



# Town of Barnstable

# Zoning Board of Appeals



[www.town.barnstable.ma.us/ZoningBoard](http://www.town.barnstable.ma.us/ZoningBoard)

Board Members:

Craig Larson – Chair   Brian Florence – Vice Chair   Alex Rodolakis – Clerk   George Zevitas - Member  
David A. Hirsch – Associate Member   Herbert Bodensiek – Associate Member  
James Tinsley – Town Council Liaison

Staff Support

Elizabeth Jenkins – Principal Planner - [elizabeth.jenkins@town.barnstable.ma.us](mailto:elizabeth.jenkins@town.barnstable.ma.us)  
Carol Puckett – Administrative Assistant – [carol.puckett@town.barnstable.ma.us](mailto:carol.puckett@town.barnstable.ma.us)

## Minutes

**Wednesday, December 10, 2014**

2<sup>nd</sup> Floor Hearing Room – 367 Main Street, Hyannis, MA

Craig Larson - Chair	Present
Brian Florence – Vice Chair	Absent
Alex Rodolakis – Clerk	Present
George Zevitas	Present
David Hirsch	Present
Herbert Bodensiek	Present
Robin Young	Present

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

***Craig Larson opens the hearing at 7:05 PM.***

### **Call to Order**

Introduction of Board Members – ***All members present introduce themselves.***

***Craig reads the following into the record:***

### **Notice of Recording**

Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

### **Approval of Minutes**

Minutes from October 22, 2014

***Motion is made by Craig Larson and seconded by George Zevitas to approve minutes as submitted.***

***Vote:***

***All in favor***

### **Comprehensive Permits**

**7:00 PM   Comprehensive Permit No. 2005-082**

**Cotuit Meadows**

Cotuit Equitable Housing, LLC has requested a minor modification of Comprehensive Permit 2005-082 to relocate certain lots designated for construction of affordable single-family dwelling units in the Cotuit Meadows subdivision. The request is to change

the designation of Lots 13, 16 and 22 from affordable to market value and the designation of Lots 12, 17 and 23 from market value to affordable.

Comprehensive Permit No. 2005-082, issued on May 2, 2006 and subsequently modified, allows for the development of 124 single-family residential units, including 31 units dedicated in perpetuity as affordable. The subject lots are addressed as 122,130, 150, 164, 216 & 206 Pheasant Hill Circle, as shown on Assessor's Map 002 as Parcels 002/012, 002/013, 002/016, 002/017, 002/022 & 002/023.

**Representative: Attorney John Kenney is here representing Cotuit Equitable Housing, LLC.**

**Attorney Kenney summarizes relief being sought which is basically to switch Lots 13, 16 & 22 from affordable to market value and change Lots 12, 17 & 23 from market to affordable. Reason for this is that they have pending Purchase and Sales agreements on two of the lots which are currently affordable which they want as market rated. He notes that his request before the board is that they find this an insubstantial modification.**

**Craig Larson notes that there is a letter from Attorney Kenney to the Housing Committee (EXHIBIT A).**

**Craig Larson asks if there is anyone here from the public who would like to speak. No one speaks.**

**Craig Larson makes the following findings:**

1. Cotuit Equitable Housing, LLC submitted a request to the Board on November 18, 2014 to modify the conditions of Comprehensive Permit 2005-082 to change the designation of Lots 13, 16 and 22 from affordable to market value and the designation of Lots 12, 17 and 23 from market value to affordable.
2. This modification request does not constitute a substantial change and therefore does not require a public hearing and is approved.

**Vote:**

**All in favor**

## **INSUBSTANTIAL MODIFICATION**

**Chair calls the Pinard hearing and reads it into the record:**

**7:00 PM Appeal No. 2014-052**

**Pinard**

Karen M. Pinard, Trustee of the Karen M. Pinard 2010 Trust, has applied to amend Variance No. 1996-054 to construct a 3-season room over a portion of an existing patio. Condition No. 7 of the existing variance limits expansion of the units without prior permission from the Zoning Board of Appeals. The property is located at 215 Pine Lane Extension, Unit B, Osterville, MA as shown on Assessor's Map 117 as Parcel 064-03B. It is in the Business A (BA) Zoning District.

**Members assigned: Herbert Bodensiek, Alex Rodolakis, George Zevitas, David Hirsch, Craig Larson**

**Representative: Attorney Michael Schulz**

**Attorney Schulz gives a summary of relief being requested which is basically to amend condition #7 to allow for construction of a three- season room over the patio. He states that the three-season room is currently shown on plans drawn by Cotuit Design and proposed addition dimensions are given. The exterior will match the current and the will be located over the hardscape adjacent to the unit. He states that the Board of Trustees of the association has completed their review and have approved this via a Letter from their attorney, Brian Wall (EXHIBIT B). He states that the applicants will be utilizing this room solely as a three-season room and not as a bedroom.**

**Craig Larson asks for public comment. No one speaks.**

**Alex Rodolakis makes findings:**

**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.
- 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:

*The proposed expansion will not result in the addition of any bedrooms to the unit, thus there will be no increase in wastewater flow, vehicle trips, or parking demand as a result of the addition.*

**Seconded by Craig Larson**

**Vote:**

**All in favor**

**Alex Rodolakis makes a motion to grant relief being sought with the following conditions:**

### Conditions

1. The request for an amendment to Variance No. 1996-54 is granted to allow the construction of a three-season sunroom at 215 Pine Lane Extension, Unit B.
2. The improvements shall be constructed as shown on the plans entitled "New Addition/ Remodeling for Pinard Residence, Pine Lane Osterville, MA," dated October 24, 2014, drawn by Cotuit Bay Design, LLC.
3. The exterior materials and colors of the sunroom addition shall be consistent with the existing building.
4. 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 building permits.

**Seconded by Craig Larson**

**Vote:**

**AYE: Herbert Bodensiek, Alex Rodolakis, George Zevitas, David Hirsch, Craig Larson**

**NAY: None**

## GRANTED WITH CONDITIONS

**Alex Rodolakis leaves the dais.**

**Craig Larson reads the following into the record:**

### Old Business

**7:00 PM Appeal No. 2014-050**

**Berkery**

Andrew M. and Joan W. Berkery have petitioned for a Special Permit pursuant to Section 240-92.B - Nonconforming buildings or structures used as single- and two-family residences. The petitioners are proposing to expand, alter and renovate the existing principal single-family dwelling and accessory cottage. The principal dwelling is to expand from 1,440 sq.ft., to 2,648 sq.ft. and the cottage is to expand from 493 sq.ft. to 829 sq.ft. Additions to the principal dwelling are located based upon existing nonconforming front- and side-yard setbacks. The property is located at 49 Lafayette Avenue, Hyannisport, MA as shown on Assessor's Map 287 as Parcel 047. It is in the Residence F-1 zoning district.

Continued from November 12, 2014. Members assigned: George Zevitas, Brian Florence, Craig Larson, Herbert Bodensiek

**Craig Larson announces that there are only four members present and would suggest that they ask to continue this to a future date certain.**

**Attorney Tracey Taylor, who is representing the applicants, agrees and asks to continue to January 14, 2015 at 7:00 PM. Hebert Bodensiek notes that he will not be available on January 14<sup>th</sup>.**

**Motion is made by Craig Larson and seconded by George Zevitas to continue this to January 28, 2015 at 7:00 PM.**

**Vote:  
All in favor**

## **CONTINUED TO JANUARY 28, 2015 AT 7:00 pm**

**Alex Rodolakis returns to the dais.**

**Craig reads the following into the record:**

**7:00 PM Appeal No. 2014-043**

**K&E Plus Three Enterprises, LLC.**

K&E Plus Three Enterprises, LLC, has petitioned for a Conditional Use Special Permit pursuant to Section 240-93.B to allow for retail sales and a drive-through pick-up window in the Highway Business District. The petitioner seeks to eliminate the carwash use and construct a 940 square feet addition to the westerly side of the existing gas station/carwash including installation of a drive-up window. The total area of the expanded building is to be used for a convenience store for the retail sales of groceries and sundries including coffee sales via a drive-through. The subject property is located at 577 West Main Street, Hyannis, MA and is shown on Assessor's Map 269 as parcel 003. It is in the Highway Business (HB) Zoning District and a Groundwater Protection (GP) Overlay District.

Continued from October 8, 2014 and November 12, 2014. No members assigned.

**7:01 PM Appeal No. 2014-044**

**K&E Plus Three Enterprises, LLC.**

In the alternative to Appeal 2014-043 above, the petitioner, K&E Plus Three Enterprises, LLC, has petitioned for a Special Permit pursuant to Section 240-94.A, Change of a Nonconforming Use to another Nonconforming Use and 240-94.B, Expansion of Nonconforming Use Section. In this Appeal, the petitioner seeks to construct a 940 square feet addition to the westerly side of the existing building and to change the use of the service station and carwash to that of a convenience store for the retail sales of groceries and sundries including coffee sales via a drive-through. The subject property is located at 577 West Main Street, Hyannis, MA and is shown on Assessor's Map 269 as parcel 003. It is in the Highway Business (HB) Zoning District and a Groundwater Protection (GP) Overlay District.

Continued from October 8, 2014 and November 12, 2014. No members assigned.

**7:02 PM Appeal No. 2014-045**

**K&E Plus Three Enterprises, LLC.**

K&E Plus Three Enterprises, LLC, has petitioned for a Special Permit pursuant to Section 240-93.B Alteration Expansion of a Pre-Existing Non-Conforming Building. In this Appeal, the petitioner seeks the Permit, if necessary, to provide for the 940 square feet addition to the westerly side of the existing building as that building does not conform to the required 60-foot front yard setback required on Old Craigville Road. The subject property is located at 577 West Main Street, Hyannis, MA and is shown on Assessor's Map 269 as parcel 003. It is in the Highway Business (HB) Zoning District and a Groundwater Protection (GP) Overlay District.

Continued from October 8, 2014 and November 12, 2014. No members assigned.

**Members assigned: Herbert Bodensiek, David Hirsch, George Zevitas, Alex Rodolakis, Craig Larson**

**Attorney Charles Sabatt is representing the applicants.**

**Craig Larson asks if Attorney Sabatt would like to hear these appeals individually**

**Halim Choubah from Choubah Engineering is also with Attorney Sabatt and displays plans on the easel.**

**Attorney Sabatt gives the history of the property and states that there was speculation at Site Plan Review that perhaps the use had been abandoned which he states is not the case. He states that there was a period of time before the current business when it was a Shell gas station but that it never reached a non-use situation. He states that what exists currently is a full service gas station consisting of four gas pumps out front under the canopy. The site also houses a convenience store for small sundries and coffee as well as a coin-operated automatic carwash. This parcel is also located in a Groundwater Protection Overlay District. What they are proposing to do is to reconstruct the structure into a more traditional looking building, expand the convenience store section, eliminate the carwash but replace it with a drive-through coffee counter. There will also be an internal coffee shop which will accommodate patrons making their own coffee. The drive-through for coffee will be located on the easterly end of the parcel which will prevent queuing when placing orders at the drive-up window. This drive-through use**

*will replace a far less offensive use as it will not offend the groundwater issues. He summarizes relief being sought. He speaks to the traffic flow at the entrances and exits and talks about the traffic study. He also notes that there was concern about the coffee venue and notes that he cannot commit to whether, in the future, there will be a popular formula brand. He states that if a formula brand is present, it will not mean that there would be an increase in traffic flow. As for Site Plan Review, he states that one of the stipulations is that the pumps be fully attended.*

*Mr. Choubah speaks about the existing curb cut at Star Market/Shaws parking lot. They are restricting curb cuts to in an o*

*Craig talks about landscaping and parking on town property. He also comments that he would feel more comfortable with a light on the corner of West Main and Old Craigville Beach Road and would like to see the building pulled back somewhat and the drive-through eliminated.*

*Alex Rodolakis comments that this a small lot, a tough intersection and can foresee motorists attempting to go the wrong way when exiting the site. He states that he believes the lot is too small for what they are trying to do with the drive through.*

*Craig Larson asks for public comment.*

*No one speaks.*

*Craig Larson calls a 5 minute recess.*

*Back in session, Attorney Sabatt wants Mr. Choubah to clarify with the board their concerns. Mr. Choubah states that he has been involved in approximately 70 or 80 gas stations over the 10 or 15 years in New England. He doesn't agree that this is a small lot and has drive thoughts on smaller lots. They meet the parking requirements and are adding landscaping buffers. As for parking encroachments, they are in excess of the parking requirement.*

*Craig Larson, on behalf of the board, welcomes the change but feels that the building should be pulled back somewhat and had a lighted intersection.*

*Attorney Sabatt asks to withdraw without prejudice each of the 3 forms of relief being presented this evening. Craig Larson states that they could always put the project through without the drive-through and possibly come back in the future for the drive-through. Attorney Sabatt thinks that the drive-through is critical and for now would like to revisit this with his client by withdrawing.*

*Motion is made by Craig Larson and seconded by George Zevitas to withdraw all three applications without prejudice.*

**Vote:**

**AYE:** Herbert Bodensiek, David Hirsch, George Zevitas, Alex Rodolakis, Craig Larson

**NAY:** None

## **WITHDRAWN WITHOUT PREJUDICE**

### **New Business**

**7:01 PM Appeal No. 2014-054**

**Feldman**

Robert N. Feldman has petitioned for a Special Permit pursuant to Section 240-91(H)(3) Developed Lot Protection. The petitioner seeks to raze the existing single-family home and replace it with a new single-family dwelling including an attached screen porch and deck. A special permit is required as the lot area is less than 10,000 square feet. The property is located at 223 Fifth Avenue, West Hyannisport, MA as shown on Assessor's Map 245 as Parcel 041. It is located in the Residence B Zoning District.

**Members assigned:** Herbert Bodensiek, David Hirsch, Alex Rodolakis, George Zevitas, Craig Larson

**Representative:** Attorneys Michael and Jeff Ford.

**Dan Ojalia hands the board members an aerial photo (EXHIBIT A).**

**Michael Ford gives summary of relief being sought and notes that this will be a demo/rebuild but cannot be done as of right because of the size of the lot. He states that in terms of the aerial photo, this is one of the smallest houses in the area. He gives the criteria under the ordinance for the grant of a Special Permit. He states that the proposed lot coverage is 19.9% which meets the maximum 20% requirement and are under the 30% requirement for floor area ratio (29.9%). He also states that this has been approved by the Conservation Commission and has issued an Order of Conditions.**

**Alex Rodolakis asks for clarification on the current height of the house. Mr. Ojala states that he believes that it is twelve feet from plate and the new house will be elevated to meet the new floor plain requirement but will be conforming. They discuss the height of foundation and house.**

**Craig Larson asks for public comment. No one speaks.**

**Craig Larson makes findings:**

### **Special Permit Findings**

- The application falls within a category specifically excepted in the ordinance for a grant of a special permit:  
Section 240-91(H)(3) allows for the complete demolition and rebuilding of a residence on a nonconforming lot containing less than 10,000 square feet of contiguous upland by Special Permit.
- Site Plan Review is not required for single-family residential dwellings.
- 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.
- The dwelling is proposed in compliance with all setback requirements of the RB District.
- The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage, inclusive of covered porches and decks, is 19.94%.
- The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished, whichever is greater. The proposed FAR is .29.
- The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 ½ stories. The proposed height is 24.6 feet; the proposed dwelling is 1 ½ stories.
- The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

**Seconded by George Zevitas**

**Vote:**

**All in favor**

**Motion is made by Craig Larson to grant the relief being sought with the following conditions:**

### **Conditions**

1. Special Permit No. 2014-054 is granted to Robert N. Feldman for the demolition of an existing dwelling and rebuilding of a 2,302 square foot dwelling at 233 Fifth Avenue, West Hyannisport
2. The dwelling shall be constructed in substantial conformance with the plan entitled "Site Plan of 233 Fifth Avenue" dated (rev.) December 4, 2014, drawn and stamped by Daniel Ojala of Down Cape Engineering, Inc; and the floor plans and elevations dated July 29, 2014, drawn by Peter McDonald Architects, four sheets.
3. The total lot coverage shall not exceed 20% and the floor-area ratio shall not exceed .30.
4. The proposed redevelopment shall represent full build-out of the lot. Further expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.

5. Prior to issuance of a certificate of occupancy, a certified as-built plan prepared by an independent party shall be submitted to the Building Commissioner confirming that the lot coverage and floor area ratio of the dwelling conforms to the ordinance and the conditions of this decision.
6. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
7. 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 building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

**Seconded by George Zevitas**

**Vote:**

**AYE: Herbert Bodensiek, David Hirsch, Alex Rodolakis, George Zevitas, Craig Larson**

**NAY: None**

## **GRANTED WITH CONDITIONS**

**At 8:15, Craig reads the following into the record:**

**7:02 PM Appeal No. 2014-055**

**McCarthy**

Arthur S. and Patricia J. McCarthy have petitioned for a Special Permit pursuant to Section 240-44, Accessory Uses. The applicants seek to construct a pier, ramp and float for non-motorized vessels on an accessory lot located on the other side of the street and slightly to the north of the lot developed with the principal single-family dwelling. The principal residential lot is located at 410 Wianno Avenue, Osterville, MA as shown on Assessor's Map 163 as Parcel 023 and the accessory lot is located at 322 East Bay Road, Osterville, MA, as shown on Assessor's Map 163 as Parcel 021. Both lots are in a Residence F-1 Zoning District.

**7:03 PM Appeal No. 2014-056**

**McCarthy**

Arthur S. and Patricia J. McCarthy have applied for a variance from Section 240-44, Accessory Uses. The applicants seek to construct a pier, ramp and float for non-motorized vessels on an accessory lot located on the other side of the street and slightly to the north of the lot developed with the principal single-family dwelling. The principal residential lot is located at 410 Wianno Avenue, Osterville, MA as shown on Assessor's Map 163 as Parcel 023 and the accessory lot is located at 322 East Bay Road, Osterville, MA, as shown on Assessor's Map 163 as Parcel 021. Both lots are in a Residence F-1 Zoning District.

**Members assigned: Herbert Bodensiek, David Hirsch, Alex Rodolakis, George Zevitas, Craig Larson**

**Representative: Attorney Michael Ford and Jeff Ford. Also with him is John O'Day from Sullivan Engineering. John O'Day points out on the easel, the lots in question. Attorney Ford gives summary of history of the lot from 1969. The lots were divided in 1969 and lots on East Bay Road were divided on the same plan. When endorsed by the Planning Board it was noted on the plan that the smaller lots were accessory to the other lots. Since the lots were created they have been conveyed on the same deed in common ownership. The ordinance provides that a special permit can be granted on a lot that is not the principal structure provided that it is either adjoining, which they don't meet, or is immediately opposite or across the road and would suggest that if you come out to East Bay Road, you can draw a straight line from the client's property to the accessory site. He states that the board would need to determine the term "immediate" and that is why they have also applied for alternative relief. He describes the pier stating that it will be just for dinghies and non-motorized vessels and notes that it has been approved by the Conservation Commission.**

**The board discusses how to proceed either with a special permit or variance. They briefly discuss the Gregory case and that they would prefer variance relief.**

**Attorney Ford gives variance conditions and would suggest that these are unique shaped lots and, in part, that the literal enforcement of the ordinance is the result of those unique conditions. He believes that the hardship would be that where these lots were laid out with the Planning Board in 1969 with a notation that they be used as accessory which they were. If the variance is not granted, they applicants would not be able to utilize the lots as accessory and not be able to enjoy the water**

*access that they have been taxed on as such. As to whether this would be a detriment to the public good, there are a series of these types of piers in the area and would not be a detriment to the public good. As to nullifying or substantially derogating from the intent of the bylaw, he doesn't think this is a substantial derogation as in unique situations as this a variance is contemplated. This is the last lot in the area requesting this type of relief and is the same variance conditions in other relief given in this area.*

*Craig Larson would like to have a condition stating that these lots must be kept in common ownership which Attorney Ford agrees to.*

*Alex Rodolakis makes findings for the variance:*

#### **Appeal 2014-056 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.
- The lot at 322 East Bay Road containing the proposed accessory use and the lot at 410 Wianno Avenue containing the principal single-family dwelling are held in identical ownership with respect to both fee and nonfee interests. Arthur S. and Patricia J. McCarthy hold title to both the principal lot and the subject accessory lot under a single deed (Land Court Certificate No. 162659).

*Seconded by Craig Larson*

**Vote:**

*All in favor*

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

#### **Conditions**

1. Relief is granted to allow for the construction of a pier, boardwalk, ramp, and float at 322 East Bay Road, Osterville.
2. The pier shall be accessory to the principal dwelling at 410 Wianno Avenue, Osterville.
3. The improvements shall be in substantial compliance with the plan entitled "Site Plan – Proposed Pier, Ramp & Float at 322 East Bay Road", dated September 23, 2014, drawn and stamped by Sullivan Engineering, Inc.
4. Parking on 322 East Bay Road is prohibited.
5. The construction shall comply with all conditions of the Order of Compliance issued by the Conservation Commission.
6. Other than those specified herein, additional improvements to the lot are prohibited without further approval from this Board.
7. This decision shall be recorded at the Barnstable County Registry of Deeds within the timeframes required by §240-125 or it shall expire, unless extended by the Board.

*With an additional condition that the lots be kept and held in common ownership.*

*Seconded by Craig Larson*

**Vote:**

*AYE: Herbert Bodensiek, David Hirsch, Alex Rodolakis, George Zevitas, Craig Larson*

*NAY: None*

#### **GRANTED WITH CONDITIONS**

*Attorney Ford requests that Special Permit Appeal No. 2014-055 be withdrawn without prejudice.*



*Motion is made by Craig Larson to withdraw Appeal No. 2014-055 without prejudice.*

**Vote:**

**AYE:** *Herbert Bodensiek, David Hirsch, Alex Rodolakis, George Zevitas, Craig Larson*

**NAY:** *None*

## **WITHDRAWN WITHOUT PREJUDICE**

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### **Other Business**

Next Regularly Scheduled Hearing January 14, January 28, February 11, February 25

### **Adjourn**

*Motion is made by Craig Larson and seconded by George Zevitas to adjourn.*

**Vote:**

**AYE:** *Herbert Bodensiek, David Hirsch, Alex Rodolakis, George Zevitas, Craig Larson*

**NAY:** *None*

Approved