

Town of Barnstable
Zoning Board of Appeals
Minutes
May 26, 2010

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday May 26, 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, and Carol Puckett – Administrative Assistant.

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

Laura Shufelt opens the hearing at 7:06PM. She reads a summary of the appeals being heard tonight. Craig Larson leaves the hearing room.

She then calls EAC and reads it into the record.

Appeal No. 2009-025 – Continued

**EAC Disposal, Inc.
Modification of Variance No. 1996-14**

Opened April 1, 2009, continued, May 20, 2009, August 5, 2009, September 23, 2009, November 4, 2009 December 9, 2009, February 10, 2010, moved to February 24, 2010, April 14, 2010 and continued to May 26, 2010. Continued for an update on Hiring of an Outside Consultant for the Board.

Board Members Assigned: William H. Newton, George T. Zevitas, Brian Florence, Alex M. Rodolakis, Laura F. Shufelt
Decision Due: June 18, 2010

EAC Disposal, Inc., d/b/a Cape Resources Company has applied for a Modification of Variance No. 1996-14. The modification is sought to allow for revisions to the site that include a new wood processor and staging area, alteration to interior site circulation, and additions and alterations to screening berms and landscape. The property is addressed 280 Old Falmouth Road, Marstons Mills, MA as shown on Assessor’s Map 100 as parcel 008. The lot is in a Residence F Zoning District

Members assigned tonight: William Newton, George Zevitas, Brian Florence, Alex Rodolakis, Laura Shufelt

Attorney Sabatt indicates that he understood that they would review the progress of the hiring of the outside consultant.

Art Traczyk indicates that the RPF went out May 17th and the deadline is June 8th. He hopes they could do a review between the 9th and 15th and discuss with the consultant and then send out on the 15th who they selected. They also need a deposit for the projected amount as before they do that they must have the

money in the account. He is thinking about a continuance to July 14th if that is acceptable to the Board. James McGillen asks if there is a time extension initiated. Art Traczyk answers yes.

William Newton asks Attorney Sabatt if there is anything on the plan that has changed.

Attorney Sabatt indicates no.

Art Traczyk indicates that he has photos of the site visit and can show them on July 14th. The board is agreeable to that.

**William Newton makes a motion to continue to July 14, 2010
Alex Rodolakis seconds**

**Vote:
All in favor.**

Craig Larson returns to the hearing room.

Laura Shufelt then calls the Centerville Building Corporation appeal and reads it into the record:

Appeal No. 2010-020

- New

**Centerville Building Corporation
Modification of Special Permit No. 1985-119**

Centerville Building Corporation, formerly known as Fraternal Lodge Building Corporation, has petitioned for a Modification of Special Permit No. 1985-119 issued to Fraternal Lodge, A.F. & A.M. in order to allow a seasonal farmer's market to be conducted on the premises. The subject lot is addressed as 1989 Falmouth Road (Route 28), Centerville, MA. It is shown on Assessor's Map 189 as Parcel 002-001. The lot is in Residence C and Residence B-1 Zoning Districts

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

Bill Elkins, a member of the Centerville Building Corporation and a member of the lodge speaks and indicates that also with him tonight are Mr. Pelletier and David Konigsburg who are both members of the lodge and the corporation. Also, Patience Thomas who handles the agricultural market. He indicates that the reason they are here is to see if they can do the farmer's market during the season for one day a week. He is not sure if there are any objections from the neighbors and is here to answer any questions.

Laura Shufelt asks if they have seen the staff report. Ms. Thomas indicates that no one had received it. Art Traczyk indicates that it was sent out and emailed but gives them a copy in order for them to read it.

Laura Shufelt calls a 10 minute recess so that the applicants can read the staff report.

Bill Elkins speaks and indicates that is a nonconforming use. However, it is a nonprofit situation and the market will be paying income and rent to the lodge. The question came about in the staff report about the traffic situation and is okay with them to have a policeman on duty. The question is whether they can have this use on the property and is best made by this board.

Craig Larson asks if they went to Site Plan Review and if they can do this without going to Site Plan Review.

Art Traczyk states that he believes that it was approved by Site Plan Review and Patience Thomas concurs that they were approved by the Site Plan Review Committee.

William Newton clarifies that the plan and parking for the vendors has been approved and asks how they are going to deal with the traffic on Route 28.

Mr. Elkins indicates that they believe it will be handled by a police officer directing traffic at the expense of the applicant.

William Newton asks if they would consider a different time period to get away from peak traffic times.

Patience Thomas indicates that they can change the hours and that a policeman will be paid for.

Mr. Elkins thinks there clearly should be a policeman on duty to handle the traffic.

Michael Hersey asks Patience Thomas to give more detail as to her relationship to the lodge as it pertains to non-profit.

Ms. Thomas indicates that she was approached by the Masonic Lodge to consider having a farmer's market as a way for them to raise money for scholarships and that it was the recommendation of Tom McKean from the Board of Health to approach it this way. She indicates that she thought it would be a good way for the Masonic Lodge to raise additional revenue.

Michael Hersey asks for an estimated amount of funds that will be made during the market.

Ms. Thomas indicates that it would depend on how many vendors but it would be a few thousand dollars during the course of the season.

Michael Hersey asks where the money would be used for.

Mr. Elkins indicates that this is a non-profit, fraternal organization worldwide and they do everything from Masonic hospitals to scholarship funds, photos and fingerprinting children and that it is a non-profit organization and mainly made up of volunteers. It is approximately 130 years old.

Laura Shufelt asks if the vendors are for profit and that this is a for profit venture.

Patience Thomas answers yes.

Laura Shufelt clarifies that the proposed use is a retail use which is different from the fraternal lodge.

James McGillen clarifies that this is a non-profit and is not an exempt use as the Board had dealt with previously.

William Newton asks what other events has the lodge had organized and asks for results from that.

Mr. Elkins indicates that they had not had any other events like this and that maybe they had yard sales in the past.

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

Gary Johnson from Woodbridge Drive speaks and commends what the organization does but would like farmer's market defined and asks if this is going to turn into a flea market. Also, they have had to listen to loud bands over the weekends for the past two or three years and kids screeching tires and are concerned.

Mrs. Johnson is concerned that it could be a flea market also or a carnival and is concerned about the noise. The organization had a pig roast last year which was noisy and wants to know how farmer's market is defined.

Laura Shufelt reads a letter from the file from Sandy Jones Fitzgerald in support and reads it into the record.

Laura Shufelt also indicates that there is a letter which was also received from JoAnne Buntich detailing her meeting with Ms. Thomas going over where farmer's markets could be done by right and pointed out to Ms. Thomas that this would be another nonconforming use.

Mr. Elkins isn't sure about what people are talking about with noise and clearly he has a pig roast but the fraternal lodge is primarily not used for outdoor functions. He knows that the German American Club meets on Sunday mornings.

Patience Thomas explains that farmer's markets are local producers of vegetables, fruits, preserves, breads, etc., and that every product that comes to market needs to be locally produced. They are not flea market items. They have a complete list and procedure to go through but occasionally they allow non-food products such as soaps made locally. Farmer's markets also run a certain amount of time and that is why they are no more than 5 hours due to spoilage.

The Board discusses.

William Newton asks Patience Thomas if she will be there supervising this on a daily basis.

Patience Thomas indicates that she will be the designated manager of the market and will take charge of the vendors as they first have to apply and are then selected and have to go through the Board of Health.

Neil Pelletier wants to address the abutter's concerns and admits that in some cases parties might've got out of hand and they are beyond doing that for charitable interests and that the farmer's market will not be late at night.

Laura Shufelt comments that she believes that the ZBA doesn't have the authority to authorize this.

The board discusses.

William Newton makes findings:

With respect to Appeal No. 2010-020 Centerville Building Corporation regarding a modification of special permit 1985-119, he finds the following findings:

- 1. The proposed farmer's market does not constitute a second nonconforming use of the property**
- 2. It is keeping with the original intent of the board's restriction of the use of the property that of the property of the non-profit social charitable organization**
- 3. The modification will not adversely affect traffic flows along Route 28 and does not pose a safety issue that would be a substantial detriment to the public good and the neighborhood**

Vote:

AYE: Craig Larson, Michael Hersey, William Newton

NAY: James McGillen, Laura Shufelt

Motion to grant is made by William Newton to approve 1985-119 with the conditions and indicates that there are 9 conditions and will put off reading them until after the vote.

Craig Larson wants to hear the conditions. William Newton reads them as follows:

- 1. The farmer's market shall be limited to an open air market to be conducted only on Mondays from 10:30 AM to 3:30 PM, for 14 consecutive weeks from June 14th to September 13th 2010. Vendors shall be provided an additional 2 hours before 12:00 noon and 2 hours after 5:00 PM to assemble and disassemble stands. During those additional hours, no products shall be sold.**
- 2. Signage, if any, shall conform to zoning and may only be displayed during the operation of the market from 10:30 AM to 3:30 PM.**
- 3. There shall be no more than 24 vendors selling farm produce raised and harvested by a farmer/grower and products made by a farmer/grower. Products sold may include fruits and vegetables, herbs, preserves, fresh-cut or dried flowers, fresh cider, dairy products, meats, poultry, and/or seafood. Home produced soaps and baked goods are permitted provided the majority of the**

ingredients are produced by the vendor. Vendors shall be limited to farmers and growers and those who buy products directly from farmers or growers in Barnstable, Dukes, Nantucket or Plymouth County, transports it to the farmer's market and resells it to the consumer.

4. Non-food items such as: crafts, housewares, utensils, tableware, clothing, jewelry or other similar manufactured products, prepared food such as take-away meals and snacks, nursery stock and plants, and third party reselling are prohibited
5. All products sold, and all site activities are subject to all applicable Board of Health regulations and licensing requirements. All scales utilized at the farmer's markets must be inspected and sealed annually by the Sealer of Weights and Measures.
6. Only products certified by the Northeast Organic Farmers' Association (NOFA) as organic may be labeled "organic".
7. All requirements of the Centerville Osterville Marstons Mills Fire Department and the Building Division if any shall be complied with.
8. The applicant shall make provisions for on-site trash receptacles and for cleaning of the site after each market. The existing on-site dumpster shall meet all Board of Health regulations including screening prior to the first market.
9. The applicant shall be responsible for assuring that a police officer is on-site to direct traffic at the entrance to the site. The officer shall be present from the time the vendors start arriving (2-hours before) until the vendors have left the site (2-hours after the market). Should the Barnstable Police determine that the posting of an officer at this location is too dangerous, they can refuse to provide that service in which case the market shall not be permitted.

Michael Hersey wants to amend to add that this modification be reviewed in one year.

William Newton accepts the amendment.

VOTE:

AYE: Craig Larson, Michael Hersey, William Newton

NAY: James McGillen, Laura Shufelt

Motion does not carry.

NOT GRANTED

Motion to adjourn

Seconded

Vote:

All in favor

Hearing adjourned at 7:55 PM.