



Town of Barnstable
Zoning Board of Appeals
Minutes
May 23, 2012

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

Also present were Elizabeth Jenkins – Principal Planner and Carol Puckett – Administrative Assistant with Growth Management.

Introduction of Board Members

Board members introduce themselves.

Approval of minutes from March 28, 2012, April 11, 2012

Laura Shufelt postpones the approval of the minutes to the next hearing.

7:00 PM

Appeal No. 2012-025 – Cont'd

Sarty

Howard L. Sarty, II has petitioned for a Special Permit in accordance with Section 240-92(B) Buildings or structures used as single- or two-family residences. The petitioner is proposing to construct a 12' x 12' attached garage addition that will not encroach into the required setbacks and to add a second story to the main dwelling with a gross floor area of 1,240 square feet. The dwelling does not conform to the 10' side yard setback requirement. The property is located at 22 Studley Road, Hyannis, MA as shown on Assessor's Map 306 as parcel 019. It is in a Residence B Zoning District

Opened May 9, 2012. No members assigned.

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

Attorney John Kenney is representing the applicant and indicates that this is a continuance from a couple of weeks ago. Also with him tonight are the building contractor. He indicates that this applicant was before the board approximately a year ago and had decided to withdraw without prejudice but that they are now looking to construct a 12 X 12 garage that will not encroach into the side yard setbacks. Also, he indicates that the proposed second floor addition is a partial second floor which staff raised questions pertaining to the dead zones. Attorney Kenney indicates that between the second interior is the dead space and that the purpose of the doors is two fold, first is for fire safety and second is for storage. As the basement is damp, storage is needed and this additional space is needed.

Brian Florence asks if the doors mentioned are half doors. The builder indicates yes. Attorney Kenney points out where the roof line is different and indicates that the property is served by municipal water and an on-site septic system. He also indicates that his client has accepted the suggested condition pertaining to limiting it to four bedrooms until it is tied into town sewer. It is presently three bedrooms and one of the bedrooms will be broken up with a stairwell coming down into the middle of it to access the second floor and there will be a small room created for storage. There will be two bedrooms on the first and two on the second. There will be a full bath on the first floor. The second floor, the master bath and the second bathroom would be rough plumbed. The house is characteristically of the zoning district architecturally. The intensification will be minimal, they would be adding one more bedroom. His client looked at the possibility of cutting off the side of the nonconforming structure but could not afford it if he had to demo/rebuild.

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

Alex Rodolakis makes findings:

In Appeal No. 2012 025:

Howard L. Sarty, II has petitioned for a Special Permit in accordance with Section 240-92(B) Buildings or Structures used as single- or two-family residences. The petitioner is proposing to construct as 12' x 12' attached garage additional that will not encroach into the required setbacks and to add a second story to the main dwelling with a gross floor area of 1,240 square feet. The dwelling does not conform to the 10' side yard setback requirement. The property is located at 22 Studley Road, Hyannis, MA as shown on Assessor's Map 306 as Parcel 019. It is in a Residence B Zoning District.

With respect to 2012-025, the applicant requests to add a second floor and to increase the intensity of the pre-existing nonconforming setback proposed design for the second story has been modified from the previous application.

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit: Section 240-92(B) of the Barnstable Zoning Ordinance allows for expansion of a preexisting nonconforming structure used as a single-family residence by special permit where the expansion intensifies the degree of the pre-existing non-conformity and does not conform with the bulk regulations in the district.**
- Site Plan Review is not required for alteration or expansion of a single-family residential structure.**
- 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.**
- That the proposed expansion will not be substantially more detrimental to the neighborhood than the existing building or structure.**

Vote:

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

NAY: None

Motion is made by Alex Rodolakis to grant the relief being sought with the following conditions:

- 1. Special Permit 2012-025 is granted to Howard L. Sarty, II for the expansion of the preexisting nonconforming residential structure at 22 Studley Road, specifically for the addition of a new second story with a gross floor area of 1,240 square feet. A 12 ft by 12 ft attached garage addition is also proposed within the permitted building envelope.**
- 2. The additions shall be constructed in substantial conformance with the plan entitled "Plot Plan of Land located at 22 Studley Road, Hyannis, MA" drawn and stamped by Yankee Survey Co, Inc., last revised March 5, 2012 and the elevations and floor plans entitled "Additions and Alterations, 22 Studley Road, Hyannis, MA" drawn and stamped by Bruce Devlin Design, dated March 2012.**

3. The number of bedrooms on the property shall be limited to four, unless the property is connected to public sanitary sewer.
4. There shall be no further expansions or additions to the dwelling and no detached accessory structures shall be constructed on the property without further relief from this Board.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be located and conform to the required setbacks for the district and screened from neighboring homes and the public right-of-way.
6. 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. The rights authorized by this special permit must be exercised within two years, unless extended.

Attorney Kenney has reviewed them and is agreeable to it

George Zevitas seconds

Vote:

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

NAY: *None*

GRANTED WITH CONDITIONS

Laura Shufelt then calls the Traugot appeals and reads them into the record:

7:00 PM

Appeal No. 2012-028 - New

Traugot

Debra Traugot has petitioned for a Special Permit in accordance with Section 240-47.1 A(1) Family Apartments. The petitioner is proposing to establish a family apartment consisting of approximately 1,100 square feet in an existing detached accessory structure. In accordance with Section 240-47.1 A(1), the Zoning Board of Appeals may allow a family apartment up to 1,200 square feet by a special permit finding. The property is located at 118 Hopewell Lane, Cotuit, MA as shown on Assessor's Map 040 as parcel 065. It is in a Residence F Zoning District.

7:00 PM

Appeal No. 2012-029 - New

Traugot

Debra Traugot has applied for a variance from Section 240-47.1 A(3) Family Apartments. The applicant is proposing to establish a family apartment consisting of approximately 1,100 square feet in an existing detached accessory structure. Relief is requested Section 240-47.1 A(3), which requires family apartments to be located within or connected to a single-family dwelling. The property is located at 118 Hopewell Lane, Cotuit, MA as shown on Assessor's Map 040 as parcel 065. It is in a Residence F Zoning District.

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

Debra Traugot is representing herself.

Debra Traugot indicates that she is here before the board as she purchased the property in December of 2011 and that everything is the same as when she purchased it. She indicates that she has an eighteen year old daughter who will be going to college full-time and thought this would be a transition. In the future, she would like to try and go through the amnesty apartment program but right now she would like a family apartment.

Laura Shufelt asks Ms. Traugot to address the three prong test for a variance. Ms. Traugot indicates that it had been used as a family apartment previously and to try to change it back to garage/storage she couldn't afford to do that. It has its own septic system as well.

George Zevitas asks how long it has been a two bedroom structure. Ms. Traugot indicates that she believes that previous owners, the Edwards, owned it as their primary residence and thinks that it might be 3 or 4 years ago. Also she believes it had been converted to a private residence for their daughter for which they received a special permit for a family apartment. Elizabeth Jenkins clarifies that the initial original permit was issued in 1996 to the Edwards who pulled building permits to convert the structure from an accessory garage to the two bedroom dwelling as it exists which was for their parents as a family apartment. George asks when was the last time a family member lived in it. Elizabeth Jenkins indicates that after Edward's parents lived there, the property was foreclosed, another owner took ownership and that the new owner did not obtain any permits for use of the property and was using it as an illegal apartment for which he was cited for by the Building Division. From there, that owner then sold it to Ms. Traugot.

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.

Alex Rodolakis explains that if her daughter was to move out that the kitchen would need to be removed. Ms. Traugot acknowledges.

William Newton makes findings:

2012-028 and the special permit 2012-029 to re-establish a family apartment:

Debra Traugot has petitioned for a Special Permit in accordance with Section 240-47.1 A(1) Family Apartments. The petitioner is proposing to establish a family apartment consisting of approximately 1,100 square feet in an existing detached accessory structure. In accordance with Section 240-47.1 A(1), the Zoning Board of Appeals may allow a family apartment up to 1,200 square feet by a special permit finding. The property is located at 118 Hopewell Lane, Cotuit, MA as shown on Assessor's Map 040 as parcel 065. It is in a Residence F Zoning District.

Debra Traugot has applied for a variance from Section 240-47.1 A(3) Family Apartments. The applicant is proposing to establish a family apartment consisting of approximately 1,100 square feet in an existing detached accessory structure. Relief is requested Section 240-47.1 A(3), which requires family apartments to be located within or connected to a single-family dwelling. The property is located at 118 Hopewell Lane, Cotuit, MA as shown on Assessor's Map 040 as parcel 065. It is in a Residence F Zoning District.

Variance Findings

The statutory requirement of MGL Chapter 40A, Section 10 for granting a variance is a three-prong test. The Board is required to find that each of the following three requirements has been met in order to consider granting the variance:

- 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;
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and has been used as a family apartment.
- 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.

Special Permit Findings:

- 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

George Zevitas asks about the second illegal apartment in the primary structure. Ms Traugot indicates that it is presently just a basement and no longer exists.

Vote:

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

NAY: George Zevitas

William Newton makes a motion to grant the variance be granted with the following conditions:

1. Variance No. 2012-028 is granted to establish a family apartment within a detached accessory cottage at 118 Hopewell Lane, Cotuit. The family apartment shall not exceed 1,100 square feet and shall have no more than two bedrooms.
2. The family apartment shall be maintained in compliance with the requirements of Section 240-47.1.
3. There shall be no renting of rooms (lodging) permitted on the property during the life of this variance.
4. The property shall be in compliance with all requirements of the Building Code, Board of Health, and Title V.
5. 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 family apartment shall be terminated and this variance shall become null and void. At that time, this variance shall cease. The applicant or property owner shall be responsible for the removal of the kitchen, unless the unit is properly permitted under the Accessory Affordable Apartment Program.
6. This 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 variance must be exercised within one year, unless extended.

Vote:

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

NAY: George Zevitas

Motion is made by William Newton to grant the Special Permit with the following conditions:

1. Special Permit 2012-029 is granted to Debra Traugot to establish a family apartment within a detached accessory cottage at 118 Hopewell Lane, Cotuit. The family apartment shall not exceed 1,100 square feet and shall have no more than two bedrooms.
2. The family apartment shall be maintained in compliance with the requirements of Section 240-47.1 and the Conditions of Variance No. 2012-028.
3. 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.

George Zevitas would like to amend the motion to include a condition that it be limited to a one bedroom apartment. William Newton does not accept the amendment

Vote:

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

NAY: George Zevitas

GRANTED WITH CONDITIONS

At 7:37 PM, Laura Shufelt calls the Falacci appeal and reads it into the record:

**7:05 PM
Mountain Ash**

Appeal No. 2012-030 – New

**John M. Falacci, Trustee,
Realty Trust**

John M. Falacci, as Trustee of the Mountain Ash Realty Trust has petitioned for a Special Permit in accordance with Section 240-94.A and Section 240-94.B Nonconforming Uses – Change of a nonconforming use to another nonconforming use and Expansion of a pre-existing nonconforming use. The Petitioner seeks to establish that the former contractor's place of business was a lawful pre-existing nonconforming use of the property and further requests to establish the parameters of that use so that the property may continue to be able to be used as a contractor's place of business. The property is located at 1199 Pitcher's Way, Hyannis, MA as shown on Assessor's Map 273 as parcel 062. It is in the Residence C-1 Zoning District and the Groundwater Protection Overlay District.

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

John Falacci is here representing the application before the board.

Laura Shufelt indicates that the board members just received the Site Plan Review approval letter today and believes they are different plans than what the board has. Mr. Falacci indicates that the Site Plan itself is not different, the building plan showed a shed coming off the roof onto the existing concrete slab and they are willing not to go forward with that as indicated by the building inspector. Laura indicates that it is difficult to review the new information as it was just received and would request that he ask for a continuance to review the newly submitted materials. Mr. Falacci notes for the record that it has been frustrating and that the town had made an error in rezoning this property in 2004 which is a hardship.

Motion is made by Laura Shufelt and seconded by Brian Florence to continue this to June 27, at 7:00 PM.

Vote:

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

NAY: None

CONTINUED TO JUNE 27, 2012 at 7:00 PM

At 7:42, Laura calls the Smith appeal and reads it into the record:

7:10 PM

Appeal No. 2012-031 - New

Smith

Shapleigh and Joanne Smith have petitioned for a Special Permit pursuant to Section 240-91(H)(3). The Petitioners seek to demolish and rebuild a single-family residence on a pre-existing nonconforming lot that does not meet minimum frontage requirements in the RB District and contains less than 10,000 square feet in area. The property is located at 100 Breakwater Shores Drive, Hyannis, MA as shown on Assessor's Map 306 as Parcel 163. It is in the Residence B Zoning District.

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

Attorney David Lawler is representing the applicants.

Attorney Lawler indicates that also with him tonight are his client, JoAnne Smith and her architect, Gordon Clark. Attorney Lawler explains that this is an older existing structure which currently does not comply with the current setback for the district. Attorney Lawler shows the proposed drawings on the overhead display and indicates that they are planning on demolishing and rebuilding on a lot under 10,000 sf. Next slide is a picture of a larger home in the neighborhood. He believes the abutters are content with the proposed project and that the proposal is in keeping with the intent of the special permit. With respect to the requirements, it complies with lot coverage or what was there and is just shy of the 30% lot coverage requirement and in keeping with the neighborhood..

George Zevitas asks what the elevation is. Attorney Lawler indicates that it is 1/5 stories and 22.9 feet to the top of plate. George asks what the current height is. Elizabeth indicates that information was not submitted by the applicant but explains that it falls below the requirement.

The architect, Gordon Clark, indicates that the house has been rotated on the lot to meet the side yard setbacks but they made it L shaped so that where the sliders and balconies are they can get views from both angles. They has used Cape style architect, all white cedar shingles, double hung windows and that a lot of the structures that are existing in the neighborhood are contemporary and eclectic in design.

Attorney Lawler indicates that when they were positioning the building the neighbors were taken into consideration.

The board discusses.

Alex Rodolakis asks if they are reducing the driveway. Gordon Clarke indicates that there will be a new driveway that will be under the garage. He explains that there is still a gravel driveway that is there and they weren't adding any new driveways other than the one that accesses the garage. one car parking space and that the garage will be talks to the parking. Elizabeth indicates that if they address the driveway.. they have no problem with that.

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

Richard Summers of 111 Breakwater Shores speaks and indicates that he purchased his property and has lived there permanently since 1987. He indicates that he talked to all the neighbors about the project and they are delighted that it is only 22.9 feet high and see this as a breath of fresh air. He indicates that he will be looking at the rendering from his living room. He indicates that the neighbors are in full support and like it architecturally.

Brian Florence makes findings:

Shapleigh and Joanne Smith have petitioned for a Special Permit pursuant to Section 240-91(H)(3). The Petitioners seek to demolish and rebuild a single-family residence on a pre-existing nonconforming lot that does not meet minimum frontage requirements in the RB District and contains less than 10,000 square feet in area. The property is located at 100 Breakwater Shores Drive, Hyannis, MA as shown on Assessor's Map 306 as Parcel 163. It is in the Residence B Zoning District.

- **The subject lot contains 8,130 square feet and has an existing lot width of 81.9 square feet.**
- **The lot was created by plan in 1965, in conformance with the zoning bylaws in effect at the time.**
- **The proposed reconstruction will not intensify the pre-existing nonconforming lot width.**
- **The proposed new dwelling is in compliance with the setback requirements in the RB District.**
- **The proposed lot coverage by all buildings and structures shall not exceed 20% or the existing lot coverage, whichever is greater.**
- **The existing lot coverage, including decks and stairs, is 21.3% of the lot. The proposed lot coverage is 20.4%, in conformance with the requirement.**
- **The floor area ratio shall not exceed .30 or the existing floor area ratio of the structure being demolished and rebuilt, whichever is greater.**
- **The existing floor area ratio, based on the Assessor's figure for living area, is 20.1%. The proposed FAR is 29.5%, in conformance with the requirement.**

- The proposed building height is 22.9 ft to the top of plate; the structure contains 1.5 stories with a drive-under garage.
- The proposed new dwelling would not be more substantially detrimental to the neighborhood than the existing dwelling.

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

- Section 240-91(H) of the Barnstable Zoning Ordinance allows for demolition and rebuilding on a preexisting legal nonconforming lot with less than 10,000 square feet of contiguous upland.
- Site Plan Review is not required for alteration or expansion of a single-family residential structure.
- 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, Brian Florence, Alex Rodolakis William Newton, Laura Shufelt*

NAY: *None*

Motion is made by Brian Florence to approve the relief being requested with the following conditions:

1. Special Permit 2012-031 is granted to Shapleigh and Joanne Smith for the demolition and rebuilding of a single-family dwelling at 100 Breakwater Shores Drive, Hyannis.
2. The dwelling shall be constructed in substantial conformance with the plans entitled "Site Plan of 100 Breakwater Shores Drive, Hyannis, MA", dated 4-27-12, drawn and stamped by Daniel A. Ojala of Down Cape Engineering, Inc. and the elevations entitled "Elevations: Proposed – Shapleigh and Joanne Smith", dated 4-29-12, drawn by Northside Design Associates.
3. The dwelling shall be connected to sanitary sewer and shall not have more than three bedrooms, as defined by the Board of Health.
4. There shall be no further expansions or additions to the dwelling and no detached accessory structures shall be constructed on the property without further relief from this Board.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be located and conform to the required setbacks for the district and screened from neighboring homes and the public right-of-way.
6. 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. The rights authorized by this special permit must be exercised within two years, unless extended.

Alex Rodolakis wants to amend #2 to indicate that the landscaping shall be in accordance with a plan dated 04-27-12 and in particular respect to the south border of the lot that the existing gravel driveway be reduced such that it conforms to the proposed conditions on that plan.

Brain Florence accepts the amendment.

Seconded by William Newton.

Vote:

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

NAY: *None*

GRANTED WITH CONDITIONS

Open: Chair's Discussion

Laura Shufelt talks about emails and that going forward, all emails must be copied to the Zoning Board of Appeals email mailbox. Also, Elizabeth Jenkins indicates that there are now clear guidelines on calling executive session which she will distribute to the board members.

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

Meeting adjourned at 8:16 PM