



Town of Barnstable
Zoning Board of Appeals
Minutes
January 11, 2012

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

Laura Shufelt opens the meeting at 7:00 PM.

Introduction of Board Members

Board members introduce themselves.

Approval of minutes from September 14, 2011, October 5, 2011 & October 12, 2011

Motion is made by Brian Florence and seconded by Craig Larson to approved the minutes as amended

Vote:

All in favor

Laura Shufelt calls the Kane appeal and reads it into the record:

7:00 PM

Appeal No. 2011-061 - New

Kane

Stephen and Holly Kane have petitioned for a Special Permit pursuant to Section 240-47.1.A(1) *Family Apartments* to re-establish a family apartment of approximately 1,100 square feet in an existing attached addition. The subject property is located at 101 Willow Street, West Barnstable, MA as shown on Assessor's Map 156 as Parcel 001-002. It is in a Residence F zoning district.

Members assigned tonight: George Zevitas, Craig Larson, Alex Rodolakis, Laura Shufelt, William Newton

Petitioners Stephen and Holly Kane are representing themselves. Stephen Kane indicates that they are here to re-establish a family apartment that was granted to the previous owners. They bought the property in 2009 and the addition with apartment was added in 2004 under the previous special permit and under the previous owners. Mr. Kane indicates that they purchased the home in order to accommodate his parents. Since the purchase, his father has passed and he is looking to have his mother live there in order to provide primary care for her.

Laura Shufelt asks if there is anyone here from the public who would like to speak. No one speaks.

She asks the board if they have any questions. William Newton clarifies that it will be the Mr. Kane's mother and asks about access to the apartment. Mr. Kane indicates that there is access from within the house but also a separate entrance from the deck.

Craig Larson makes findings:

In appeal 2011-061, Stephen and Holly Kane are seeking to re-establish a 1,100 square foot family apartment in their West Barnstable home. The subject property is located at 101 Willow Street, south of Route 6A. The parcel is approximately one acre in area. The dwelling, constructed in 1994, has a total gross floor area of 8,064 square feet and a total of four bedrooms, including the proposed family apartment

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit:

Section 240-47.1(A)(1) of the Barnstable Zoning Ordinance allows for a family apartment greater than 800 square feet, not to exceed 1,200 square feet, with a Special Permit from the Zoning Board of Appeals.

- Site Plan Review is not required for single-family residential structures or family apartments.
- 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.

Vote:

AYE: George Zevitas, Craig Larson, Alex Rodolakis, Laura Shufelt, William Newton

NAY: None

A motion is made by Craig Larson to grant the variance with the following conditions:

1. Special Permit 2011-061 is granted to Stephen and Holly Kane to establish a family apartment within their house at 101 Willow Street in West Barnstable. The family apartment shall be limited to a one-bedroom unit not to exceed 1,100 square feet.
2. The family apartment shall be maintained in compliance with the requirements of Section 240-47.1.
3. The on-site septic system shall comply with the Town of Barnstable Board of Health regulations and Title V without variances from the Board of Health.
4. 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 a Certificate of Occupancy for the family apartment. The rights authorized by this special permit must be exercised within two years, unless extended.

Seconded by William Newton.

Vote:

AYE: George Zevitas, Alex Rodolakis, Craig Larson, William Newton, Laura Shufelt

NAY: None

GRANTED WITH CONDITIONS

Laura Shufelt then calls the EAC hearing.

Craig Larson recuses himself.

7:00 PM Appeal No. 2009-025 - Continued

**EAC Disposal, Inc. d/b/a
Cape Resources Company
Modification of Variance No. 1996-14**

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. Appeal No. 2009-025 has been amended to include a request that Condition Number 28 in Variance No. 1996-14, requiring that the variance expire on December 31, 2015, be deleted. The Applicant requests the modification of such other conditions and terms contained within Variance No. 1996-14 as may be required to effectuate the intent of the new proposed plan submitted with the application and the terms of any decision to be rendered by the Zoning Board of Appeals. The subject 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.

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, May 26, 2010, July 14, 2010, August 11, 2010, September 15, 2010, October 27, 2010, December 1, 2010, February 2, 2011., March 9, 2011, April 13, 2011, May 11, 2011, June 8, 2011, June 22, 2011, July 27, 2011, September 14, 2011, November 9, 2011, December 14, 2011 and January 11, 2012.

**Board Members Assigned: William H. Newton, George T. Zevitas, Brian Florence, Alex M. Rodolakis, Laura F. Shufelt
Decision Due: September 15, 2011, With Extension: January 20, 2012**

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

Attorney Charles Sabatt is representing the applicant. Laura indicates that the public hearing was closed at the last hearing and they are here tonight to discuss findings and conditions.

Attorney Sabatt indicates that he has one concern. Laura indicates that she would need to ask Ruth Weil – Town Attorney as to the procedure. Attorney Weil says they are in the deliberation phase and if you want Mr. Sabot's comments that it would be appropriate.

Attorney Sabatt points out on page 7 of the proposed conditions, #25 (last line) which states that fires on this property are prohibited regardless of origin or cause including acts or neglect by site operators. He understands the motivation but as he understands, the position is that this site did have an experience in 2002 in which there were series of fires throughout the dry summer but the then operators at that time were not properly managing the piles at that time. The proper way to manage and thinks it was discussed during the testimony part of the hearing was to rotate or move the piles on a continuous basis. What he is recommending is a line that would say that in lieu of what is there, there shall be no open burning of materials on site then the applicant shall prevent any fires that would result from any spontaneous combustion of stockpiled materials. He gives examples of arson or someone's truck being on site that could catch on fire or lightning striking and creating a fire. He clarifies his language that he would propose is that there shall be no open burning of materials on site and that the applicant shall prevent any fires that result from spontaneous combustion of stockpiled material. Brian Florence suggests language similar to wording such as they might make every effort to prevent fires.

The board discusses.

William Newton has an issue regarding a review in the future to see how it is going. Brian indicates that because they have a standard, the enforcement agent will have something they can stand on in order to compel enforcement. Laura Shufelt indicates that the reports will be monthly and better than an annual or two year review.

William Newton asks about a review at some future point. Attorney Sabatt indicates that he believes Assistant Town Attorney - Charlie McLaughlin was of the opinion that it should not be incorporated into the

decision. Attorney Weil indicates that she did discuss this with Charlie McLaughlin and that 40A doesn't contemplate the periodic review, and that under the decision, the Director of Growth Management gets the same reports that the Building Commissioner and if they see any violation that they will consult with the Building Commissioner. She believes it is better to leave it with the mechanism under 40A.

The board and Attorney Sabatt discuss the 2030 date. Attorney Sabatt indicates that the original decision went from 1996 to 2015 which is 20 years. He indicates that if the board is initially thinking to replicate, that going to 2030 somewhat replicates this time period. He also states that he amortized this project for the money invested which also comes out to the twenty years and is the basis for the 2030 date.

William Newton asks about the grinding machine being utilized on Saturday and would prefer it not be done on Saturday at all and that grinding be held to the weekdays Monday through Friday and the weekend be preserved for selling of products and bringing in of materials. Attorney Sabatt asks to confer with his client. Attorney Sabatt indicates that according to the manager, they grind on Saturday mornings generally when it is very busy which is in the springtime but could live without that but that another thought might be to make the hour later on Saturday or that they could make it seasonally.

The manager of the facility, Pat Gregory, indicates that as it stands, they don't like to grind on the weekends and has no problem with ceasing grinding all together on the weekends. However, in the busy season they have to keep up with orders but could live without it if need be. Attorney Sabatt indicates that maybe they could not grind on Saturdays unless they need to reduce the size of piles in order to avoid fires. The board discusses.

Laura Shufelt indicates that she would prefer grinding and screening only between the hours of 10:00 AM and 2:00 PM.

Laura wants to discuss Condition #33 as the berm doesn't have a maximum height listed. Attorney Sabatt thinks in the original decision there was a limit to the berm. They discuss height of the berm.

William Newton asks about construction of the sound barrier wall. Laura explains the standards. Attorney Sabatt indicates that Mr. Alix, the consultant that was here the last time, has the specifications of the wall. Elizabeth Jenkins indicates that Mr. Alix had suggested the dimensions of the wall and that all new improvements to the site have to go through Site Plan Review to address those concerns.

Brian Florence wants to address Condition #23 and the fencing. He would like to add that it be properly maintained. Attorney Sabatt concurs.

Attorney Weil addresses Condition #25 to include the language that Mr. Sabatt originally proposed

Laura Shufelt asks Attorney Weil if they should go through all the findings orally. Attorney Weil indicates that she doesn't believe so as long as they reference any amendments and only read the amendment by paragraph number.

Brian Florence wants to discuss Condition #25 in reference to the fires and indicates that the applicant has no ability to control if someone breaks into the property and starts a fire. Also, they have no ability to control spontaneous combustion and asks how to hold them accountable for that and then if it happens, the only mechanism we have is to begin the enforcement process. Attorney Weil indicates that the enforcement process, if presented with a fact pattern like he just described, that the Building Commissioner would use his

discretion and thinks and her recommendation is this language would be easier to enforce than putting reasonable efforts.

Brian Florence suggests "except for matters beyond their control". Attorney Weil thinks that the Building Commissioner could take that into account. Attorney Sabatt thinks that it "shall employ its best management practices to prevent fires by spontaneous combustion". Attorney Weil comments that she doesn't know what the best management practices would be going forward and thinks that Mr. Florence's language would be preferable.

The board discusses the amendments and the sunset provision.

Laura Shufelt asks that if Town Council does away with variances and if the applicants had to come back what would transpire. Attorney Weil indicates no and explains the language as outlined by Charlie McLaughlin and if Town Council does away with variances that they could not extend beyond the expiration date.

Laura Shufelt asks the members what their feelings are on the sunset provision. Brian Florence would like to eliminate the sunset provision. Alex Rodolakis would like it date specific. William Newton indicates if they had to come back and use variances no longer existed, they would have no where to go with it. He indicates that he could live with 2030 but doesn't want to eliminate it completely. Attorney Sabatt reiterates that it would good economic sense for it to be at least until 2030. Laura Shufelt indicates that she believes that this board has ever put an expiration date on it but if they are going to put one on it that 2030 is reasonable and doesn't think it should anything less than that.

A motion is made by Laura Shufelt and seconded by Brian Florence to propose the language as written in the draft decision for Condition #53 which is "the variance shall expire on December 31, 2030".

Vote:

AYE: Brian Florence, George Zevitas, Laura Shufelt, William Newton

NAY: Alex Rodolakis

Brian Florence makes a motion that In the matter of the modification of Variance 1996-14 for the yard waste recycling facility, EAC Inc., at 280 Old Falmouth Road, Marstons Mills, Assessor's Map 100 parcel 008 in the RF zoning district, Resource Protection Overlay District and Groundwater Overlay Protection District, to accept the findings as written in staff's draft findings as entered into the record on January 11, 2012.

Vote:

AYE: George Zevitas, Brian Florence, Alex Rodolakis, William Newton, Laura Shufelt

NAY: None

Brian Florence makes a motion to grant the Appeal 2009-025 based on the conditions as outlined as written: George Zevitas seconds the motion.

Brian Florence wants to amend #23 so that the "fence shall be maintained continuously". Alex Rodolakis indicates that there are two fences that are referenced and that both fences shall be maintained continuously by the applicant for the time of the variance. Everyone accepts the amendment.

#25 = Brian Florence indicates it be as written. Alex Rodolakis wants to substitute Paragraph 25 as in the staff report to now read: "the height of the materials within the yard waste area shall not exceed 35 feet.

Because the height of the shredded materials poses a public safety threat as described in Finding #18 herein, piles of shredded brush shall not exceed 20 feet in height. Height measurements shall be taken from the elevation above sea level shown on the existing plan". Also, there shall be no open burning of materials on site and the applicant shall use their best efforts and be consistent with best practices to insure any fires that may result from spontaneous combustion from stockpiled material be prevented. The board discusses. Brian Florence suggests eliminating the amendment Alex Rodolakis made and to use the text in its original format and add "except for causes beyond the operator's control". The board discusses again.

Laura Shufelt makes a motion to leave the language as is for Paragraph #25.

Vote:

AYE: George Zevitas, Brian Florence, William Newton, Laura Shufelt

NAY: Alex Rodolakis

Laura Shufelt wants to discuss #26 about permitted hours of operation shall be limited to 7:00 AM to 5:00 PM Monday through Saturday except no grinding or screening shall only take place between 10:00 AM and 2:00 PM on Saturdays. They board discusses.

Vote to leave language as indicated above:

AYE: George Zevitas, Brian Florence, Alex Rodolakis, Laura Shufelt

NAY: None

Laura Shufelt asks for a vote on conditions as amended:

AYE: George Zevitas, Brian Florence, William Newton, Laura Shufelt

NAY: Alex Rodolakis

GRANTED WITH CONDITIONS

Alex Rodolakis leaves.

Issuance of Decision Pursuant to Order of Judgment for Sprint Spectrum, LP - 217 Thornton Drive, Hyannis

Elizabeth Jenkins explains that the ZBA back in 2001 heard a variance request from Sprint Spectrum to construct telecommunications tower which was granted. However, it was appealed and judgment was granted in favor of Sprint. The court ordered the Town of Barnstable to issue all permits necessary to construct the tower which would include the variance relief. The only problem was that there wasn't a written decision issued by the ZBA pursuant to that court order. Recently, Sprint has come to the Town of Barnstable asking for a modification to the variance that was never issued and that this is a housekeeping issue.

A motion is made by Brian Florence for the chair to sign and grant the relief being requested pursuant to the court order.

Vote: All in favor

Laura Shufelt indicates that she will not be her on the 25th of January.

Discussion on Special Permit Application 2011-060 – Tonsberg

Elizabeth Jenkins indicates that an application was filed and that an extension was filed. She indicates that the applicant hasn't informed staff of what they are planning to do. At this point, unless they hear from the applicant, they will advertise and it will come before the board in February.

Chair's Discussion

Executive Session Minutes Released = Laura Shufelt indicates that she does not have any currently to release.

Motion is made by William Newton and seconded by Brian Florence to adjourn.

Meeting adjourned at 8:37 PM