



Town of Barnstable

Zoning Board of Appeals



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Board Members:

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

Staff Support

Elizabeth Jenkins – Principal Planner - elizabeth.jenkins@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, February 25, 2015

2nd Floor Hearing Room – 367 Main Street, Hyannis, MA

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

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

Craig Larson calls the meeting to order at 7:03 PM as a quorum has been met.

Call to Order

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

Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 an 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 January 14, 2015

Motion is made by Craig Larson and seconded by Alex Rodolakis to approve the minutes as submitted.

Vote:

All in favor

At 7:05, Craig Larson reads the following into the record:

New Business

7:00 PM Appeal No. 2015-012

Nga Vong

Nga Vong has applied for a Conditional Use Special Permit pursuant to Section 240-25(C)(1) to operate a nail salon, a personal service business, in an existing 1,500 square foot tenant space. The property is located at 489 Bearse’s Way, Hyannis, MA as shown on Assessor’s Map 292 as Parcel 077. It is located in the Highway Business and Residence B Zoning Districts.

Members assigned: George Zevitas, Alex Rodolakis, Brian Florence, Herbert Bodensiek, Craig Larson

Representative: Attorney Mark Boudreau.

Attorney Boudreau introduces Mr. Vong and gives a summary of relief being requested. He states that the applicant currently operates two other salons off Cape. The plaza has a wide interest of businesses and feels that this will fit in nicely. His client will employ 8 people, Monday through Saturday and gives the business hours. Attorney Boudreau states that this plaza has always had adequate parking.

George Zevitas asks Mr. Vong to clarify that these employees are paid minimum wage and get a commission plus tips. Alex Rodolakis asks for clarification of the location in relationship to Bobby Byrne's pub and is told that it will be to the left of the pub. Brian Florence asks for clarification on waste disposal as they use chemicals when doing their business. Mr. Florence is told that they are not required to have a holding tank for their waste by Attorney Boudreau. Mr. Vong states that they will not be storing large quantities of acetone used for their business. George Zevitas asks again for clarification as to whether employees are given minimum wage. Mr. Zevitas also asks if the 8 employees will be present at one time, have multiple customers at one time and how this would affect parking. Craig Larson asks Mr. Vong if he would go on the record that he will comply with all labor laws in the state of Massachusetts. Mr. Vong says yes.

Craig Larson asks for public comment. No one speaks.

Craig Larson makes findings:

Nga Vong has applied for a Conditional Use Special Permit pursuant to Section 240-25(C)(1) to operate a nail salon, a personal service business, in an existing 1,500 square foot tenant space. The property is located at 489 Bearse's Way, Hyannis, MA as shown on Assessor's Map 292 as Parcel 077. It is located in the Highway Business and Residence B Zoning Districts.

Special Permit Findings

1. In Appeal No. 2015-012, Nga Vong has requested a Conditional Use Special Permit to operate a nail salon, a personal service business, within an existing 1,500 square foot tenant space at 489 Bearse's Way, Hyannis.
2. Section 240-25(C)(1) of the Zoning Ordinance allows any use permitted in the B District with a Conditional Use Special Permit. Personal service businesses are permitted in the HB District with a special permit from this Board.
3. The Building Commissioner reviewed the existing site and uses and issued a Site Plan approval letter dated January 29, 2015.
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.
5. The proposed use of the property will not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.

Vote:

AYE: Alex Rodolakis, Brian Florence, Herbert Bodensiek, Craig Larson

NAY: George Zevitas

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

Conditions

1. Special Permit No. 2015-012 is granted to Nga Vong to allow the operation of a nail salon in an existing 1,500 square foot tenant space at 489 Bearse's Way, Hyannis, MA.
2. This use shall be subject to all conditions of the Site Plan Approval letter issued on January 29, 2015.
3. Business signage is encouraged to be externally illuminated or back-lit.
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 for this special permit to be in effect. The rights authorized by this special permit must be exercised within two years, unless extended by the Board.
5. This business will comply with quantities of chemicals from the Building Department, Board of Health and the Fire Department.

Attorney Boudreau agrees to the addition of Condition #5.

Seconded by Brian Florence.

Vote:

AYE: Alex Rodolakis, Brian Florence, Herbert Bodensiek, Craig Larson

NAY: George Zevitas

GRANTED WITH CONDITIONS

At 7:21, Craig Larson calls the Laham appeals and reads them into the record:

Old Business

7:03 PM Appeal No. 2015-009

Laham Management & Leasing, Inc

Laham Management & Leasing, Inc, as lessee, has applied for modify Use Variance No. 1968-06, which authorizes the northern portion of the site (Lot 8 on Plan Book 11 Page 103) to be used for automobile sales and service. The Applicant seeks to raze the existing building and construct a new building containing a private car wash and three detail bays, plus associated parking. The property is located at 49 Bearse Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 040. It is in the Residence B and Groundwater Protection Overlay Zoning Districts.

Continued from February 11, 2015. No members assigned.

7:04 PM Appeal No. 2015-010

Laham Management & Leasing, Inc

Laham Management & Leasing, Inc has applied for use variance from Section 240-11 (Residence B Zoning District) to establish vehicle storage parking to be used in conjunction with the existing automobile dealership located at 25 Falmouth Road and 28 Hallett Road. The applicant is proposing to raze an existing freestanding garage and residential dwelling and redevelop the parcel for parking. The property is located at 29 Bearse Road, Hyannis, MA as shown on Assessor's Map 311 as parcel 039. It is in the Residence B and Groundwater Protection Overlay Zoning Districts.

Continued from February 11, 2015. No members assigned.

7:05 PM Appeal No. 2015-011

Laham Management & Leasing, Inc

Laham Management & Leasing, Inc, as lessee, is seeking a Special Permit pursuant to Section 240-93B and 240-94B for the alteration and/or expansion of a nonconforming building and use of the premises. The applicant is proposing to raze the existing 2,816 square foot building, consisting of 3 automobile bays and offices used in conjunction with the dealership located at 25 Falmouth Road and 28 Hallett Road, and construct one new 2,450 square foot building containing a private car wash and three detail bays, plus parking. The property is located at 49 Bearse Road, Hyannis, MA as shown on Assessor's Map 311 as parcel 040. It is in the Residence B and Groundwater Protection Overlay Zoning Districts.

Continued from February 11, 2015. No members assigned.

Members assigned: Alex Rodolakis, Brian Florence, George Zevitas, Matt Levesque, Craig Larson

Representative: Attorney Michael Ford.

Attorney Ford is here with Attorney Jeff Ford. Also with him is the applicant: Joe Laham and Griffin Bodin with Atlantic Design which are the site engineers for the project. Attorney Ford states that,, given the zoning issues to the existing dealership on Hallet Road, would like first to review what they have done in reference to development permits to the dealership itself. He indicates that the first plan is the Falmouth Road property where the dealership is. He states that previously there were three franchises that operated here: Mercedes, BMW and Volvo. Mr. Laham owns the site now and has taken steps to redevelop the site. Mercedes is no longer at the site and the BMW franchise has found a new home on Willow Street. Volvo has been moved temporarily to the Audi site which Mr. Laham also owns and will be moved back after this site is developed. Mr. Laham hands in pictures of elevations (Exhibit A). Attorney Ford states that the new building will be for Audi only. Service for Audi will be located in this building below ground. This area will be located down a ramp where there will be ten (10) lifts which will replace seventeen (17) current lifts. There are currently four (4) curb cuts of which three (3) will be eliminated when the new building is constructed. All parking currently in front of the building will be eliminated as the new building will be moved back 30 feet from

Route 28 making the building more conforming. The new building will be larger, not in terms of footprint, but in fact only a few square feet larger the existing footprint given the fact that most of that square footage will be underneath the building. There are proposing several bays where vehicles would be detailed. Also, this proposal includes land that was not part of the initial approvals in 2008 which was acquired by Mr. Laham called the LeGeyt property. Currently, on this property at the southerly end, a single family home with a garage that is attached to the house and a separate garage which had the benefit of a Class 2 dealer's license and used for auto service and sales from that lot. He cannot find any basis that he could suggest that it complied. This proposal that they filed for in regards to the LeGeyt property, they would need use variance in order to take the house down and use the lot for parking to be associated with the main lot. He has been contacted by legal counsel for at least one of the abutters by Attorney Steven Pizzutti, whose concern is that with the LeGeyt lot, having the house coming down, the carwash and the lot being used for parking. Therefore, they would like to offer an alternate plan where the house that is on the LeGeyt property remains as a single-family home. Also, at the very northerly portion of that lot where that noncompliant garage has been operating is still included in this proposal. The other change in this proposal is that they will eliminate the carwash. The garage building will still have three (3) bays for detailing but the bay that was to be for the carwash will only be for rinsing.

He shows a plan that was recently submitted to the Building Commissioner based on a plan in the 90's and is the basis on which the current Class 1 dealer's license is issued for this particular site which was approved and shows the 213 spaces but for that 1/3 lot of the LeGeyt lot they still need a use variance for.

There is a 9000 square foot gross increase in the size of the building with most of the area taken up by the office space and service bays. He states that at Site Plan Review, the Building Commissioner saw this project as an improvement, approved it, but reasoned and determined that the project needed to come to the Zoning Board of Appeals. A plan is shown on the easel (**Exhibit B**). He refers to ZBA's findings and relief in the board's decision in 2008.

Attorney Ford then gives the reasoning as it pertains to the conditions that give rise to the reasons for the special permits and variance. He gives a title history. He indicates that they have been to Site Plan Review which gave approval for this project with one exception. The exception is the piece behind the building that comes off the LeGeyt lot which was not part of the original Site Plan Review approval. He states that, if needed, he will touch base with SPR again but wants to disclose that it was not part of the original SPR approval. He states that the new option includes, keeping the house, eliminating the car wash and improving the parking layout and curb cuts which will eliminate parking on the street

Attorney Ford gives a summary of the proposed plan and believes they meet the special permit provisions. In reference to the staff report, he notes that additional information was required and that no findings or conditions were provided in the report. He states that he is hopeful that by modifying the plan; keeping the house, getting rid of the carwash and improving the buffers that there might be a future hearing and is conducive to a continuance if needed.

Craig Larson asks Attorney Ford to review the findings for the proposed special permit which he does.

Alex Rodolakis asks for clarification on the display area. Craig asks about lighting and fencing. Mr. Laham states that they only want to illuminate the area they are occupying and use enough light to illuminate the vehicles. He states that the lighting will be timed and have a security light. Alex Rodolakis asks about fencing. Mr. Laham states that they want to take down the barbed wire and that there will not be any fencing on Bearse Road and none on Hallet Road. Mr. Laham also states that the plan is to fence the entire line of the residential area where they abut and come around Otis Road and stop for the site line. Attorney Ford clarifies that the plan is to put fencing and arborvitaes wherever they abut the residential area and where there is the commercial portion they will be putting a buffer zone with no fencing. Craig Larson asks about loading and unloading of vehicles. Mr. Laham explains that they specifically designed that area to be wide enough to have the trucks come in and out.

Craig asks for public comment.

Alan Morrow at 30 Otis Road points out where he lives. He states that his concern is the lot where the LeGeyt's garage is as this is too close to the property line and states that the garage has a bathroom and an office. He wants to keep the neighborhood residential and is concerned about noise and expansion. He thinks that if this goes through that the neighbors should get compensation.

Jenny Burgess of 19 Bearse Road speaks and states that she has lived there for 34 years. In the past, this was a quite residential neighborhood but over the years how the encroachment of business has changed the neighborhood and turned it into a

commercial nightmare and believes this is an infringement of their lifestyle and feels it will be detrimental to the neighborhood and asks to object this appeal.

John Lovell at 45 Otis Road is concerned about the lighting. Craig Larson states that there will be a lighting plan. Mr. Lovell does not want a rain garden and is concerned about mosquitoes.

Angela Derrick of 24 Otis Road is concerned about test driving cars around the neighborhood.

Mr. Morrow asks if they would consider removing the LeGeyt's garage building. Attorney Ford says they will be replacing the building and making it smaller.

Attorney Ford rebuts and states that the LeGeyt garage is coming down, the single-family home will remain. Mr. Laham comments that he has no problem with prohibiting test driving down the neighborhood streets and is conducive to a condition to that affect.

John Lovell asks if the building in blue is coming down. Mr. Laham answers yes.

Louise Morrow at 30 Otis Road asks questions about the building which was be for car detailing. Alan Morrow asks how they can detail cars without soap... Mr. Larson states that it would be via BOH regulations.

Mrs. Burgess talks about the trees. Craig Larson clarifies that there will be a maximum of 60 arborvitaes. Mr. Bodin says that there will be a new landscape plan and explains.

Board discusses administrative site plan review. Attorney Ford clarifies that they will take it back to SPR and then bring it back to the board. Craig Larson also asks for lighting plan and wants them to address the swale and lights.

Mr. Bodin explains the rain garden.

Craig Larson asks for new plans when they come back.

Attorney Ford requests a continuance.

Motion is made by Craig Larson and seconded by Brian Florence to continue these appeals to March 11, 2015 at 7:00 PM

Vote:

All in favor

Craig Larson notes that this is still an open hearing and will be open to questions at the next hearing.

CONTINUED TO MARCH 11, 2015 AT 7:00 PM

Adjourn

Motion is made by Craig Larson and seconded by Brian Florence to adjourn.

Vote:

All in favor

Exhibits

2015-009, 010 & 011 – Exhibit A = 24X18 “Layout Plan of Land of #49 Bearse Road, Hyannis, MA drawn by Down Cape Engineering, Inc., Revision Date of 06-26-08: Exhibit B (Page 1) = 17X11 Site Plan prepared for: Trans-Atlantic Motors, Inc, 83-046 Sheet 1 of 1 Revised date of 06-12-00; Exhibit B (Page 2) = Aerial Photo from TOB taken July 10, 2009.