



Town of Barnstable
Zoning Board of Appeals
Minutes
May 12, 2010

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday May 12, 2010 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 – Principal Planner– Elizabeth Jenkins, Principal Planner, Thomas Perry – Building Commissioner, and Carol Puckett – Administrative Assistant.

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

Laura Shufelt opens the hearing at 7:04 PM. -Laura Shufelt indicates that the first appeal being heard tonight is the Tonsberg appeal. She indicates that Roberto DiMarco, Esq., has sent a letter on behalf of his clients, Roberta & Frederick Tonsberg asking to withdraw without prejudice.

Appeal No. 2009-068 - Continued

**Tonsberg
Special Permit Demo/Rebuild on Nonconforming Lots**

Opened, November 18, 2009, continued February 10, 2009, moved to February 24, 2010, continued April 14, 2010, and to May 12, 2010, at request of applicant.

This appeal has been continued in order to allow for processing of a Cape Cod Commission Hardship Exemption from the District of Critical Planning Concern Centerville Beach Nomination.

No Members Assigned, No Testimony Given
Decision Due: May 27, 2010

Frederick and Roberta Tonsberg have petitioned for a Special Permit pursuant to Section 240-91.H(2), Developed Lot Protection, Demolition and Rebuilding on Nonconforming Lots. The petitioner seeks to demolish the existing dwelling located on the property and reconstruct a new dwelling not in compliance with current setback requirements for the district. The property is addressed as 2 Short Beach Road, Centerville, MA and is shown on Assessor's Map 206 as parcel 044. The property is in a Residence D-1 Zoning District.

Motion is made to withdraw without prejudice

Seconded by James McGillen

Members assigned tonight: William Newton, James McGillen, Craig Larson, Brian Florence, Laura Shufelt

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

Appeal No. 2010-003 - Continued

Gregory

Expand Nonconforming Structure & Accessory Uses

Opened January 27, 2010, continued to March 10, 2010, April 14, 2010, and to May 12, 2010. This was continued to allow for the review and input of the Town Attorney's Office.

Members Assigned: William H. Newton, Brian Florence, Alex M. Rodolakis, James F. McGillen, Laura F. Shufelt
Decision Due: July 22, 2010

Nathaniel A. Gregory has petitioned for a Special Permit pursuant to Section 240-93 B – Alteration or Expansion of a Pre-existing Nonconforming Structure and a Special Permit pursuant to Section 240-44 A – Accessory Uses. According to the application submitted, the petitioner seeks the "construction of a pier to replace a prior pier" on an accessory lot located across the road from the principal lot on which the single-family dwelling it serves is located. The principal residential lot is addressed 428 Wianno Avenue, Osterville, MA and is shown on Assessor's Map 163 as Parcel 024. The accessory lot is addressed 320 East Bay Road, Osterville, MA and is shown on Assessor's Map 163 as Parcel 020. Both lots are in a Residential F-1 Zoning District.

Members assigned tonight: William Newton, Brian Florence, Alex Rodolakis, James McGillen, Laura Shufelt

Art Traczyk indicates that Attorney Schulz requests a June 9th continuance.

Laura Shufelt makes a motion to continue this to June 9, 2010

William Newton seconds.

Vote:

All in favor

CONTINUED TO JUNE 9TH AT 7:00 PM

Laura Shufelt then calls the Rivera appeal and reads it into the record:

Mauro O. Rivera and Aida G. Rivera have petitioned for a Special Permit pursuant to Section 240-47.1.A(1) Family Apartments in order to allow a family apartment located in the main dwelling to exceed 800 square feet but not more than 1200 square feet. The subject property is shown on Assessor's Map 246 as Parcel 070 and addressed 34 Strawberry Hill Road, Centerville, MA. The lot is in a Residence B Zoning District.

Members assigned tonight: William Newton, James McGillen, Craig Larson, Alex Rodolakis, Laura Shufelt

Mauro Rivera is here representing himself and is accompanied by his son, Daniel. .

Daniel Rivera explains that he lives with his parents at 34 Strawberry Hill Road. He states that it is a one family house and that his father is trying to make it a family house. Daniel indicates that he recently got accepted into the nursing program, doesn't have money for an apartment and that his sister and himself would like to live in the apartment.

Laura Shufelt states that it was previously an amnesty apartment unit. She asks if indeed the previous tenants left. Mr. Rivera answers yes. Laura clarifies that his son and daughter with her child will be living in the apartment. Laura clarifies that Mr. Rivera lives there and that this is his primary residence.

Craig Larson asks Art Traczyk if under amnesty there were any problems with this property. .

Art Traczyk answers no.

James McGillen clarifies that Daniel, the son, will be living there with his sister and her child who is currently two years old.

Laura Shufelt asks Mr. Rivera about the fence and states that one of the conditions is that the fence doesn't meet site clearance and will be a condition of the variance.

Mr. Rivera indicates that he has already put the new fence in.

Laura Shufelt asks if there is anyone here from the public who would like to speak either in favor or in opposition.

Steve Tenaglia is here representing his parents, Rocco & Carolyn Tenaglia who live at 5 Patricia Street. He indicates that his father is with him tonight and that the property in question has been used as a rental unit in the past and that there have been 4 or 6 cars at any one given time. There is also a home based business and that there are two fairly large landscape trucks with 20 foot trailers and a temporary structure that houses one of the trailers. He indicates that the deck is used for storage for all types of landscaping equipment. Also, a new driveway on the side was cut in and the fence was knocked down so that now there are two driveways. He asks that if family members moving in, will they also be employed in the business that would bring another truck and 20 foot trailer and cars? The Assessor's card shows the house as a 5 bedroom and the plans that they have seen from the Building Department shows that they are looking for 6 bedrooms. In January of 2009, his parents thought about selling their home and upgraded their septic and when they came in front of the Board of Health they were told there was a new floor plain map that required them to have a less dense lot and were made

to sign a deed restriction that the home would never be greater than the 3 bedroom home. He indicates that there are many times during the night that the overflow of cars are parked on Chadwick Avenue which he believes hurts property values as this house is the very first house in the residential neighborhood and has changed the character significantly. He believes there are more than 3 or 4 people living there. He would like the Board to take a look at it and thinks there are more violations with not only the fences or parking.

Eleanor Simpson of 45 Patricia Street has been there since 1960 and thinks that Mr. Tenaglia has spoken to the issue very well. It is disheartening to see this in this area as there are multiple vehicles, a lot of tools and doesn't think it is zoned for business. She indicates that the fence has been a problem for years. Also, she is concerned as she believes that these family members are already living there and asks if he can rent rooms as well and is told no.

Craig Larson asks if the fence has been lowered. Ms Simpson indicates that they have been working on it but hasn't noticed a difference.

Danny Rivera indicates that the fence was lowered by the regulations. Also, there were be no more additional vehicles to be brought in and that his father has moved some vehicles to another site along West Main. Street. Daniel Rivera indicates that there is an electrician who lives near them who has trucks and a boat also.

Craig Larson asks how many trucks and what size. Mr. Rivera indicates he has a pick up truck, a dump truck which he has moved to another location. He indicates that the lawnmowers are kept in a trailer. He indicates that his wife, himself and his two children are the only ones who live there.

James McGillen asks how many bedrooms there are. Mr. Rivera indicates that there are 3 up and 3 down. Laura Shufelt indicates that the septic is approved for 6 bedrooms. Art Traczyk indicates that there is a permit from 2005 for 6 bedrooms.

James McGillen asks Mr. Tenaglia and Ms. Simpson if they are aware that the applicant is not asking for an increase in bedrooms as he already has approval for 6 bedrooms.

Mr. Tenaglis indicates that he believes there are more than 6 people living there and asks if there is still a requirement to list the people living there yearly. The Board indicates yes.

William Newton asks if they need the kitchen on the lower floor.

Daniel Rivera states that they can't always be upstairs.

William Newton makes findings: With respect to 2010-017 for a special permit pursuant to section 240-47.1A(1) Family Apartments, the applicants, Mauro O. Rivera and Aida G. Rivera have petitioned for a Special Permit in order to allow a family apartment located in the main dwelling to exceed 800 square feet but not more than 1200 square feet. The subject property is shown on Assessor's Map 246 as Parcel 070 and addressed 34 Strawberry Hill Road, Centerville, MA.

- 1. Since issued, the comprehensive permit in 2002 an accessory affordable apartment has occupied the lower level.*
- 2. The Rivera's wish to change this designation now to a family apartment for use by two family members that needs to be modified because an infant child who is to occupy this also*
- 3. The existing apartment space exceeds the allowable 1200 square feet by less than 1%, a small difference that is inconsequential to the intended use*

4. *The fence surrounding the front and side yards of the lot is not in conformance with the vision clearance for corner lots and must be revised which will be a condition*

Vote:

AYE: *Alex Rodolakis, Craig Larson, James McGillen, William Newton, Laura Shufelt*

NAY: *None*

William Newton makes a motion in regards to appeal 2010-017 for the approval of the granting for the special with the following conditions as indicates in pages 2 and 3 of the staff report:

1. *The area of the family apartment is limited to the existing lower level apartment unit.*
2. *Occupancy of the family apartment is limited to 2 family members and a child only.*
3. *The apartment shall comply with, and be maintained, in full compliance with all other requirements of Section 240-47.1 for a family apartment as-of-right as well as all conditions in this decision.*
4. *Any, and all requirements of the Building Division, shall be fully complied with to assure that the unit and building meets all applicable codes including building, fire, and health.*
5. *All parking shall be on-site and not within 10 feet of neighboring properties.*
6. *Occupancy of the dwelling and the family apartment unit is restricted to family members only and there shall be no renting of the unit or rooms to non-family members.*
7. *During the term of this special permit, there shall be no expansion of the building and no addition of bedrooms to the property.*
8. *The existing Comprehensive Permit shall be rescinded prior to this permit being executed.*
9. *The existing fence located on the property shall be required to be brought into conformance with § 240-41 - Vision Clearance on Corner Lots prior to the execution of this permit.*

Seconded by James McGillen

Vote:

AYE: *Alex Rodolakis, Craig Larson, James McGillen, William Newton, Laura Shufelt*

NAY: *None*

GRANTED WITH CONDITIONS

Thomas Perry indicates that the applicant will have to have a building permit for the paper trail

Laura Shufelt calls Mr. Rivera up to explain the process.

They re-open to amend the conditions to include that a building permit needs to be applied for.

William Newton wants to add Tom Perry's concern that a building permit must be executed before they have the

10. *A building permit is required prior to the occupancy of the apartment unit. That permit can only be issued when this decision is finalized and filed with the Registry of Deeds.*

Motion to amend

Seconded

Vote:

AYE: Alex Rodolakis, Craig Larson, James McGillen, William Newton, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Laura Shufelt then calls the Vinagre appeal and reads it into the record:

Appeal No. 2010-018 - New

Vinagre

Variance for a Detached Family Apartment

Norberto H. Vinagre has applied for a Variance to Section 240-47.1. Family Apartments. The applicant seeks a variance to allow for an existing apartment unit that is located in a detached structure to be utilized as a family apartment. The subject property is shown on Assessor's Map 209 as Parcel 071 and addressed 122 Old Stage Road, Centerville, MA. It is in a Residential D-1 and a Residential C Zoning Districts.

Attorney Michael Schulz is representing the applicant and indicates that this is a short sale which has liens on the property which they need to rectify. He indicates that because one of the lien holders will not agree to accept anything less than full value, there is a delay and therefore they are asking for a continuance.

Laura Shufelt makes a motion to continue to June 9, 2010.

James McGillen seconds.

Vote:

All in favor.

CONTINUED TO JUNE 9, 2010 AT 7:00 PM

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

Appeal No. 2010-019 – New

Osterville Historical Society, Inc.

Appeal of the Building Commissioner

Osterville Historical Society, Inc., has appealed the Building Commissioner's determination that the operation of a part-time, seasonal farmer's market is not primarily or dominantly related to the educational purpose of the Osterville Historical Society and is therefore not permitted as a part of the exempt use of the property at 155 West Bay Road, Osterville, MA. The appellant is seeking the Zoning Board's reversal of the Commissioner's determination. The subject property is shown on Assessor's Map 116 as Parcel 86, addressed 115 West Bay Road, Osterville, MA. It is in a Residential C Zoning Districts.

Members assigned tonight: James McGillen, Craig Larson, George Zevitas, William Newton, Laura Shufelt

Attorney Michael Schulz is representing the applicant. With him tonight is Cynthia Hall, Executive Director of the Osterville Historical Society to answer any questions. Attorney Schulz gives a summary of the relief being sought. He thinks that limited operation of five hours, one day per week from June to September is primarily or dominantly related to the education purposes of the Osterville Historical Society. He cites Chapter 40A §3 and reads part of it. He also indicates that Massachusetts Case law has boiled it down into a two prong test:

- 1. That the land be used for the educational purposes must be owned or leased by the educational non-profit organization**
- 2. That the primary or dominant purpose of the use must be for educational purposes.**

He indicates that OHS was organized as nonprofit education in 1956. In 1960, OHS received a letter from the IRS that recognized that OHS was organized exclusively educational purposes. He indicates that the letter is appended to his letter dated March 18th as Exhibit #2 and that the letter is in full force and effect. For over 50 years OHS has been in Osterville with various exhibits, children educational programs and adult educational programs and structured tours within the OHS campus, etc. In 2009, the Historical Society opened its door to the public for free. He believes that with it meets the first prong of that test. He indicates that they depend on long term membership for contributions and asks how do you create an awareness of the educational opportunities? He indicates that they do mailings, but that the farmer's market was done to bridge this gap by giving a reason to current and new members to explore this campus. During the market the entire campus is open free of charge to those who attend. He indicates that OHS had a net profit of approximately \$8.00 in 2009 and that in short, the farmer's market is an awareness creator and not a commercial enterprise and wants it to stay that way.

Brian Florence asks about the educational components as to who is taught and what is the curriculum?

Cynthia Hall indicates that the farmer's market last year was an educational outreach program and that people learn what is not in season. She indicates that they also had a vendor there that they partnered with who did lectures on maritime history and will continue doing that this year.

Brian Florence asks if there is any educational component to the farmer's market.

Cynthia Hall indicates that they didn't get involved in asking them about specific people coming up to their booth but because of the nature of some of their products such as holistic soaps that are made from organic substances, invariably, people would ask them how they are made. There was an educational component to that but again it wasn't something that OHS and the museum generated.

Brian Florence asks where the produce is grown. Attorney Schulz indicates that he believes they are all grown off-site. Cynthia Hall indicates that OHS does not have a farm but has an herb garden which they teach children about.

Craig Larson asks Cynthia to list the general vendors. Cynthia Hall indicates there is a woman who makes soaps in her garage, another grows lavender and makes product from it, another woman who makes laundry soap from berries, a baker, and three different produce vendors of which one is a certified organic grower who all grow on and off Cape.

Craig Larson clarifies that the vendors have a booth and inform the customer how things are being made, produced, etc. Cynthia Hall states that this year they are creating an entranceway in order for people to pick up information about the agriculture and organic products, etc.

Brian Florence asks Attorney Schulz if the vendors make a profit. Attorney Schulz answers yes.

Building Commissioner, Tom Perry, states that the reason it was denied is that it is no more different than a retail store selling vegetable, organic or not. He doesn't see where answering questions by the vendors is educational. He indicates that this past year they have had at least six farmer's market requests and does not have a problem with it if it is in a commercially zoned area but is concerned about one being held in a residential area as it is retail. He states that it has to be connected to an educational organization He indicates that case law is very specific as to what incorporates a 501.C.3 ,an educational exemption, as it has to be connected. He talks about the case in Newton about the church that was doing counseling while the religious use was the predominant use and this was a side business. The courts upheld the Building Inspector saying he was correct in saying this was not part of the exempt use.

The Board and Tom Perry discuss what can be sold and the Newton case.

James McGillen talks about the Dover amendment.

The Board discusses their feelings on farmer's markets.

Laura Shufelt asks if there is anyone from the public who would like to speak either in favor or in opposition.

Sarah Wyatt can see the museum from her home, has shopped there and asks if they reinstated Captain Parker's farm if it would make a difference to keep the farmer's market there.

William Newton makes a motion to support and uphold the application of the Osterville Historical Society and that the denial by the Building Commissioner be refused.

George Zevitas seconds.

Laura Shufelt addresses the motion. She disagrees with the majority and sees it similar to how Brian Florence and Mr. Perry feel and that the farmer's market may be a seemingly benign use in a residential zone but it is an intensification of the use. Also, if the purpose is to bring attention to the museum then they could do a carnival but doesn't think that the neighborhood or the Board would want to see that. She believes that there is a correlation to that and doesn't see the correlation between the farmer's market and the Historical Society.

Craig Larson comments that they still have to comply by bulk regulations and thinks that some of this is controllable.

Vote:

AYE: George Zevitas, Craig Larson, James McGillen, William Newton

NAY: Laura Shufelt

BUILDING COMMISSIONER'S DECISION HAS BEEN OVERTURNED.

Motion to adjourn

Seconded

All in favor

Meeting adjourned at 8:22 PM.