



Town of Barnstable
Zoning Board of Appeals
Minutes
February 8, 2012

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

Also present were Elizabeth Jenkins – Planner and Carol Puckett – Administrative Assistant.

Laura Shufelt opens the hearing at 7:00 PM.

Introduction of Board Members – Board members introduce themselves.

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

7:00 PM

Appeal No. 2012-003 - Continued

Todd C. Elwell

Todd C. Elwell has applied for a variance to Section 240-11(A)(1) Principal Permitted Uses in the Residence B District. The Applicant is requesting a variance to allow an existing accessory cottage to be used as an affordable housing unit. The subject property is located at 45 Newton Street, Hyannis, as shown on Assessor's Map 308 as Parcel 158. It is in the Residence B Zoning District.

Members assigned tonight: William Newton, Craig Larson, Alex Rodolakis, Brian Florence, George Zevitas

Attorney Steven J. Pizzuti is representing the applicant.

Attorney Pizzuti indicates that Mr. Elwell has owned this property since 2004. He indicates that there were 7 people in the main house and 2 people living in the cottage. At that time, he had it inspected by the Town and the Board of Health approved everything except for the 3rd floor. Since that time, the applicant has owned, rented it to various individuals, and not until last year was he ever delivered a zoning violation. Prior to him owning this, the prior owner had converted the garage into living space and didn't inform the town. Unfortunately, Mr. Elwell didn't know that history. Attorney Pizzuti indicates that his client would like to restore the main house to a legitimate use and offer conditions with the approval of this cottage with having the cottage used as an affordable unit and approve the accessory unit under the LIP program. Also, the applicant would like to offer the following landscaping plan by Coy Brooks company. Attorney Pizzuti indicates that Mr. Elwell has learned that there has been complaints, police reports, and was aware that in 2007 there was a fight/disturbance which he was surprised to learn of and would like to remediate the number of people living in the house. Attorney Pizzuti indicates that Mr. Elwell has removed some tenants and has contacted all the neighbors, given them his phone number in order for them to call with any problems. Attorney Pizzuti indicates that Coy Brook did a landscape plan which he thinks will go along with

soothing the neighbors concerns. Attorney Pizzuti points out that the assessor has designated this property as having two living units and that Mr. Elwell will have a lease to two individuals so that there will be a total of 4 people in the main dwelling and only one occupant in the cottage which will reduce the density. Attorney Pizzuti indicates that the first variance issue is that it is the largest property on the street and 34% larger than the average houses on that street. Because this house is so large and expensive to heat, and today you cannot generate rent to pay for the utilities, what they can do is to create an affordable unit. Attorney Pizzuti indicates that this property is unique which doesn't generally affect the zoning district because it is not just the structure as this structure is very large, but thinks that the literal enforcement and hardship is a financial one as he would not be able to maintain the property without the accessory apartment and is not in derogation of the intent of the law.

William Newton clarifies that this is a use variance to allow a second structures on one lot. He asks Attorney Pizzuti to go through the three prong test for issuing a variance.

Attorney Pizzuti indicates that the first prong test is that it affects the property or structure but doesn't necessarily affect the zone, his position is that this massive property/structure is so large that it is larger than any other on the street and compares it to the Beltone building. Also, that most of the structures in the district are not large houses. His client has a structure that is more unique than other structures. The question becomes if this makes sense, can you hang your hat on it and do you want to displace hard working people. Attorney Pizzuti indicates that literal enforcement will cause hardship owing to the fact that the place is so big it costs \$1000 a month to heat it and Mr. Elwell has been feeling hardship since the fall. As far as a detriment to the public good, Attorney Pizzuti indicates that his client will be able to create an affordable unit which he feels would be in a district which currently has multiple apartments which is more than outside of this district.

Laura Shufelt asks how the principal dwelling will meet the requirements of the . Attorney Pizzuti indicates his client has a proposed lease and a total of 4 people who will be living in the main structure and that the ordinance allows for up to 3 non-family members.

Elizabeth Jenkins, planner for the Zoning Board of Appeals, indicates that the applicant has applied for use of the accessory cottage as an affordable unit and has not addressed the principal dwelling and that the scope of the application deals with the cottage structure.

Craig Larson asks if the applicant will be living there. Attorney Pizzuti indicates no. Craig Larson asks if he has tried to sell the unit. Attorney Pizzuti indicates that he doesn't believe so. Craig indicates that if they issued it to the principal resident and wanted to sell it, the variance has up to one year to be enacted. Attorney Pizzuti asks why would it be difficult to issue without the owner living there and that this has been a rooming house for the past 25 years. Laura Shufelt indicates that there hasn't been any supervision and that the applicant has been an absentee landlord. Attorney Pizzuti suggests putting a condition in regarding policing the property. Laura Shufelt asks if they have investigated the LIP option. Attorney Pizzuti indicates that Mr. Elwell talked to Arden Cadrin regarding that issue. Laura Shufelt suggests that they would need to talk to the state regarding the LIP program. Attorney Pizzuti indicates that they could have that as a condition of the variance. Laura Shufelt asks for clarification on the square footage of the cottage. Elizabeth Jenkins gives the square footage from the Assessor's record. Laura Shufelt informs Attorney Pizzuti that that LIP requires at least 700 square feet.

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

Pat MacLellan abuts the property at 45 Newton Street and is concerned about the hardship on the neighborhood. He indicates that most of the crime committed in the neighborhood seems to come out of this house. He indicates that his wife and himself are trying to raise two children and that he has seen upwards of 8 tenants on the applicant's property. He indicates that there has been approximately 35 calls to the police department regarding this property. Mr. MacLellan indicates that he and his family have lived there for approximately one year and that one of his neighbors has moved because of the problems with the tenants at the applicant's property.

The board discusses.

Attorney Pizzuti indicates that he has consulted with his client and on the suggestion of what Mr. Larson has suggested, and would they give him a certain amount of time to obtain a purchaser who would be willing to live there so that he wouldn't end up getting the property foreclosed on. Attorney Pizzuti then goes on to indicate that if his client rented to three people in the main house, his client wouldn't be able to afford the property. The board discusses.

Craig Larson clarifies that there is a total of four people currently living on the property. Attorney Pizzuti discusses the interpretation of the ordinance as it relates to Section 240-11.B.

Craig Larson asks the abutter, Mr. MacLellan, if it was owner occupied and he just rented out rooms would it be amiable to the neighborhood. Mr. MacLellan indicates that the neighborhood has plenty of existing affordable housing.

Attorney Pizzuti indicates that if the board were not willing to grant the owner-occupied status then he would have to withdraw or continue this and at some point, he would like to direct to the proper authorities exactly what is going on with that enforcement. He asks if the board is amenable to making a finding that an owner-occupied scenario would be beneficial.

The board discusses.

William Newton suggests they write this out to what is agreeable to his client, bring it back and allow the board to look it over and either approve or disapprove.

Craig Larson indicates that he would vote yes if it was owner occupied, Alex Rodolakis, George Zevitas agree. Laura Shufelt believes it would be easier done with a 40B. Laura Shufelt suggests continuing it. The board discusses dates for a continuance.

Alex Rodolakis will not be here on April 22nd. George might have a problem on the 14th of March.

A motion is made by William Newton and seconded by George Zevitas to continue this to April 11, 2012 at 7:00 PM.

Vote:

All in favor

CONTINUED TO APRIL 11, 2012 AT 7:00 PM

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

7:00 PM

Appeal No. 2012-005 - New

Stetson

Anne E. Stetson has applied for a variance from Section 240-14(E) Bulk Regulations in the Residence F District. The Applicant is seeking a variance from the 30 foot front yard setback requirement to construct a 24' x 24' garage in place of an existing carport. The garage would be 21 feet from the front property line. The subject property is located at 211 Lake Shore Drive, Marstons Mills, MA, as shown on Assessor's Map 030 as Parcel 002. It is in the Residence F Zoning District.

Members assigned tonight: William Newton, Craig Larson, Alex Rodolakis, Brian Florence, George Zevitas

Matt Farrell, engineer from J.M. O'Reilly & Associates is here to answer questions regarding the application. Also with him is Jeff Jones from Classic Construction who is the builder representing the property owners. Mr. Farrell

indicates that he has two letters from abutters who are in favor which he hands to staff. He indicates that the applicants are proposing to construct a garage in place of a car port. He indicates that as to the soil conditions, the topography is that they couldn't site the garage in any other location because of its proximity to Long Pond and wouldn't allow them financially to site the garage in any other location. As for hardship, the owners are getting up in age and would like to have access. Also moving the garage outside of the 30 foot setback could create and could add to the construction costs because of retaining walls and access. Mr. Farrell believes that the project would serve the public good since no one is objecting it.

George Zevitas indicates that he isn't sure a garage is needed. William Newton asks where visitors would park Mr. Farrell indicates that they park in the street and some in the half circle near the car port.

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

Elizabeth Jenkins indicates that the relief being sought should be accordance with Section 240-14.E and not 240-11.E as outlined.

Craig Larson makes findings:

Anne E. Stetson has applied for a variance from Section 240-14(E) Bulk Regulations in the Residence F District. The Applicant is seeking a variance from the 30 foot front yard setback requirement to construct a 24' x 24' garage in place of an existing carport. The garage would be 21 feet from the front property line. The subject property is located at 211 Lake Shore Drive, Marstons Mills, MA, as shown on Assessor's Map 030 as Parcel 002. It is in the Residence F Zoning District.

Variance Findings

- 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:

All in favor

A motion is made by Craig Larson to grant the relief being requested with the following conditions:

- 1. This variance from Section 240-14(E) Bulk Regulations – Minimum Front Yard Setback Requirement is issued for property located at 211 Lake Shore Drive, Marstons Mills to allow the construction of a 24 foot by 24 foot garage located 21 feet from the front property line.*
- 2. The addition shall be constructed in substantial conformance with the plans entitled "Stetson Residence – Site Plan, 211 Lake Shore Drive, Marstons Mills, MA", dated January 10, 2012, drawn and stamped by John M. O'Reilly, JM O'Reilly & Associates, Inc. and the elevations submitted to the Zoning Board of Appeals.*
- 3. The garage shall not be used for living space.*
- 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 Building Permit for the addition. The rights authorized by this variance must be exercised within one year, unless extended.*

Seconded by William Newton.

Vote:

AYE: William Newton, Craig Larson, Alex Rodolakis, Brian Florence, George Zevitas

NAY: None

GRANTED WITH CONDITIONS

7:00 P.M.

Appeal No. 2011-060 - New

Tonsberg

Frederick and Roberta Tonsberg have applied for a Special Permit pursuant to Section 240-92 (B) Non-conforming Buildings and Structures used as single- and two-family structures and 240-131.4 D&E Craigville Beach District Use Regulations. The Applicant needs to demolish and rebuild the single-family home as a primary residence to make the building habitable. The subject property is located at 2 Short Beach Road, as shown on Assessor's Map 206 as Parcel 002. It is in the RD-1 District and Long Beach-Short Beach Neighborhood Overlay District.

(Note: The Applicant in Appeal No. 2011-060 has submitted a request to withdraw this application without prejudice.)

Laura Shufelt reads the appeal and indicates that there is a request from the applicant's attorneys, Rodman Walker & DiMarco LLC., to withdraw without prejudice.

A motion is made by Laura Shufelt and seconded by Alex Rodolakis to withdraw without prejudice.

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

Request for Review of Tradewinds Inn Special Permit No. 2005-065

Laura Shufelt indicates that there is a memo from JoAnne Buntich and feels that they have to review this request.

Attorney Michael Ford is representing the applicant. He indicates that in 2005, special permits were issued for this property, which was used previously as a hotel and restaurant and changed to condos. He indicates that there was another special permit issued after that for alterations and expansion. In 2011, the current owners appeared before the Conservation Commission in order to replace an existing concrete pier in Lake Elizabeth which was approved. He indicates that it involves removal for the pier and construction of the new wooden pier and float. There was an appeal under the state wetlands act, there were some revisions made to the pier and DEP issued a superceding order upholding the Conservation's Commission's approval with a revised plan which has now become final. The applicant then sought the guidance of DEP as to whether or not the pier needed a Chapter 91 license. That turned on the question whether Lake Elizabeth was a great pond and the advise they received from the state was that they needed chapter 91 license. The owner's caused the Chapter 91 license to be applied for. As the Chapter 91 process works its way through, one of the requirements is a review of zoning compliance by the Building commissioner who is sent a form to check off zoning compliance. It was then at that point that Tom Perry – Building Commissioner reviewed the permit and in reviewing #17, it was Mr. Perry's opinion that even though this pier originally existed, it should be brought to ZBA to insure that it doesn't trigger a modification of the special permit. Attorney Ford indicates that the pier is disintegrating and he would suggest that they are not building a new structure or adding, just replacing an accessory structure and suggests that this doesn't trigger a full modification of the relief previously granted. Attorney Ford indicates that the pier is being replaced but with the addition of a float, the actual area will be larger than what is there now.

Laura Shufelt asks if there was a Chapter 91 license prior to this. Attorney Ford indicates not that he is aware of. Laura asks if the increase it is more than 10%. Attorney Ford indicates yes and that the pier wasn't on the original site plan. Laura Shufelt clarifies that the issue of the pier wasn't addressed at all in the previously granted relief granted.

Kieran Healey from BSC Engineering shows aerial views from 2002 and 2011.

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

A motion is made by Craig Larson and seconded by William Newton that the reconstruction of the pier is consistent with the findings and conditions of Special Permit 2005-065.

Vote:

AYE: William Newton, Craig Larson, Alex Rodolakis, Brian Florence, George Zevitas

NAY: None

Release of Executive Session Minutes

Laura Shufelt indicates that she hasn't reviewed any executive session minutes.

Upcoming Meetings:

Elizabeth Jenkins clarifies that Alex Rodolakis will not be here on school vacation week.

A motion is made by William Newton and seconded by Craig Larson to adjourn.

Meeting adjourned at 8:30 PM