



Town of Barnstable
Zoning Board of Appeals
Minutes
August 24, 2011

Laura Shufelt - Chair	Present
William Newton – Clerk	Present
Michael Hersey	Absent
Craig Larson	Present
Alex Rodolakis	Present
Brian Florence	Present
George Zevitas	Absent

Also present were Elizabeth Jenkins – Principal Planner, JoAnne Buntich – Director of Growth Management and Carol Puckett – Administrative Assistant.

Board members introduce themselves.

Approval of minutes from 07-13-11 & 07-27-11

Motion is made by Alex Rodolakis and seconded by William Newton to approve the minutes from 07-13-11 as submitted.

Vote:

All in favor

Laura indicates that there are executive session minutes from September 13, 2011 to review. Motion is made by Craig Larson and seconded by William Newton to approve. Alex Rodolakis recuses himself as he was not present.

Vote:

All in favor.

Laura calls the Leoni appeals

7:05 PM Appeal No. 2011-025 – Continued

**Ray D. Leoni Nominee Trust – Ray D. Leoni
Trustee
Enforcement Action**

Ray D. Leoni, Trustee of the Ray D. Leoni Nominee Trust has appealed the Building Commissioner's decision to deny the issuance of a building permit for the alteration of an existing pier in accordance with Section 240-131.4(D)(1) *Craigville Beach District Use Regulations - Change, Expansion or Alteration of Uses and Structures As of Right*. The appellant sought to alter an existing pier as-of-right on an accessory lot located opposite and across the road from the principal lot on which the single-family dwelling is located. The principal lot is addressed 22 Coddington Road, Centerville, MA as shown on Assessor's Map 186 as Parcel 052 and the accessory lot is

addressed 47 Ladd Road, Centerville MA as shown on Assessor's Map 206 as Parcel 059-001. They are in the Craigville Beach (CRD) zoning district and the Centerville River North Bank Neighborhood overlay district.

Opened June 22, 2011, Continued to July 27, 2011 and August 24, 2011. No members assigned. No testimony taken. Agreement to extend time limits signed. New Decision Due Date = October 03, 2011.

**7:05 PM Appeal No. 2011-026 – Continued
Leoni**

**Ray D. Leoni Nominee Trust – Ray D.
Trustee
Special Permit – Craigville Beach District Use
Regulations**

Ray D. Leoni, Trustee of the Ray D. Leoni Nominee Trust has petitioned for a Special Permit pursuant to Section 240-131.4(D)(2) *Craigville Beach District Use Regulations - Change, Expansion or Alteration of Uses and Structures by Special Permit* or, in the alternative, a Special Permit pursuant to Section 240-44(A) *Accessory Uses Permitted with Special Permits*. The petitioner is seeking to alter an existing pier on an accessory lot located opposite and across the road from the principal lot on which the single-family dwelling is located. The principal lot is addressed 22 Coddington Road, Centerville, MA as shown on Assessor's Map 186 as Parcel 052 and the accessory lot is addressed 47 Ladd Road, Centerville MA as shown on Assessor's Map 206 as Parcel 059-001. They are in the Craigville Beach (CRD) zoning district and the Centerville River North Bank Neighborhood overlay district.

Opened June 22, 2011, Continued to July 27, 2011 and August 24, 2011. No members assigned. No testimony taken. Agreement to extend time limits signed. New Decision Due Date = November 19, 2011.

7:05 PM Appeal No. 2011-027 – Continued

**Ray D. Leoni Nominee Trust – Ray D. Leoni
Trustee
Variance – Subordinate Nature of Accessory**

Uses

Ray D. Leoni, Trustee of the Ray D. Leoni Nominee Trust has applied for a variance to Section 240-43 *Incidental and Subordinate Nature of Accessory Uses*. The applicant is seeking to alter an existing pier on an accessory lot located opposite and across the road from the principal lot on which the single-family dwelling is located. The principal lot is addressed 22 Coddington Road, Centerville, MA as shown on Assessor's Map 186 as Parcel 052 and the accessory lot is addressed 47 Ladd Road, Centerville MA as shown on Assessor's Map 206 as Parcel 059-001. They are in the Craigville Beach (CRD) zoning district and the Centerville River North Bank overlay district.

Opened June 22, 2011, Continued to July 27, 2011 and August 24, 2011. No members assigned. No testimony taken. Agreement to extend time limits signed. New Decision Due Date = October 03, 2011.

Laura indicates that there is a letter from Attorney Albert Schulz asking for a continuance.

Motion is made by Brian Florence and seconded by Alex Rodolakis to continue to October 12, 2011 at 7:00

Vote:

All in favor

William Newton asks the reason for the continuance. Laura explains that the applicant filed the enforcement action before the denial of the building permit was issued by the Building Commissioner and now need more time to reply to the denial.

CONTINUED TO OCTOBER 12, 2011 at 7:00 PM

At 7:10 PM, Laura reads the appeal into the record.

7:00 PM

Appeal No. 2011-042

Gardner

James A. & Cynthia B. Gardner have applied for a Variance to §240-47.1(A)(3) Family Apartments. The applicants are seeking a variance to establish a family apartment in an existing detached accessory structure. The subject property is addressed 94 School Street, Cotuit, MA and is shown on Assessor's Map 035 as Parcel 020. It is in a Residential F Zoning District.

Members assigned: William Newton, Alex Rodolakis, Craig Larson, Brian Florence, Laura Shufelt

James and Cynthia Gardner are here representing themselves..

Cynthia Gardner reads her reason for requesting a variance. See letter submitted as Exhibit A.

Brian Florence asks about the previous work that had been done on the structure and if a building permit had been applied for that work. Mrs. Gardner indicates that they, as homeowners, had done the work and did not apply for a building permit. .

Laura asks if there is an occupancy permit. Mrs. Gardner indicates no. Laura indicates that there are several things that need to be done to the structure in order for it to be safe.

Brian Florence asks they are willing to have the son move into the house until they correct the violations. Mrs. Gardner indicates yes.

William Newton asks the Gardner's to explain how they got to this point and how they had the oversight of what the law was in putting it together. James Gardner indicates that that didn't think it was a regulation to ask for a detached family apartment and that they weren't trying to be defiant but never thought about it. He indicates that it has a kitchen that they installed two years ago. William Newton asks if they are aware of the Title V regulation. Mr. Gardner indicates that he didn't know until they had to replace the septic system and that they will take out and have taken out one of the bedrooms in the house to comply with Title V. William Newton clarifies that there will be two bedrooms in the main dwelling and one in the detached family apartment.

Craig Larson asks the applicants if they have read the staff report and the suggested conditions and if they have any questions regarding it. Cynthia Gardner has a concern about the ownership condition and clarifies that the family apartment would be null and void if sold outside the immediate family.

Cynthia Gardner submits a letter from Richard Barry. Laura reads it into the record. Laura says affordable housing cannot be for family members.

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

Jennifer Barth of 16 Highland Avenue, Cotuit is here to support the applicants in their request for a family apartment.

Amy Kates of 4782 Falmouth Road, Cotuit is here to support the Gardner's and asks the board for a reasonable solution for them to keep their son on the property and that the requirements be reasonable and meet code.

Brian Florence comments that condition #4 says that the first floor of the detached accessory building shall not be converted to habitable space and would submit that they are less than the 800 sf that is required. Also, he indicates that it looks as though the stairway needs to go inside the building which might require a vestibule or something along those lines in order to accommodate the fire separation from the garage, he would suggest that in place of that that it says "no more than the maximum 800 sf shall be dedicated to habitable space" as that is allowed by the bylaw anyway. Laura comments that the stairs already exist. Brian indicates that it has to have a specific landing at the bottom. Laura asks if the stairs are enclosed. Mr.

Gardner indicates that they are but is not sure that he submitted that in the square footage he submitted. Brian Florence would also like to address condition #6 and would add "that are not approved by the building division and health division.

Brain comments about condition #6. "that are not approved by the health and building division".

Craig Larson indicates that he was thinking of deleting #4, 5 & 6. Craig would like to see a deed restriction about number of bedrooms and doesn't think that it needs to be addressed about what happens in the basement as they should be aware that they have to get a building permit.

Laura Shufelt wants condition #7 to be explicit and that the occupancy permit be obtained within a year.

They discuss conditions 4, 5 & 6. .

Elizabeth Jenkins indicates that the BOH regulation limits them to three bedrooms.

The board discusses.

Craig Larson does findings:

In Appeal 2011-042, James A. & Cynthia B. Gardner have applied for a Variance to §240-47.1(A)(3) Family Apartments. The applicants are seeking a variance to establish a family apartment in an existing detached accessory structure. The subject property is addressed 94 School Street, Cotuit, MA and is shown on Assessor's Map 035 as Parcel 020. It is in a Residential F Zoning District.

- 1. Owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located; and**
- 2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner;**
- 3. The 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.**

Vote:

AYE: William Newton, Alex Rodolakis, Craig Larson, Brian Florence, Laura Shufelt

NAY: None

Craig Larson makes a motion to grant with the following conditions:

- 1. This variance is issued to permit a family apartment in the second story of an existing accessory building located at 94 School Street, Cotuit. Non transferable to future owners.**
- 2. The family apartment shall comply with and be maintained in accordance with all conditions herein, as well as all applicable requirements of Section 240-47.1 for a family apartment, including that the family apartment use is nontransferable to future owners.**
- 3. The family apartment shall be maintained as a one-bedroom unit of 638 square feet on the second story of the existing detached accessory building located on the property.**
- 4. The property shall be limited to a total of three bedrooms.**
- 5. Prior to occupancy, the apartment unit shall be fully compliant with all requirements of the Health Division and the Building Division. The unit shall be in conformance with all applicable zoning, building, fire, and health codes, including code-compliant egress, stairway construction, and fire separation. The applicant shall demonstrate compliance with Title V and local Board of Health requirements. OCC permit shall be obtained within one year of this date.**
- 6. All parking for the primary dwelling and family apartment shall be located on-site.**

- 7. Occupancy of the family apartment unit shall not exceed two family members. There shall be no renting of the apartment unit to non-family members and no renting of rooms (lodging) permitted during the life of this variance.**
- 8. When the family apartment is vacated or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use of the apartment shall be terminated and this variance shall become null and void. At that time, this variance shall cease and the applicant or property owner shall be responsible for the removal of the kitchen and use of the building as an independent living unit. A building permit for the removal of the unit shall also be required at that time.**

Brian Florence seconds.

Laura Shufelt is would like another condition regarding the outstanding violations.

Brian Florence makes another condition:

- 9. Any violations that currently exist on the property shall cease until the proper permits have been obtained with the Building Division.**

Craig accepts the amendment

Vote:

AYE: William Newton, Alex Rodolakis, Craig Larson, Brian Florence, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Elizabeth Jenkins talks about canceling the September 28th hearing as there will be a quorum issue. They discuss. Elizabeth indicates that the meeting will have to be opened and the appeals continued to a date certain.

A motion is made by Brian Florence and seconded by Craig Larson to adjourn.

Meeting adjourned at 7:42 PM.
