



Town of Barnstable
Zoning Board of Appeals
Minutes
March 14, 2012

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

Laura Shufelt opens the hearing at 7:00 PM. Board members introduce themselves.

Laura Shufelt calls the Centerville Gardens appeal and reads it into the record:

7:00 PM Appeal No. 2012-007 - New Centerville Gardens II, LLC

Centerville Gardens II, LLC. has petitioned for a Conditional Use Special Permit pursuant to Section 240-25(C)(1) to allow a medical office use in the Highway Business Zoning District. The Petitioner seeks to construct a 9,925 square foot building for office and dental office use. The subject properties are located at 1060 Falmouth Road, Hyannis, MA and 28 and 36 Wequaquet Lane, Centerville, MA as shown on Assessor's Map 250 as Parcels 023/X01, 023/X02, and 024. They are in the Highway Business and Residence D-1 Zoning Districts and the Groundwater Protection Overlay District.

Attorney David Lawler is representing the applicant and indicates that there are a few details that need to be worked out with staff and the Building Commissioner and requests that the a continuance to March 28, 2012 at 7:00 PM

Motion is made by Brian Florence and seconded by William Newton to continue this to March 28, 2012 at 7:00 PM.

Vote:
All in favor

At 7:05, Laura Shufelt calls the MDM Hyannis appeals and reads them into the record:

**7:05 PM Appeal No. 2012-008 - New MDM Hyannis Property LLC &
Star Nominee Trust**

MDM Hyannis Property, LLC and Star Nominee Trust have applied to modify conditions No. 1, 2, and 4 of Variance No. 2008-010 to change the existing permitted uses of the property. Use of the property is currently limited to retail sales of electronics; the Applicant seeks to include retail, health club, general light industrial, business park, general office, and educational, vocational and training center as permitted uses. The property is located at 624 and 640 Iyannough Road, Hyannis, MA as shown on Assessor's Map 311 as parcel 012 and 013. The parcels are located in the Highway Business and Business Zoning Districts.

7:05 PM

Appeal No. 2012-009 - New

**MDM Hyannis Property LLC &
Star Nominee Trust**

MDM Hyannis Property, LLC and Star Nominee Trust have petitioned to modify and amend Conditional Use Special Permit No. 2008-011 to provide additional permitted uses for the property. Use of the property is currently limited to retail sales of electronics; the Applicant seeks to include retail, health club, general light industrial, business park, general office, and educational, vocational and training center as permitted uses. The property is located at 624 and 640 Iyannough Road, Hyannis, MA as shown on Assessor's Map 311 as parcel 012 and 013. The parcels are located in the Highway Business and Business Zoning Districts.

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

Attorney David Lawler is representing the applicant. Brian Florence announces that as part of his job, he was working on an enforcement action where Attorney Lawler was representing the opposing party and would like to disclose that fact. He asks Attorney Lawler and the board if they are okay with that. Attorney Lawler indicates that he was acting as an attorney in that case and does not object nor thinks that there is a conflict of interest. The board members agree.

Attorney Lawler gives a brief history of the property and references the variance and special permit that had been issued to this property previously. He indicates that this building was to be used for Circuit City and for the sale of only electronics which he believes is too exclusive a use. He indicates that because Circuit City filed for bankruptcy, the building has been vacant since 2008. Attorney Lawler then indicates that himself and the applicant have met with Growth Management Director – JoAnne Buntich previously before going before the Cape Cod Commission and were allowed to expand the uses to more than what is in the application. Attorney Lawler indicates that Growth Management suggested omitting light industrial as they feel it would not be approved and that his client does not have any objections to removing that from the application. In respect to retail, they are not looking to put a Walmart or Kmart in the building. What they are looking for in general is for retail sales of clothing or for the sale of tools which would have to meet the requirements of hazardous waste, etc., Also, they are looking to have an approval of broad language in order not to have to come back for a different use. He indicates that it is anticipated that there will be a power tool company who will be leasing the building. Specifically, what they want to amend on both the variance and special permit previously issues, is Condition #1 which references the electronic retail which he is hoping to amend the language on the permits to include the specialty retail, office use, athletic/health, business park, educational/vocational training center.

Questions from the board: William Newton asks where they are with negotiations with clients. Attorney Lawler indicates that because of negotiations with a possible tenant he can only disclose that a potential client who would sell power tools and tools for construction trade. Attorney Lawler comments that he has never seen any relief issued so specific as for this property. They discuss specialty retail. Elizabeth explains that the applicant amended their DRI decision and have to go back before the Commission when they have a tenant and explains what the definition of specialty retail is.

The board discusses specialty retail. Attorney Lawler is comfortable with recommendation made by staff and for the purposes of being pragmatic, his client thinks the revised staff report definition of specialty retail is okay.

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

Ray Lang , resident of the Town of Barnstable, suggests a detailed break down of each use and that specialty retail is too broad. He indicates that as you define a use, things should be taken into consideration such as

- **what and how many people are involved in the use**
- **is it an expanding business or will it remain the same in 5 or 10 years in the future**
- **how many square feet, how many cars are involved**
- **how many parking spaces are to be used and at what time are they going to be used.**

He thinks a board needs these pieces of information in issuing variances or special permits. He believes it is up to the client to get the information regarding square footage, parking, etc., as he indicated earlier. He is concerned about a business park as a use.

Attorney Lawler indicates that the Circuit City has been built and the specialty use for which it was built doesn't exist anymore.

Laura Shufelt reads the definition of specialty retail and business park to be included in the language. Craig Larson suggests reading what they don't want included into the language.

Laura Shufelt reads the following:

Specialty retail shall not include warehouse clubs or discount clubs, supermarkets or grocery stores, convenience stores, discount superstores or super centers engaged in retailing a general line of products and/or groceries with no one merchandise line predominating, or retail sales of automobiles or other motor vehicles. Any use shall be consistent with the findings and conditions of the Cape Cod Commission's DRI Decision and be in compliance with the requirements of the Groundwater Protection Overlay District.

Attorney Lawler agrees to the language.

Elizabeth Jenkins indicates that there is a gray area when a tenant is not defined and CCC puts a safeguard on trip generation. She refers to Condition #2. They continue to discuss the definition of specialty stores. William Newton wants clarification on specialty retail.

The board discusses parking and the specialty retail.

Brian Florence makes a motion to end the debate. No one seconds.

Craig Larson asks about the landscape plan. Attorney Lawler indicates that his client will maintain the landscaping. Alex Rodolakis recommends taking out specialty foods store. Attorney Lawler confers with his client and indicates that he is okay with that.

Laura suggests just reading the findings and conditions that they want to change:

Elizabeth Jenkins indicates that as to the variance modifications, she asks to reiterate that the modification will not result in detriment to the public good, etc.

Craig Larson does findings:

In Appeal No. 2012-008, MDM Hyannis Property, LLC and Star Nominee Trust have applied to modify conditions No. 1, 2, and 4 of Variance No. 2008-010 to change the existing permitted uses of the property. Use of the property is currently limited to retail sales of electronics; the Applicant seeks to include specialty retail, health club, general light

industrial, business park, general office, and educational, vocational and training center as permitted uses. The property is located at 624 and 640 Iyannough Road, Hyannis, MA as shown on Assessor's Map 311 as parcel 012 and 013. The parcels are located in the Highway Business and Business Zoning Districts.

The site was redeveloped in 2008 by Berkshire Development, LLC specifically for the electronics retailer Circuit City. Because of the size of the building, the project qualified as a Development of Regional Impact and was reviewed by the Cape Cod Commission.

Findings:

1. In Appeal No. 2012-008 MDM Hyannis Property, LLC and Star Nominee Trust have applied to modify conditions No. 1, 2, and 4 of Variance No. 2008-010 to change the existing permitted uses of the property. Use of the property is currently limited to retail sales of electronics; the Applicant seeks to expand the uses permitted on the property.
2. The property is located at 624 and 640 Iyannough Road, Hyannis, MA as shown on Assessor's Map 311 as parcel 012 and 013. The parcels are located in the Highway Business and Business Zoning Districts and Groundwater Protection Overlay District.
3. Building permits were obtained for the construction of the building in accordance with the conditions of Variance No. 2008-010. A final certificate of occupancy has not been issued for the development.
4. Variance No. 2012-008 was issued by the Board to allow the building to be constructed 45 feet from the front property line. Conditions No. 1 and No. 2 of Variance No. 2012-008 make reference to the use of the property for an electronics retailer.
5. Condition No. 4 of the variance references the Cape Cod Commission's DRI Decision issued on February 7, 2008. The Cape Cod Commission issued a Minor Modification (Type 2) of that decision on January 3, 2012.
6. Granting the requested modification will not be in derogation of the spirit and intent of the zoning ordinance and will not result in substantial detriment to the public good.

Vote:

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

NAY: William Newton

Based on those findings, Craig Larson makes a motion to grant the relief being requested with the following conditions: :

1. Condition No. 1 shall be modified as follows:

This Variance is issued for the two lots, totaling 2.53 acres and addressed as 624 and 640 Iyannough Road (Route 132), Hyannis, MA (Assessors Map 311, Parcels 012 and 013) to be used as one for the purposes of redevelopment and use as a retail store for the sales of electronics. Notices of the executed Ground Leases to the lots shall be recorded at the Barnstable County Registry of Deeds and Barnstable Registry District and proof of this recording submitted to the Zoning Board Office prior to the issuance of any building permit that relies on this variance.

2. Condition No. 2 shall be modified as follows:

The redevelopment shall be limited to a one-story, 23,500 sq.ft., single-tenant building for the retail sales of electronics. The site shall be developed as per the engineered site plan submitted entitled "Berkshire Development Iyannough Road, Barnstable, Massachusetts – Site Alternative" as prepared by VHB Vanasse Hangen Brustlin, Inc., dated February 23, 2007, and last revised February 1, 2008. The

exterior of the building shall be developed as shown on the elevations submitted entitled; "Berkshire Development Hyannis, MA'" as drawn by Casco Project Managers. This shall include the exterior coloration of the building.

3. Condition No. 4 shall be modified as follows:

The Petitioner and occupant of the property shall be responsible for assuring that the redevelopment and use of the site is in compliance with, and maintained consistent with, this special permit as well as all conditions of the Cape Cod Commission's Development of Regional Impact Decision issued February 7, 2008, as modified by the January 3, 2012 Minor Modification Type 2, and as may be further modified or amended. If the Commission's DRI decision is modified, the Applicant shall be responsible for notifying the Zoning Board of Appeals Office of that modification for a determination if this permit needs to be modified.

4. All other conditions of Variance No. 2008-010 shall remain in full force and effect.

Seconded by Alex Rodolakis

Vote:

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

NAY: William Newton

GRANTED WITH CONDITIONS

On Conditional Use Special Permit 2012-009, Craig Larson makes the following findings

1. *MDM Hyannis Property, LLC and Star Nominee Trust have petitioned to modify and amend Conditional Use Special Permit No. 2008-011 to allow for additional permitted uses for the subject property. Use of the property is currently limited to retail sales of electronics; the Applicant seeks to expand the permitted uses of the development.*
2. *The subject property is located at 624 and 640 Iyannough Road, Hyannis, MA as shown on Assessor's Map 311 as parcel 012 and 013. The parcels are located in the Highway Business and Business Zoning Districts and Groundwater Protection Overlay District.*
3. *The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-25(C)(1) of the Zoning Ordinance states that "any use permitted in the B District" may be permitted in the HB District, subject to grant of a special permit. Uses requested by the Applicant must be permitted or permitted as a conditional use in the B District.*
4. *The project is subject to the terms of a DRI Decision issued by the Cape Cod Commission which regulates issues that may affect public safety, welfare, and convenience, including trip generation levels. A number of mitigation measures, including financial contributions for affordable housing, workforce training and roadway safety, and the acquisition of off-site property, have been taken to offset the potential impacts of the proposed development on the surrounding area.*
5. *This proposal serves to provide flexible options for occupancy of a building that was left vacant as a result of changing economic and market conditions.*
6. *This decision incorporates and amends the findings issued with Special Permit No. 2008-011.*

7. ***Building permits were obtained for the construction of the building in general accordance with the conditions of the variance and special permits issued by the Zoning Board in 2008. A final certificate of occupancy has not been issued for the development.***
8. ***The subject property was developed specifically for a specialty retail business, which limited retail sales to a specific category of consumer goods. Specialty retail stores can be expected to have different community impacts than general merchandise stores because of their limited market. Vehicle trip generation levels and parking demand are expected to be lower for a specialty retailer.***
9. ***An approved site plan is on file for this development. Appeal No. 2012-009 does not include a request to modify the existing building or site conditions.***
10. ***The Strategic Land Use Planning map depicts the subject property within a 'Regional Commercial Center'. The proposed land uses are consistent with that designation.***
11. ***Modification of Special Permit No. 2008-011 will also serve to modify Special Permit No. 2008-012 by reference.***
12. ***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.***
13. ***The proposed uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.***

Vote:

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

NAY: None

Based on those findings, Craig Larson makes a motion to grant the relief being requested with the following conditions:

Craig Larson indicates that it will be from Page 7 through 9 and reads #2:

2. ***Permitted uses of the subject property shall include specialty retail sales, health club, business park, general office, and educational, vocational and training center. The Building Commissioner shall have the right to refer proposed uses to the Zoning Board for a determination as to whether the proposed use falls within the spirit and intent of this permit.***

Craig then wants to include the language under specialty retail as a definition as presented, with a hardware/tool use and delete any specialty category that has to do with food and beverage merchandise and organic. Also, under business park shall be defined as:

an integrated facility, often with shared common areas, occupied by multiple business or office establishments in similar or complementary industry sectors (e.g., aviation or airport-related uses).

Also, other conditions as written in the original permit.

Brian Florence asks to clarify that specialty retail would not include food/liquor. Craig Larson indicates that if there was to be a liquor store proposed that they would have to come back before the Zoning Board.

Seconded by Alex Rodolakis

Vote:

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

NAY: William Newton

GRANTED WITH CONDITIONS

At 8:15 PM, Laura Shufelt calls the Joyce appeal and reads it into the record:

7:10 PM

Appeal No. 2012-010 - New

Joyce Landscaping, Inc.

Joyce Landscaping, Inc. has applied for a modification of Use Variance No. 1998-16, as modified by Appeal No. 2009-036. Pursuant to the requirements of conditions No. 27 and 28 in Appeal No. 2009-036, the Applicant seeks to modify the conditions of the variance to allow construction of an approximately 9,525 square foot warehouse and office building. The building will replace two office trailers and eleven storage boxes and two greenhouses will be relocated. The subject properties are located at 50 and 68 Flint Street, Marstons Mills, MA as shown on Assessor's Map 123 as parcels 004/006 and 004/007. They are in the Residence F Zoning District.

Note: The Applicant has submitted a request to continue this hearing to March 28, 2012

Laura Shufelt indicates that she will not be assigning members tonight as Attorney Kenney has requested that this be continued.

Motion is made by Laura Shufelt and seconded by William Newton to continue this to March 28 2012 at 7:00 PM

Vote:

All in favor

CONTINUED TO MARCH 28, 2012 at 7:00 PM

Motion is made by Alex Rodolakis and seconded by William Newton to adjourn.

Vote:

All in favor.