

Town of Barnstable Zoning Board of Appeals

www.town.barnstable.ma.us/ZoningBoard

Board Members:

Brian Florence – Chair Alex Rodolakis – Vice Chair George Zevitas - Clerk
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, January 13, 2016

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

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

Also present were Elizabeth Jenkins – Regulatory Review/Design Planner and Carol Puckett – Administrative Assistant

At 7:00, as a quorum has been met, Brian Florence calls the hearing to order:

Call to Order

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

Brian Florence reads the following with no response:

Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 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 of October 28, 2015

Motion is made by Herbert Bodensiek

Seconded by Matt Levesque

Vote:

All in favor

New Business

7:00 PM Appeal No. 2015-060

Celentano

Amy D. Celentano, as trustee, has petitioned for a variance to the minimum setback requirements of the RF-1 District, Section 240-13(E). The petitioner seeks relief from the minimum 30 foot front yard and 15 foot side yard setback requirements to construct an approximately 100 square foot garden shed. The property is located at 45 Longwood Avenue, Hyannis, MA as shown on Assessor's Map 287 as Parcel 054. It is in the Residence F-1 Zoning District.

Alex Rodolakis recuses himself and leaves the dais.

Members assigned: Brian Florence, George Zevitas, Matt Levesque, Herbert Bodensiek, Robin Young

Representative: Ian Warner is representing Amy Celantano. He sites the location and that they are seeking a variance for the front and side setbacks in order to construct a shed. Originally it was a boarding house with a large parking lot. They removed the parking area down to about 3 cars from 10 and added a cottage garden for vegetables and flowers with a walkway. He states that Ms. Celantano would now like to construct the garden shed for typical garden tool storage. It will be about 8 X 12; approximately 22.5 feet from Wachusett and 10 feet from the western side setback. As for the 3 prong test, the shed will be able to be constructed on top of the existing brick, financially if it had to be moved it would have to be on top of the septic which would then have to be moved including a tree that would detract from the property. Many of the existing neighborhood homes are nonconforming also and this shed would be somewhat set back.

Questions from the board

Robin Young asks if there will be plantings to block the shed from the front. Mr. Warner says that there will be plantings to shield the shorter side of the shed. George Zevitas asks if they could move it to a different location. Mr. Warner states that it would put it on top of the septic cleanout where the tree and garden is located.

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

George Zevitas makes findings:

In Appeal No. 2015-060, Amy Celentano seeks a variance from the front and side yard setback requirements of the RF-1 District to allow the construction of an 8' x 12' garden shed at 45 Longwood Avenue in Hyannis Port. The property is a .28 acre lot located on the corner of Longwood and Wachusett Avenues.

Proposal & Relief Requested

The Petitioners seek to construct an approximately 100 square foot garden shed in the parking area along Wachusett Avenue. The shed is proposed to be located approximately 22 ½ feet from the front property line, where a 30 foot setback is required; and approximately 10 feet from the side property line, where a 15 foot setback is required. The proposed shed appears to be a typical pre-fabricated garden shed.

Based on the plan submitted by the Petitioner, it appears a portion of the front setback area will be converted into a garden and terrace area. Approximately three on-site parking spaces will be retained.

Variance Findings

- Fulfilled the requirements in that the 3 prong test is met requiring a findings be met that 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:

All in favor

Motion is made by George Zevitas to grant the relief being sought in accordance with the staff report, conditions 1 through 3:

Variance Conditions

1. Variance No. 2015-060 is granted to allow the construction of a garden shed not to exceed 100 square feet in area or footprint within the required front and rear setback areas at 45 Longwood Avenue, Hyannis.
2. The shed shall be located in substantial compliance with the plan entitled "Celentano Residence, 45 Longwood Ave, Hyannisport, MA" drawn by ACER Landscape Design, dated November 20, 2015.

3. 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.

Seconded by Herbert Bodensiek

Vote:

AYE: *Herbert Bodensiek, George Zevitas, Robin Young, Matt Levesque*

NAY: *Brian Florence who states that he feels that the applicant has not completely demonstrated that the shed could be placed elsewhere on the lot.*

GRANTED WITH CONDITIONS

7:01 PM Appeal No. 2016-001

Oakleigh Trust

Oakleigh Trust is appealing the decision of the Building Inspector that the owner of 524 Wianno Avenue was entitled, as-of-right under 240-91(H), to a permit to demolish an existing dwelling and construct a new, larger dwelling in a different location on the property. The Appellant cites as reasons for the appeal the provisions of Section 240-91(H) including, but not limited to, the site has no frontage on a public road, does not meet the maximum lot shape factor requirements of 240-7(D) and is not the lot which was originally created prior to bulk and density requirements of the Zoning Ordinance. The property to which the appeal pertains is owned by the Chartin Realty Trust, Charles R. Grant, Trustee and addressed 524 Wianno Avenue, Osterville, MA as shown on Assessor's Map 163 as Parcel 027. It is located in the Residence F-1 and Resource Protection Overlay District.

Members assigned: *Brian Florence, Herbert Bodensiek, Alex Rodolakis, George Zevitas, Matthew Levesque*
Representative: *Samuel L. Rodriguez, Esq., and Michael Haney, Esq. for the appellant. Mr. Rodriguez has a response in regards to the staff report. One of the requests they have is that they have not been able to determine if there was for a civil engineer report for them to review or if there was a certified report regarding height and setbacks. He clarifies that they are seeking enforcement action and not an appeal of a building permit and are willing to continue this if need be.*

Brian asks Mr. Rodriguez to present their case. Attorney Rodriguez gives an overview. First is the request for enforcement, secondly that this is a pre-existing nonconforming lot which speaks to Section 6 and case law which he states pertains to the Rockwood case. Lastly, they will touch on 240-91H.

Attorney Haney states that the former lot of land had a building on it that was a house which was knocked down and replaced with a new dwelling in the 60's. That house was either a 4/5 or 6 bedroom dwelling and contained about 3200 sf. That was the house that became the subject of the current demo permit which allowed the house to be knocked down and the building permit appears to be applied for with additional amendments.

The former dwelling that was there, if on a lot of land that was a conforming lot, would be able to be knocked down. It is their opinion that there were amendments that were unclear. They are not in disagreement that if the lot of land where the building sat on was a conforming lot then you can build a replacement dwelling, but it is their opinion that it was a nonconforming lot that was entitled to grandfathered protection because the lot was created prior to the adoption of zoning and the land and dwellings existed.

He notes that the staff report recites on Page 3, that lot # 1 is the principal lot. He states there is no frontage and no way. The property owners have an easement right over a defined area. The way is not a defined lot shown on the Land Court plan. He thinks there is an assumption, possibly by the building inspector, that the way constitutes a street or road in the definition; and is his opinion that the building permit should've had an opinion as to access, egress and requirements for frontage. He believes that the assumption is erroneous and that there is only one party that has rights to go over the Tripp's property and access is not available to the public.

The additional concerns they have is that the lot with the tennis court, being added to the principal lot:

- **automatically triggers a requirement prior to the issuance of the building permit to get the zoning relief necessary under a special permit to construct a replacement dwelling as you are no longer constructing a replacement dwelling on the lot that was entitled to the grandfathering protection**
- **that lot has now been altered or changed and made significantly larger and the building inspector should have requested that they come before ZBA because it has been changed/altered and is therefore not entitled to the protection it had previously.**

He gives the zoning history. In his opinion, if you are going to build a main and guest house, it is an expansion of what was there.

Attorney Rodriguez reads from MGL 40A, Section 6. Section 6. Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood

He refers to the Palitz and Rockwood cases which he reads in part (Exhibit A – 2016-001). He states that in this case, they really need an engineer's report and doesn't see there was ever any special permit applied for. He asks whether a guest house is allowed in this zoning district. They contend when a house is more than doubled it is beyond the intention of 240-91, whether the guest house is permitted in this zone, and if the garage complies with the setbacks.

Mr. Haney thinks there is little debate that the garage should be considered an accessory dwelling and should be considered a separate unit. Also, the land area that was added, which is presently accommodating the tennis courts and will accommodate the garage, he believes comes close to what was the old lot line. He doesn't believe that the garage and the location of the garage should use the revised lot line but that the former lot line should be used.

George asks why it has taken so long for the appeal of the building inspector. Attorney Haney explains that he is not sure of the level of the construction that took place in July when this was documented. Application had been made to the Conservation Commission and all that took place at that time was the demo of the building. He states that there was no garage on those plans.

Brian Florence asks Attorney Haney if he has status or proof of the way. Attorney Haney states that it is in the package that is part of the staff report as land court. Brian Florence asks whose burden it is to prove/know that the permit is issued. Haney thinks it is up to the building inspector to make that determination. Haney believes that in the area above the garage, the plans has it labeled as kitchen. Florence asks if they were aware that the historical commission heard this. They discuss the process of the historical commission.

Brian Florence asks if there is anyone from the public who would like to speak either in favor or in opposition.

Attorney Michael Ford is representing the property owners/principals, Mr. & Mrs. Grant. Also with him tonight is Terrance Heinlien, AIA - Architect and E.J. Jaxtimer – Project Supervisor as well as Paul Roma – Town of Barnstable Building Inspector. Attorney Ford states that he is in opposition to the appeal before the board and asks that this not be continued. His clients have a deadline and would like to get into the house by June. He reviews the timeline of this process from his client's perspective. He has a copy of the plan that was presented to the Conservation Commission (ConComm) (Exhibit B - 2016-001) for which they were notified and had representation at that meeting by an agent - Arlene Wilson from Wilson and Associates. Attorney Ford states that ConComm approved it unanimously and that John O'Day from Sullivan Engineering stated that the appellants asked for and received copies of the plans with the garage and setbacks on that plan. Also, in the application that the appellants submitted, he didn't see any bylaw cited until tonight. Attorney Ford goes on to say that in 2015, the architect and other professionals representing the owners met with the building department on numerous occasions to make sure that everything was in order before the building permit was issued including the history of the lot. He references the staff report in regards to the subject of frontage. He refers to Chapter 41 Section 81FF. He states that the Town of Barnstable does not define frontage and therefore they look at the definition in the subdivision control law which is "either having the linear distance necessary on a public way or a way laid out under the subdivision control law or a way which was in existence prior to the adoption of the subdivision control which has suitable width and grades for the purposes for which it proposed to be used".

His clients reached out and met with the Lewis' daughter and reviewed the plans who questioned what the access would be since the way was shared and what the protocols were to be. They clearly knew with the ConComm approval, the size, placement, setbacks and how big it was and what would happen during construction. He has pictures to be filed (Exhibit C – 2016-001). He points to the picture of the excavator taking down the house. He states that while the demo permit is ex parte it is constructive notice. Mr. Lewis had come into the building department and had the process explained to him and feels that was actual notice. Attorney Ford refers to the Connors and Galavan cases.

As for the other issues, there has been no reconfiguration of the lot and only became nonconforming when the Resource Protection Overlay District (RPOD) was adopted. They purchased an adjoining lot and did not reconfigure and would've merged with the main lot. He refers to the 40A section 6 and a case in Chatham regarding a floodplain. Attorney Ford states that all the information is in the building permit and does not warrant a continuance. He refers to the staff report, page 7 (Exhibit D – 2016-001) showing the figures from the building department. He refers to a picture of the two structures on the lot (Exhibit C). As for the Palitz case, he doesn't think they are not creating any new nonconformities. He also feels that the Rockwood case and the appellant's reliance on that case is misplaced and not applicable. He suggests they uphold the building commissioner on the merits of this case. His clients reached out to the appellants and in the staff report a finding is made to the effect that this action by the appellants is too late.

Brian Florence asks Paul Roma - Town of Barnstable's Building Inspector for comments. Brian asks if he discussed the bylaw with Mr. Lewis. Mr. Roma says that he did on numerous occasions and gave him a copy of the demo/rebuild ordinance and explained what the process was.

Brian Florence asks for public comment. No one speaks.

The board discusses.

Alex Rodolakis asks Attorney Rodriguez for further comments. Attorney Rodriguez doesn't think this is moot and questions what would happen if a building inspector does make an error and does not catch it before 30 days then it would make it too onerous on other homeowners. He disagrees with the interpretation of the cases cited by the applicant's attorney and encourages the board to read them and decide for themselves. They discuss further the merger of the lots and the issue of grandfathering protection.

George Zevitas asks Attorney Haney to address the guest apartment versus a guest quarters. Attorney Haney states that based upon the review of the plans that were filed, the engineering plans identified the living space above the garage as guest house. He states that the plans show the guest house creatively being attached to the main house via a breezeway and believes that they are allowing two dwellings on one lot.

Attorney Ford wants to submit a plan showing the garage for the record. (Exhibit E- 2016-001)

Brian Florence asks Mr. Roma about the guest house. Mr. Roma states that no local building inspector has the authority to authorize that and that it is the determination of the building commissioner who will take a look at it and that in this area of Osterville it is customary.

Attorney Ford reiterates that this is 7 bedrooms, two are in the garage area and the building department has allowed a kitchenette where those two bedrooms are.

The board discusses.

Brian Florence makes findings:

Findings

In Appeal 2016-001, The Oakleigh Trust, seeks to overturn the November 4, 2015 determination of the Building Inspector that "the owner of 524 Wianno Avenue was entitled as of right under 240-91(H) to a permit to demolish an existing house and construct a new, larger house in a different location on the site." The application cites as reasons for the appeal:

1. the provisions of 240-91(H), including but not limited to the site has no frontage on a public road;
2. does not meet the requirement of 240-7.D;
3. and is not THE LOT which was originally created prior to bulk and density requirements of the Ordinance."

4. The property to which the appeal pertains is owned by the Chartin Realty Trust, Charles R. Grant, Trustee and addressed 524 Wianno Avenue, Osterville, MA as shown on Assessor's Map 163 as Parcel 027. It is located in the Residence F-1 and Resource Protection Overlay District.
5. The subject property is a combination of two ownership lots, totaling 1.83 acres of upland, and deriving frontage and access from a private way in existence prior to the adoption of the Subdivision Control Law. The way is shown on a 1941 Land Court Plan, 18587-A.
6. Lot 1, created by a Land Court Plan dated September 27, 1968 and recorded December 16, 1968, contained 1.65 acres of upland. Beginning on March 6, 1968, lots in the area were zoned RD-6 and were required to contain a minimum of one acre and be 125 feet wide. Minimum lot shape factor and upland area requirements had not yet been adopted.
7. With the adoption of the Resource Protection Overlay District and the resulting increase in minimum lot area requirements to two-acres in November 2000, the subject lot became nonconforming. The lot is grandfathered under Section 240-91.
8. In 2004, the 7,362 sq.ft "accessory lot" containing the tennis court came under common ownership with the "principal lot". The additional land area provided by the accessory lot brought the property into greater conformance with zoning. As stated in the April 8, 2015 letter from Attorney Christine Jenness, the principal lot and accessory lot were considered together for "building and zoning purposes."
9. Demolition and rebuilding on nonconforming lots is regulated by Section 240-91(H) of the Zoning Ordinance. This section allows for the demolition and rebuilding of single-family residences on nonconforming lots containing a minimum of 10,000 square feet if certain criteria are met.
 - a. The proposed construction of the new residence conforms to all use and setback requirements (30 foot front, 15 foot side/rear) of the RF-1 Zoning District.
 - b. A maximum building coverage of 20% of the upland area of the lot is required. The 1.83 acre lot would allow for approximately 15,920 sq.ft of lot coverage. A conservative estimate of the total lot coverage of the structure, swimming pool and shed total approximately 6,000 sq.ft or about 7% of the total lot area.
 - c. A maximum floor area ratio of 0.30 is required. The 1.83 acre lot would allow for approximately 23,880 gross sq.ft of structure to be reconstructed. A conservative estimate of the dwelling, including the basement, garage, first floor, second floor and half story totals approximately 7,300 sq.ft or a FAR of about 0.09.
 - d. The building height, to the plate, cannot exceed 30' feet or 2 ½ stories. The approximate height of the structure to the top plate is 20 feet. A letter from the project architect, Terrance Heinlein, AIA, dated June 9, 2015 provides evidence of the proposal's compliance with the half-story requirements of the ordinance.
- The Appellant had constructive notice of the issuance of the building permit, as evidenced by their correspondence with the Conservation Division. The Appellant did not file an appeal of the issuance of the building permit, as provided for by Massachusetts General Law Chapter 40A Sections 8 and 15. and had conversations with building inspector, Paul Roma
- This appeal constitutes a request for enforcement action made pursuant to Massachusetts General Law Chapter 40A Section 7. Pursuant to the conclusion of *Connors vs. Annino*, requests for enforcement action made under Section 7 are "not an available alternative remedy" to appealing the issuance of a building permit.
- The Appellants' failure to file an administrative appeal of the issuance of the building permit within 30 days of its issuance deprives this Board of jurisdiction to consider this appeal.

Jenkins clarifies that the findings and motion are one and that the findings support that motion to uphold the Building Inspector.

Seconded by George Zevitas

Vote on findings:

AYE: Brian Florence, George Zevitas, Herbert Bodensiek, Matthew Levesque

NAY: Alex Rodolakis feels that he is in opposition to the findings dealing with the property itself but is in favor with the dealings of the issue of constructive notice. Brian clarifies that this will be an opposition.

Motion is made by Brian Florence to Uphold the Building Inspector and seconded by Matt Levesque.

Vote on motion:

AYE: Brian Florence, George Zevitas, Herbert Bodensiek, Matthew Levesque, Alex Rodolakis

NAY: None

UPHELD THE BUILDING INSPECTOR

7:02 PM Appeal No. 2016-002

E R & C Enterprises, LLC

E R & C Enterprises, LLC has applied for a Special Permit pursuant to Section 240-25(C)(1) – Conditional Uses in the Highway Business District for a retail convenience store and food establishment with drive-through. The Applicant, who currently operates a preexisting nonconforming gas station with car wash and retail, intends to remove the existing drive-through car wash, including all equipment and underground tanks, and construct a 980 square foot addition with a relocated drive-through at the rear of building. The drive-through would be converted to a takeout beverage and food lane. The retail sale of gasoline, a preexisting nonconforming use, is proposed to continue. The property is located at 577 West Main Street, Hyannis, MA as shown on Assessor's Map 269 as Parcel 003. It is located in the Highway Business (HB) Zoning District and the Wellhead and Groundwater Protection Overlay Districts.

**Members assigned: Brian Florence, George Zevitas, Alex Rodolakis, Herbert Bodensiek, Robin Young
Matt Levesque leaves for the evening.**

Representative: David Lawler, Esq. Also with him tonight is Hal Choubah – Engineer.

Attorney Lawler states that he has met with Growth Management and Tom Perry – Building Commissioner about this. He has a revised parking plan. Part of the parking lot is within the town layout and would do a license agreement and with respect to the islands they would do an adopt-an-island at their cost. He gives a summary of relief being requested. They are trying to set up a queue of vehicles to provide for maximum access. The applicant is planning on serving breakfast, coffee, lunch. He states they do not, at this time, have a lessee but it would be possibly a Dunkin Donuts® or Honey Dew® or something to that affect. He submits a memo (Exhibit A). He states that most of the traffic flow in this area is going into Hyannis and within this area there are several coffee shops. He states that this will not create any additional counts in this area. In his discussion with the town, they have talked about the curb cut which he believes the town wants to keep open. If the town is looking for right and left turn only onto Old Craigville Road, they will accommodate that. He shows "proposed modification at 577 Main Street by CEG (Exhibit B). He suggests that the traffic impact will not be greater. The town has raised queuing concerns. They are just converting from one type drive thru to another. He thinks the queue will be minimal. He states that the school does not open until 9:00 am and issues out at 3:00 pm.

George Zevitas asks about the retail use and asks to explain the history of that and how it became retail. Attorney Lawler is not certain and is not sure if retail existed. Elizabeth Jenkins is not sure when the retail use began and points to the 2005 special permit regarding use and development which approved an automobile detail bay and retail sales of gasoline. Attorney Lawler states that if it wasn't approved then they would be here to get that approval and if it is necessary that would be another reason they are here also.

Hal Choubah is asked if there will be any changes to the canopy. Hal says no and that the canopies were permitted when they came before this board previously. Also, he states that at that time, they had sold snacks. Herbert Bodensiek clarifies with Mr. Choubah that this is an analysis and not a study. Mr. Choubah states that what was submitted tonight was a report looking at the existing conditions and data from the Institution of Traffic Engineers (ITE) grip generation manual according to what the use was. He states that the key is to manage the traffic and points out the curb cuts. He believes that most traffic would be between 8:00 and 9:00 am and around 5:00 pm.

Brian Florence asks if there is anyone from the public who would like to speak either in favor or in opposition.

Ann Marie Moriarity, an abutter, is here with her mother and states that they have deep concerns about the increase in traffic and states that it will also increase once there are future additions of classrooms at Hyannis West. They are concerned about this school zone be impacted by the addition of the coffee shop. As for residents, they would like to see an additional traffic study. She also states that the retail use presently exists where the rest rooms and a service bay once existed and that the owner removed the restrooms and turned it into retail.

Catherine Moriarity speaks and states that she has lived on Old Craigville Road for over 50 years and is concerned about the traffic. Because of the school bus situation, more parents are now dropping off their children and picking them up creating more traffic and traffic concerns. People are parking behind the gas station because of lack of parking at the school, walking across the road and that there is no crosswalk. The traffic has increased since the retail use started and traffic increasing because of trucks dropping off supplies.

Attorney Lawler states that the school was given notice on this and the parking lot behind this property is not owned by the applicant. They would adopt traffic measures that staff or the town may recommend mitigate/assist this board to make a determination.

Robin Young would ask for an independent traffic study of the area. He would like to also hear about the end of life on the gas tanks since this is in the well head area. The board discusses traffic concerns and would like to see a traffic study.

Attorney Lawler states that they could agree to delivery times of gas and would agree that any oil deliveries would be done in non peak times and work around the schedule of the Hyannis West Elementary School. They would also coordinate delivery trucks for the retail/coffee use.

Attorney Lawler agrees to work on this request with Elizabeth Jenkins.

Motion is made and seconded to continue this to February 10 at 7:00 pm

Vote:

All in favor

CONTINUED TO FEBURARY 10, 2016 AT 7:00 PM

7:03 PM Appeal No. 2016-004

DeStefano

Patrick and Susan DeStefano have petitioned for a variance to Section 240-47.1.A(3) Family Apartments. They seek to construct a family apartment above a garage that will be detached from the principal single-family dwelling. The property is located at 55 Bridget's Path, Centerville, MA as shown on Assessor's Map 169 as Parcel 099. It is in the Residence C Zoning District.

Members assigned: Brian Florence, Alex Rodolakis, George Zevitas, Herbert Bodensiek, Robin Young

Representative: Brad Sprinkle – Contractor and Eric the project supervisor. Also with him are the applicants, Mr. & Mrs. DeStefano. He gives summary of relief being requested. A daughter has moved back in with her family, they want to live in the apartment and for her daughter to move into the house.

Robin Young asks if they have received feedback from neighbors. Mr. DeStefano thinks they are all okay and that one neighbor wrote a letter in support that the members have a copy of. Mr. DeStefano states that it will be a garage and have an apartment above it. Alex Rodolakis asks why they wanted it detached. Mr. DeStefano states because of privacy. Mr. Sprinkle adds that there is not any appropriate land on the right and that the septic system exists on the left side back but there were constraints. Brian asks Mr. Sprinkle if has seen the staff report and to speak to the 3 prong test. Mr. Sprinkle states that because of the nature of the lot and the setbacks the hardship would be that they would have to move the septic system to come off the rear; and that he doesn't think there would be a detriment as it will look attractive and will look like a free standing two car garage; and his neighbors are not objectionable.

Alex Rodolakis asks about the pitch of the roof. Mr. Sprinkle states that the plate will not exceed 20 feet and the pitch will be 8 to 10 pitch.

Brian Florence asks for public comments. No one speaks.

The board discusses.

Alex Rodolakis clarifies that the applicant knows the rules/regulations of the family apartment ordinance. Mr. DeStefano states that he has seen the requirements and agrees to them.

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; in this case the lot is in such a manner that the applicant is not able to build it attached apartment
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and.. having to remove septic system
- 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. They have not heard any opposition and have a letter from Debra Askew in favor

Vote:

All in favor

Based on those positive findings, Alex Rodolakis makes a motion to grant subject to the conditions as outlined in the staff report being conditions 1 – 7 and as shown below:

Variance Conditions

1. Variance No. 2016-004 is granted to allow the construction of a family apartment on the second story of a detached accessory building at 55 Bridget's Path, Centerville. The family apartment shall not exceed 800 square feet and shall have no more than one bedroom.
2. The apartment shall be constructed and maintained in substantial conformance with the elevations and floor plans submitted to the ZBA file and all requirements of the Building Code.
3. The family apartment shall be maintained in compliance with the requirements of Section 240-47.1.
4. There shall be no renting of rooms or lodging permitted on the property during the life of this variance.
5. Prior to occupancy of the apartment, the Applicant shall obtain septic permits from the Health Division to connect the accessory family apartment into the septic system on the lot. The Applicant shall provide detailed floor plans of the dwelling and apartment to the Health Division.
6. 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.
7. 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:

All in favor

GRANTED WITH CONDITIONS

Correspondence

- Letter dated December 18, 2015 from Planning Board in reference to Notice of Public Hearing on Proposed Zoning Amendment to Amend the Code: Part 1 of the General Ordinances, Chapter 240 Zoning of the Town of Barnstable to include a Hyannis Parking Overlay District.
- Cape Cod Commission – Notice of Minor Modification (Type 1) to the Development of Regional Impact Decision for the Barnstable Municipal Airport Improvement Project that was approved by the Cape Cod Commission on December 23, 2015.

Adjournment

Motion is made and seconded to adjourn.

Vote:

All in favor

Exhibits

2016-001 – Oakleigh Trust – Exhibit A

Approved