



Town of Barnstable
Zoning Board of Appeals
Minutes
July 25, 2012

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

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

Laura Shufelt opens the hearing at 7:08 PM.

Introduction of Board Members – Members introduce themselves

Approval of Minutes from May 23, 2012

Motion is made by Craig Larson and seconded by William Newton to accept the minutes as submitted.

Vote:

All in favor

Laura Shufelt calls the Cotuit Equitable appeal and reads it into the record:

Comprehensive Permit No. 2005-082 - New

**Cotuit Equitable Housing, LLC
Request for Minor Modification**

Cotuit Equitable Housing, LLC has submitted a request for a minor modification of Comprehensive Permit No. 2005-082 Cotuit Meadows. The request is to designate Lot No. 8 for the construction of an affordable single-family dwelling unit and to designate Lot 7 for the construction of a market rate single-family dwelling unit.

The subject lots are addressed as 74 & 82 Pheasant Hill Circle, Cotuit, MA as shown on Assessor's Map 002 as Parcels 007 and 008.

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

Representative: Attorney John Kenney.

Attorney Kenney indicates that it is a simple request and gives a background on where they are on the subdivision. He indicates that the sewer treatment plan is up and running and working perfectly. Lot 8 and 104

are considered part of Phase 2. They want to change 7 and 8 from affordable to market and they will commence construction. He believes that this qualifies as minor modification.

William Newton asks why the switch of the lots. Attorney Kenney indicates that when the 31 affordable homes were designated, it was before the project was built. Since then, roads have been cut into the subdivision and the developer looked over the site to determine where the homes would better fit. Attorney Kenney indicates that there is a strong market for the affordable units and that they plan on coming back before the board in regards to Phase 2 with what would not qualify as a minor modification as they would like to change some lots as it pertains to affordable versus market and some housekeeping items on the comprehensive permit.

Brian Florence arrives.

Laura comments that she is concerned about clustering of the affordables. Attorney Kenney indicates that there is little to no guidance on what constitutes spreading this out throughout the subdivision which makes it difficult when developing the project.

Motion by William Newton and seconded by George Zevitas that the modification is minor and insubstantial and by that would grant the request for the changing of lots.

Vote:

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

NAY: None

GRANTED

At 7:18, Laura calls the Hyannis Toyota appeals and reads it into the record:

7:05 PM

Appeal No. 2012-040 - New

Hyannis Enterprise, Inc. d/b/a Hyannis Toyota

Hyannis Enterprise, Inc. d/b/a Hyannis Toyota is appealing a Notice of Zoning Ordinance Violation issued by the Zoning Enforcement Officer for the "[o]peration and advertisement of a car wash/vacuum for a fee and open to the general public" in alleged violation of Conditional Use Special Permit No. 2009-070. The Appellant denies it has violated the terms of the Special Permit and petitions the Board to issue a ruling that they are operating in conformity with the conditions set forth in the Special Permit. This appeal is filed in accordance with Massachusetts General Laws Ch. 40A §§8 and 15 and §240-125(B)(1)(a) zoning ordinance. The subject property is located at 1056 Iyannough Road, Hyannis, MA as shown on Assessor's Map 294 as parcel 072. It is in the Highway Business and Business Zoning Districts.

7:05 PM

Appeal No. 2012-041 - New

Hyannis Enterprise, Inc. d/b/a Hyannis Toyota

Hyannis Enterprise, Inc. d/b/a Hyannis Toyota has petitioned to modify a condition of Conditional Use Special Permit No. 2009-070 that states "the car wash shall not be open to use by the public." The Petitioner seeks to amend this condition to be able to offer car wash service to all of its customers and their spouses and family members. The subject property is located at 1056 Iyannough Road, Hyannis, MA as shown on Assessor's Map 294 as parcel 072. It is in the Highway Business and Business Zoning Districts.

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

Representative: Brian J. Wall, Esq. Also with Attorney Wall is the owner of Hyannis Enterprises, Jack Carter. Attorney Wall indicates that they have two appeals before the board tonight which he summarizes. He wants to note that in the B1 zoning district the car wash is allowed as-of-right where it is and requires a special permit to get across the HB1 district for access. He indicates that the specific issue is that the permit conditions stated that the car wash was not to be open to the general public and the violation is for operation and advertisement of the

car wash for a fee and open to the public. He respectfully disagrees with the zoning enforcement officer on the definition of public and who Mr. Carter's customers are. He gives a summary of the history of the site.

Attorney Wall indicates that in 2009 they wanted to put in a showroom and put a car wash in the back in the B1 district which the board granted. He indicates that he represented Mr. Carter during that application and represented that the purpose of the car wash was for use for in-stock inventory. It was also for customers who came to the site for car service who would be given a token for the car wash. He indicates that at the time, he proposed a condition that would've reflected those representations but for reasons they don't know, the permit came out with a condition that stated that the car wash shall not be open for use by the public. He indicates that at the time they didn't think much about it as it granted more use of the car wash that they had actually asked for or represented. The whole idea that Mr. Carter was trying to generate was to have a first class dealership for which the car wash is an extension of granting service to the customer. It is a state of the art car wash which cost approximately \$500,000 to build and after being built, the use exceeded his expectations. Attorney Wall then indicates that if someone comes in for an oil change and it is raining, they are given a token for future use. Attorney Wall indicates that Mr. Carter looked at that condition and considers the customers that are there for service, whether it is for an oil change, coming between oil changes or using their token at different times, a customer, and not the public. Mr. Carter also considers family with spouses and their teenage children who are in the market for a car, his customers. Attorney Wall indicates that the specific violation he believes was a complaint by a competitor but beyond that, the violation indicates that it says that it was for advertisement. He indicates that at times Mr. Carter put a sign on the road indicating that the car wash was open as on snowy days he would shut it down because of cost. People were then calling asking if the car wash was open to which he responded by putting a small sign out when the car wash was open.

He addresses the fee and that the condition in the permit does not reference this. He explains what happens when the token is used and as it relates to the upgrading of services such as undercarriage washing, etc., and if a person wants to upgrade the services offered, Mr. Carter could recoups some of his expenses.

Attorney Wall then discusses the alternative special permit they are applying for which would allow the use of the car wash in the way he has explained.

Questions from the board:

George Zevitas asks why they didn't ask for the expanded use back then. Attorney Wall indicates that the point was for customer service and Mr. Carter wasn't sure how big and popular the car wash was going to be.

Laura asks what prevents someone else from coming on-site to use the car wash. Attorney Wall indicates that they are not prevented but is talking about a large customer base and thinks there is a distinction between allowing and permitting the use of the facility for those people versus advertising and asking all members of the public to come on the property. They discuss customer base versus the public. .

Craig Larson asks if, when utilizing the car wash, it starts with a token. Attorney Wall says it has to be a token or pay. Mr. Carter says they can put in a token, credit card or cash.

Tom Perry – Building Commissioner is here and indicates that one issue regarding this is that it was being advertised on the internet and a sign out front but the condition of the permit indicated that it was to be open to customers only. He indicates that when this was brought before Site Plan Review, they never proposed that it was to be open to the public.

Craig Larson clarifies with Tom Perry that if they had proposed the car wash be open to the public that the traffic would've been an issue.

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

The board discusses.

Attorney Wall asks to continue both matters as his concern is that the order is a cease and desist of the car wash all together and that it would be a hardship for the applicant. The board asks Tom Perry what this prevents the applicant from doing. Mr. Perry indicates that the cease and desist order is to stop it from being advertised to the public, stop opening to the public and to follow the conditions of the permit and stop placing an A-frame advertising out front.

Motion is made by Craig Larson and seconded by William Newton to uphold the decision of the Building Commissioner/Zoning Enforcement Officer.

Vote:

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

NAY: None

In the matter of the modification of the special permit, Attorney Wall requests to continue this to a future date certain.

Motion is made by Laura Shufelt to continue this to September 26, at 7:00 PM

CONTINUED TO SEPTEMBER 26, 2012 AT 7:00

7:10 PM Appeal No. 2012-042 - New Shay

Joseph F. Shay, Jr., has petitioned for a Special Permit in accordance with Section 240-92(B) - Nonconforming buildings or structures used as single- and two-family residences to expand a preexisting nonconforming dwelling into a front setback. The Petitioner is proposing to construct a second-floor deck which will provide covered parking on the north/east side of the existing nonconforming home. The new deck, proposed to be 7.9 feet from the property line, will intrude into the required building setback from Mount Vernon Avenue. The property is located at 76 Washington Avenue, Hyannis (Hyannis Port), MA as shown on Assessor's Map 287 as parcel 096. It is in a Residence F-1 zoning district.

NOTE: A request has been received to withdraw this application without prejudice.

Laura Shufelt indicates that a letter has been submitted by Attorney Cox to request to withdraw without prejudice.

Motion is made by Laura Shufelt and seconded by William Newton to grant the request to withdraw without prejudice.

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

At 7:57 PM, Laura calls the Lone Tree/Joly appeals and reads them into the record:

7:00 PM Appeal No. 2012-037 - New Lone Tree, LLC

Lone Tree, LLC is appealing a decision of the Building Commissioner to deny a building permit application for construction a single-family dwelling based on the Doctrine of Merger. The appeal, filed in accordance with Massachusetts General Laws Chapter 40A §§8 and 15, seeks to establish that the lot addressed 58 Midpine Road is a buildable lot under M.G.L. Chapter 40A §6 and Barnstable Zoning Code §§240-90 and -91 Nonconforming Lots. The subject property is located at 58 Midpine Road, Barnstable (Cummaquid), MA as shown on Assessor's Map 356 as parcel 007. It is in a Residence F-2 zoning district.

7:00 PM

Appeal No. 2012-038 - New

Joly Enterprises, Inc.

Joly Enterprises, Inc. is appealing a decision of the Building Commissioner to deny a building permit application for construction a single-family dwelling based on the Doctrine of Merger. The appeal, filed in accordance with Massachusetts General Laws Ch. 40A §§8 and 15, seeks to establish that the lot addressed as 25 Merion Way is a buildable lot under M.G.L. Ch. 40A §6 and Barnstable Zoning Code §§240-90 and -91 Nonconforming Lots. The subject property is located at 25 Merion Way, Barnstable (Cummaquid), MA as shown on Assessor's Map 350 as parcel 023. It is in a Residence F-2 zoning district.

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

Representative: Attorney Kirrane is here representing the applicant. He indicates that the applicants are seeking to overturn the decision of the Building Commissioner as to the buildability of the two lots. He thinks that these are last of the undeveloped lots in the area to be developed. He indicates that the lots are consistent in size and frontage with other lots in that subdivision. He indicates that the intent as stated in the bylaw is to protect the property lots of owners of pre-existing legally created nonconforming lots and to protect private property rights. He gives a history of the purchase of the lots. He indicates that in 1977, these lots were deeded out, one to the husband and one to the wife. They continued to own these lots until they died. Mrs. Harazda died and the lot passed by intestate to her and their daughter. Thereafter, Mr. Harazda dies and his lots pass by a residuary clause in his will whereby his daughter also then became the owner of this adjoining lot. He would suggest that under the plain language and notwithstanding that the lots were inherited by the daughter that these lots would qualify under section 240-91. He indicates that one of the cases that has recently come down is the Dalkouras case which the board has copies of. He has suggested to the Building Commissioner that although the daughter became the owner of these tow lots, there was not an intent of her parents to merge into one single developable lot. He indicates that the Town of Sandwich had a similar problem and in January of 2008 modified their ordinance language.

Questions from the board.

Brian Florence would like to hear from Tom Perry who is present tonight.

Tom Perry indicates that they would have to assume that the subdivision was created legally and that these are legal lots. However, he didn't want to get into wills or probate issues and looked at this strictly as it pertained to ownership. He indicates that they were held in common ownership for ten years and doesn't see how they are protected, were transferred on the same deed, transferred out on the same deed and believes this is a merger of the lots.

Brian Florence asks Mr. Perry about Section 240-91 as it seems they meet all the conditions of it. Mr. Perry indicates that you have protection for the zoning change but that a subdivision gives you seven years protection and an ANR gives you three years and once you exhaust those time frames, they merge.

Attorney Kirrane indicates that these lots have been taxed separately and were deeded out to the current owner on two separate deeds. He will provide the board with information about the separate entities.

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

Dan Ojala, a civil engineer and direct abutter speaks and supports Tom Perry's decision. He indicates that he would welcome a single home but he would contest if they plan to unmerge the lots. He believes that the ownership was clear.

Carl Keppler from 18 Merion Way, directly across from the two lots. When he purchased his property, he believed these lots were merged and supports one house but not two. There was significant flooding because of drainage issue and is concerned that if two houses are put there that there will be more runoff which will affect the septic systems.

Karl Soberger of 43 Merion Way indicates that after a rainstorm, the area in front of his property is flooded and that buses cannot go through because of the water problem. He would support one house but not two.

Attorney Kirrane indicates that the town interprets its own bylaw and not make its decision based on Chapter 40A Section 6. He then indicates that based on a 1999 letter from a previous Building Commissioner, Ralph Crossen, the lots were considered buildable.

Dan Ojala indicates that the common lot and single lot are separate sections of the bylaw and that he opened the building department file and found another letter from Ralph Crossen saying that the lots were not buildable

Laura indicates that there is a letter in support from Margaret Gibson of 70 Country Club Drive and reads it into the record.

The board discusses. William Newton would agree with the Building Commissioner, Alex Rodolakis believes it was held in common ownership.

Brian Florence makes findings that the Building Commissioner acted reasonably and responsibly and judiciously in interpreting the ordinance. William Newton seconds.

Craig Larson suggests amending it to say that they have been in common ownership since 1996. Brian indicates that he would add, based on the Building Commissioner's statement of common ownership.

Vote:

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

NAY: None

Motion is made by Brian Florence to Uphold the Building Commissioner's decision.

Vote:

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

NAY: None

Elizabeth Jenkins wants to clarify that it applies to both appeals.

Brian Florence indicates that he only mentioned one but would incorporate the findings and motions to both appeals.

Brian Florence does findings in the matter of Appeal 2012-038, he would find that the Building Commissioner acted reasonably, responsibly and judiciously in his interpretation of the ordinance in that the lots had merged.

Vote:

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

NAY: None

Motion is made by Brian Florence and seconded by William Newton to Uphold the Building Commissioner's decision.

Vote:

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

NAY: None

UPHELD THE BUILDING COMMISSIONER

7:15 PM

Appeal No. 2012-043 - New

Adams

R. Christopher Adams has petitioned for a Special Permit to Section 240-47.1(A)(1) Family Apartments. The Petitioner is proposing to establish a family apartment of approximately 1,130 square feet in an existing attached addition. The property is located at 200 Palomino Drive, Barnstable, MA as shown on Assessor's Map 297 as parcel 045. It is in a Residence F-1 Zoning District.

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

Representative: Chris Adams is here representing himself. He indicates that himself and his wife are seeking to re-establish a family apartment but that it exceeds the square footage that could be approved. as-of-right. He indicates that the apartment was built handicapped accessible and that it would be for his mother. He doesn't see a negative impact on the neighborhood as the apartment has existed for 18 years and that this is an extension of the home. He indicates that the house itself is in disrepair and that he is in the middle of repairing it.

Craig Larson asks if he is aware of the rules and regulations of the family apartment ordinance and if he is willing to abide by them. Mr. Adams indicates yes. Laura clarifies with Mr. Adams that this property has a 6 bedroom septic system and that with this apartment it would make a total of 5 including the family apartment. Laura asks if the apartment was built with permits. Mr. Adams is not sure. Laura indicates that there is a suggested condition that he was made aware of regarding it being built w/permit and being up to code.

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

In Appeal No. 2012-043, R. Christopher Adams has petitioned for a Special Permit to Section 240-47.1(A)(1) Family Apartments. The Petitioner is proposing to establish a family apartment of approximately 1,130 square feet in an existing attached addition. The property is located at 200 Palomino Drive, Barnstable, MA as shown on Assessor's Map 297 as parcel 045. It is in a Residence F-1 Zoning District.

- 1. The family apartment currently exists and is attached and accessible from within the principal dwelling. The principal dwelling was constructed in 1983; the portion of the home that is proposed to contain the family apartment is a later addition, constructed in 1994.**
- 2. The apartment was established by a prior owner without permits for the use so that it would appear that what were are doing is legalizing something that was put in place prior to that.**
- 3. The proposed apartment is a one-bedroom unit with a kitchen, living/dining area and two full bathrooms, all on one level.**
- 4. There appears to be sufficient parking on-site to accommodate the proposed apartment**

5. The on-site septic system is sized for six bedrooms. There are four bedrooms in the dwelling and one in the apartment.
6. A special permit is required in accordance with 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.
7. The application falls within a category specifically excepted in the ordinance for a grant of a special permit:
8. Site Plan Review is not required for single-family residential structures or family apartments.
9. 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: Alex Rodolakis, Craig Larson, William Newton, George Zevitas, Laura Shufelt

A motion is made by William Newton to grant the relief being sought with the following conditions:

1. Special Permit 2012-043 is granted to R. Christopher Adams to establish a family apartment within the dwelling at 200 Palomino Lane, Barnstable. The family apartment shall be limited to a one-bedroom unit not to exceed 1,130 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 Title V and local Board of Health regulations without variance.
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.
5. The applicant shall apply for a building permit for any portions of the family apartment unit which have not been previously permitted. The Building Commissioner or his designee shall determine that the unit conforms to the approved plans as submitted with the building permit application and meets the state building and fire codes prior to issuance of occupancy permit and certificate of compliance. The Health Division shall determine that the unit is in compliance with applicable on-site wastewater discharge requirements.

Seconded by Craig Larson

George Zevitas asks about the final condition and asks how they get a building permit for the original construction. Laura indicates that they request a permit based on plans and the inspector would inspect and that everything is up to code.

Vote:

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

NAY: None

GRANTED WITH CONDITIONS

7:20 PM

Appeal No. 2012-044 – New

Edmonds

Richard G. and Lillian S. Edmonds have applied for a variance to Section 240.47.1(A)(3) Family Apartments. The applicants are proposing to utilize approximately 465 square feet of an existing detached garage and to construct an addition of approximately 672 square feet to establish a detached family apartment. The property is located at 455 Sampsons Mill Road, Cotuit, MA as shown on Assessor's Map 039 as Parcel 150. It is in a Residence F zoning district.

Richard G. and Lillian S. Edmonds have petitioned for a Special Permit to Section 240.47.1(A)(1) Family Apartments. The applicants are proposing to utilize approximately 465 square feet of an existing detached garage and to construct an addition of approximately 672 square feet to establish a detached family apartment. A Special Permit is required for family apartments in excess of 800 sq.ft, but not exceeding 1,200 sq.ft. The property is located at 455 Sampsons Mill Road, Cotuit, MA as shown on Assessor's Map 039 as parcel 150. It is in a Residence F zoning district.

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

Representative: Ed Lacey – Builder.

Ed Lacey indicates that the applicant is planning on making a family apartment in an existing detached garage. He indicates that they had looked at putting the apartment in the main house but that there were problems where the apartment could be situated.

Laura Shufelt asks Mr. Lacey to explain the 3 prong test as it pertains to this variance appeal.

Mr. Lacey indicates that in his opinion, the only logical place to put the unit would be the right side of the house as the yard slopes off, also it would obstruct the room in back of house which is a sunroom which doesn't work well for the back of the house. He indicates that where the garage is more level land and that you wouldn't see it from the street and that is how they arrived at that location. As to the literal enforcement regarding the financial hardship, Mr. Lacey indicates that the applicant would like her daughter and her family to move in to give them financial support. He also indicates that it will fit into the neighborhood and would not increase traffic. He indicates that it is on a dirt road and that there will be no additional parking and that parking will be on-site.

William Newton asks if they have spoken with neighbors. Mr. Lacey indicates that he has not heard any objections from any neighbors.

Craig Larson clarifies that Mr. Lacey and the owners understand the bylaw as it pertains to family apartments. Craig asks who will be living in the apartment. Mr. Lacey indicates that the applicant will be living there. Craig clarifies that if the applicants do not use the apartment for family members any longer, then the kitchen needs to be taken out. Mr. Lacey indicates that the applicants are aware of this. Craig also indicates that the Board of Health was consulted recently and the opinion is that they would have to tie into a single system. Craig clarifies that he is aware that they would have to get a permit from the Board of Health without variance. Mr. Lacey indicates that the applicants are okay with that condition.

Laura Shufelt indicates that there is no one in the audience to speak either in favor or in opposition.

Craig Larson makes findings:

In Appeal 2012-044, Richard G. and Lillian S. Edmonds have petitioned for a Special Permit to Section 240.47.1(A)(1) Family Apartments. The applicants are proposing to utilize approximately 465 square feet of an existing detached garage and to construct an addition of approximately 672 square feet to establish a detached family apartment. A Special Permit is required for family apartments in excess of 800 sq.ft, but not exceeding 1,200 sq.ft. The property is located at 455 Sampsons Mill Road, Cotuit, MA as shown on Assessor's Map 039 as parcel 150. It is in a Residence F zoning district.

The property is a one-acre lot located south of Route 28 in Cotuit. There are two structures on the subject property: a three-bedroom, 3,156 gross sq.ft single-family dwelling constructed in 1985 and a 24' x 26' detached garage. The Petitioner seeks a variance from Section 240-47.1(A)(3), as the proposed family apartment is not attached to or within the principal dwelling.

Variance Findings

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

NAY: *None*

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

Variance Conditions

1. Variance No. 2012-044 is granted to establish a family apartment within a detached accessory building at 455 Sampsons Mill Road, Cotuit. The family apartment shall not exceed 1,128 square feet and shall have no more than one bedroom.
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, local 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.
7. The applicant shall apply for a building permit for the family apartment unit. The Building Commissioner, or his designee, shall determine that the unit conforms to the approved plans as submitted with the building permit application and meets state building and fire codes, prior to issuance of an occupancy permit and certificate of compliance.
8. The Health Division shall determine that the unit is in compliance with applicable on-site wastewater discharge requirements. The Applicant shall obtain all necessary disposal works construction permits in accordance with Health Division requirements.

Seconded by Brian Florence.

Vote:

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

NAY: *None*

Craig Larson makes special permit findings:

In Appeal 2012-045, he moves to make the following findings:

Special Permit Findings

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1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit:
2. 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.
3. Site Plan Review is not required for single-family residential structures or family apartments.
4. 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.

Seconded by William Newton.

Vote:

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

NAY: None

Craig Larson makes motion to grant with the following conditions:

1. Special Permit 2012-045 is granted to Lillian Edmonds to establish a family apartment within a detached accessory building at 455 Sampsons Mill Road, Cotuit. The family apartment shall not exceed 1,128 square feet and shall have no more than one bedroom.
2. The family apartment shall be maintained in compliance with the requirements of Section 240-47.1 and the Conditions of Variance No. 2012-044.
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

Seconded by Brian Florence.

Vote:

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

NAY: None

GRANTED WITH CONDITIONS

Open: Chair's Discussion

Brian Florence asks about putting language in conditions about other approvals from boards/committees. Elizabeth Jenkins indicates that in some cases there might be questions regarding if work was done and that if they cannot meet these conditions that they cannot move forward. They discuss. Elizabeth Jenkins will do research.

Laura asks about a bill to go through regarding the permit extension act. Elizabeth Jenkins is not sure if it is final.

Elizabeth Jenkins indicates that at the next meeting, board elections should be done.

August 8th will be cancelled.

Upcoming Meetings:

August	*8 & 22
September	12 & 26
October	10 & 24
November	14
December	12
*NOTE: August 8th hearing to be cancelled	

Motion is made by Laura Shufelt and seconded by Craig Larson to adjourn.

Vote:

All in favor.

Meeting adjourned at 9:00 PM.