PM

***Laura Shufelt then calls the Joyce Realty Acquisitions I, LLC. appeal.
Laura reads them into the record***

Appeal Nos. 2009-036 & 037 – New

Joyce Realty Acquisition I, LLC.

Appeal No. 2009-036 - New

**Joyce Realty Acquisition I, LLC.
Modification of Variance No. 1998-16**

Joyce Realty Acquisition I, LLC, d/b/a/ Joyce Landscaping Inc., has applied for a modification of Variance No. 1998-16. The applicant is requesting the modification to permit development and use of the property in accordance with a new site plan submitted and to allow; the storage of additional materials, employment of more than twenty (20) persons, include landscape masonry work from the site, provide for heavy duty equipment at the site and allow for more tractor trailer deliveries to the site. The subject property is addressed 68 and 50 Flint Street, Marstons Mills, MA, and is shown on Assessor's Map 123 as parcels 004-006 and 004-007. It is zoned Residential F and in a Groundwater Protection Overlay District.

Appeal No. 2009-037 - New

**Joyce Realty Acquisition I, LLC.
Appeal of Administrative Official**

Joyce Realty Acquisition I, LLC, d/b/a/ Joyce Landscaping Inc., has appealed a May 13, 2009 Notice of Zoning Ordinance Violation(s) and Order to Cease, Desist and Abate issued by the Building Division. The appeal cites that the applicant has filed for a modification of Variance No. 1998-16 as requested in the order and that the other activities cited in the order are exempt as agricultural use. The subject property is addressed 68 and 50 Flint Street, Marstons Mills, MA, and is shown on Assessor's Map 123 as parcels 004-006 and 004-007. It is zoned Residential F and in a Groundwater Protection Overlay District.

***Laura Shufelt indicates that there is a letter from Attorney John Kenney for a continuance to
October 21, 2009 at 7:00 PM***

***Motion to continue to October 21, 2009 at 7:00 PM
Seconded***

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

NAY: None

CONTINUED TO OCTOBER 21, 2009 AT 7:00 PM

Laura Shufelt then calls the Laugharn appeal and reads it into the record.

James and Justine Laugharn have applied for a Special Permit pursuant to Section 240-91.H(2) Nonconforming Lot – Developed Lot Protection. The petitioner is seeking a special permit to allow for the demolition of the existing dwelling and the rebuilding of a new single-family dwelling on the undersized lot. The location of the proposed dwelling is based upon the location of the existing structure and does not conform to the required front yard setback off the Way situated to the west of the lot. The property is addressed as 100 Bay View Road, Barnstable, MA, and is shown on Assessor's Map 319 as parcel 030. It is in a Residence B zoning district

Members assigned: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

Chris Childs from Patriot Builders is here representing the applicants. He gives a summary of relief being requested. He indicates that all dimensional requirements are being met and that Old King's Highway recently approved the change of 12 inches and he has submitted plans to this Board.

William Newton asks where the access is to the property.

Chris Childs indicates that there is a right of way and at the southwest corner is where it is accessed and they are proposing a driveway off the 10 foot way and will apply for the road opening permit when they get the building permit.

Craig Larson asks why they can't make the building conform to the setbacks.

Chris Childs indicates that there is an Order of Conditions from Conservation that moving to adhere to the 20 foot setback would impinge on the wetlands. Chris indicates that previously it was proposed to be a second floor addition to maintain the existing structure, put two additions on the south side and a second floor. It was then decided that they would build the exact same design as the additions as a new structure and received approvals. He indicated to the Laugharn's that they needed a special permit.

Art Traczyk comments that Conservation is strict in having them move closer to the wetland area.

They discuss problems with moving it away from the right of way and closer to the conservation area.

Laura Shufelt asks if there is anyone here from the public who would like to speak

Jeanette Ennis of 72 Bay View Road speaks and indicates that she has been there since 1970. She indicates that the house being demolished was going to be modified but that it interferes with their deeded beach rights. She is concerned about the changes to the right of way. She is also concerned about the utility pole, guy wires and removal of trees. She wants to know about her deeded beach rights and asks if they are going to put a driveway across the deeded beach right of way.

William Newton asks Ms. Ennis how the people who had lived there got in and out. Ms Ennis indicates it was an unwritten thing and that they would drive over the right of way into their grassed driveway.

Michael Hersey indicates that the footprint is proposed to be the same and asks if her objection is access to the lot.

Ms. Ennis indicates that they will be removing trees and relocating the utility pole.

Brian Florence comments that the construction will be after the summer months and could be conditioned. He also indicates that the utility pole and the right of way concerns could be conditioned to the satisfaction of the Town Engineer..

Chris Childs indicates that the utility pole was something Verizon petitioned the Town as they were planning on taking it down and moving because it is unsafe. He has documentation that reflects correspondence prior to Patriot Builders being involved with the project. Also, there is a tree where a limb would need to be taken off and have spoken with Mr. & Mrs. Cataldo about the tree.

Mrs. Cataldo who lives at 279 Sunset Lane speaks and indicates they haven't given permission to do anything to the tree yet. She indicates that the tree is partly supporting the pole and is concerned about the new placement of the pole and guy wires.

Laura Shufelt then reads the letter from abutters, the Gruhn's, into the record asking that the replanting in the conservation part of the property in question be kept low as not to interfere with their view of Sandy Neck. Laura asks if Chris Childs wants to address this. Chris Childs indicates that the plantings will have to be approved by Conservation, which hasn't been done yet, and that the applicants aren't planning on putting anything there unless they are told to by Conservation

Art Traczyk comments that the Conservation Committee wants it partially vegetated and that he did put a suggested condition with a limit of less than 2 feet.

William Newton asks about the garage and access. Mr. Childs indicates that the applicants will ask engineering about it and that he plans to use that access to get in and out of the property.

Mike Hersey asks what they will do to restore preserve the right of way. Mr. Childs that the applicants would like approval for gravel and, if not, they will put grass.

Art Traczyk indicates that it is a public way and any improvements in the right of way need to be addressed by the Town.

Chris Childs indicates that he would be happy to initiate with the Town Engineer what they could to improve that area before they move forward.

The Board discusses making a condition pertaining that all improvements within the public right of way must be approved by the Town Engineer prior to any changes or alterations. Chris Childs then suggests making a condition regarding the planting in that area to protect the abutter's view it be based on prior approval by the Conservation Committee not necessarily restricting heights or exact number or dimensions of plants as the planting is not part of what he would be doing on this project as it would be up to the applicants.

Laura Shufelt comments that what they had proposed was a condition regarding revegetating the border of the wetland area the applicant in consultation with the Conservation agent shall select those approved species from the ConComm's adopted list of trees and shrubs, etc., using those identified as lawn shrubs on that list.

Chris Childs indicates that is okay.

Art Traczyk indicates that he had talked with Fred Stepanis of ConComm who had it approved by him.

James McGillen makes positive findings.

On Appeal 2009-039 regarding Laugharn petition to demo/rebuild a nonconformity to setbacks, James and Justine Laugharn have applied for a Special Permit pursuant to Section 240-91.H(2) Nonconforming Lot – Developed Lot Protection. The petitioner is seeking a special permit to allow for the demolition of the existing dwelling and the rebuilding of a new single-family dwelling on the undersized lot. The location of the proposed dwelling is based upon the location of the existing structure and does not conform to the required front yard setback off the Way situated to the west of the lot. The property is addressed as 100 Bay View Road, Barnstable, MA, and is shown on Assessor's Map 319 as parcel 030. It is in a Residence B Zoning District.

- 1. The lot coverage by all building and structures does not exceed 20 percent of the existing lot coverage, whichever is greater.***
- 2. The Floor Area Ratio does not exceed .30 or the existing Floor Area Ratio of the structure being demolished and being rebuilt, whichever is greater.***
- 2. The height of the building does not exceed 30 feet to the highest plate and does not contain more than 2 ½ stories.***
- 3. The proposed new dwelling, although not complying with the setback is equal to the setback of the existing building.***
- 4. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.***

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

NAY: None

Michael Hersey makes a motion to grant 2009-039 subject to the current terms and conditions previously outlined by Mr. McGillen.

James McGillen amends it that adding the additional conditions of that they proposed. Laura indicates conditions 1 through 8 and another condition regarding the right of way as previously stated by Art. Art Traczyk indicates that the condition shall state that all improvements within the public right of way must be approved by the Town Engineer prior to any changes or alterations.

Craig Larson indicates that the plan also has been revised and the date should reflect 06-29-09.

Seconded.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Laura Shufelt calls a 5 minute break.

Back in session at 8:23 PM.

Laura reads the JDJ appeal into the record.

Comprehensive Permit No. 2003-090

**JDJ Housing Development – Village Green
Minor Modification Request To Transfer Permit**

A July 9, 2009, letter from Joseph Keller, Manager of JDJ Housing Development LLC, has requested the Board approve Dakota Partners, Inc., acquisition of JDJ Housing Development LLC and its assets, inclusive of Comprehensive Permit No. 2003-090 and all modifications and extensions issued for the development of the "Village Green".

Comprehensive Permit No. 2003-090 as modified authorized development of 148 rental apartment units in five (5) three-story buildings on 14.32 acres. A minimum of forty (40) units are to be affordable rental and eleven (11) units committed to "workforce housing". The subject property is addresses 0 Independence Drive (a/k/a 770 Independence Drive), Barnstable, MA and is shown on Assessor's Map 332, as Parcel 010-1. It is zoned Industrial and is in a Wellhead and Groundwater Protection Overlay Districts.

Members assigned: Craig Larson, Michael Hersey, James McGillen, Laura Shufelt, William Newton

Laura Shufelt indicates that this is informational rather than a substantive change. In a Chapter 40B there is typically a condition that any transfer of the permit requires the applicant to come back and ask for approval and they would also have to get approval from whomever the subsidizing agent is. In this case, the formal Board added not only the transfer of the permit

but the transfer of any interest or interest in the applicant so that the LLC, if transferred, was required and that the applicant come back to the Board and it's purely informational. By transferring the interest they don't have to go back to the subsidizing agency and that is why they do not have a letter as the permit is not being transferred. JDJ Development is still the holder of the permit and it is just the interest that is being changed. What is before the Board is information and not a substantial change. She talks about communication from Mr. Berlandi and wants to address his concerns as well as his clients regarding their concerns about not allowing public comment. She indicates that when it is informational there is no public hearing and is not required. She quotes CMR 760.56. and what constitutes substantive and insubstantial changes. She talks about cost certification and that finances are under the subsidizing agency. She indicates that this Board can only review the financial statements and the viability as it stands for profitability as to when they wish to impose a condition that the developer comments would make their project uneconomical. She explains again what is in the purview of this Board and the subsidizing agency.

James McGillen comments that this is a change of beneficiaries.

Joseph Keller from Osterville, principal of JDJ Development, speaks and wants to introduce the people from Dakota Partners. He felt it was better to turn over the development to people more familiar with this area and who more about it. He gives a background on Dakota Partners.

Michael Hersey asks why they would need to hear from Dakota Partners management if public comments are not also allowed.

Laura Shufelt explains that this is just for informational purposes.

Steve Kominski and Roberto Arista, principals from Dakota Partners introduces themselves. Steve Kominski clarifies that they hare here for a minor modification.

George Zevitas asks Laura Shufelt to explain again.

Laura Shufelt indicates that the permit is not being transferred, it is a transfer within. Laura explains..

Art Traczyk explains what had transpired in other transfers versus this case.

Bud Bergstrom, from the audience, asks if there is going to be public comment.

Laura Shufelt indicates that there will be no public comment

James McGillen makes a motion that the modification is insubstantial based on the statutory provisions

Seconded.

George Zevitas asks if the person from the audience could have public comment.

Laura Shufelt indicates that there is a motion on the floor and that there was no public comment as once it is determined insubstantial there is no public comment.

James McGillen explains how this is insubstantial.

Vote:

AYE: Craig Larson, Michael Hersey, James McGillen, William Newton, Laura Shufelt

Nay: None

INSUBSTANTIAL CHANGE GRANTED – TRANSFER GRANTED

Motion to adjourn

Seconded

Meeting adjourned at 8:40 PM
