



Town of Barnstable Zoning Board of Appeals



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Board Members:

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David A. Hirsch – Associate Member Herbert Bodensiek – Associate Member Robin Young – Associate Member Matthew Levesque – Associate Member
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Staff Support

Elizabeth Jenkins – Regulatory / Design Review Planner - elizabeth.jenkins@town.barnstable.ma.us
Anna Brigham – Principal Planner – anna.brigham@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, April 27, 2016

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

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

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

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 in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Minutes

Approval of Minutes from February 10, 2016 and February 24, 2016

Minutes of February 10, 2016 = Motion is made by Alex Rodolakis and seconded by David Hirsch to approve as submitted.

**Vote:
All in favor**

Minutes of February 24, 2016 = Motion is made by David Hirsch and seconded by Robin Young to approve as submitted.

**Vote:
All in favor**

Old Business

7:00 PM Appeal No. 2016-006

Haddock

Lucinda Haddock has petitioned for a variance to Section 240-14.E Bulk Regulations. The petitioner is requesting a variance to construct a carport within a required side yard setback. The property is located at 108 Buckwood Drive, Hyannis, MA as shown on Assessor’s Map 272 as Parcel 082. It is located in the Residence C -1 Zoning District.

Continued from February 10, 2016 and March 23, 2016.

Members assigned February 10, 2016: Brian Florence, Alex Rodolakis, George Zevitas, Robin Young, David Hirsch (Matt Levesque also present)

Members assigned tonight: Brian Florence, Alex Rodolakis, David Hirsch, Robin Young

Brian Florence informs Ms. Haddock that there are only 4 members present who can vote and that the vote has to be unanimous. Ms. Haddock, who is representing herself, agrees to go forward with a 4 member board. She has brought photos of other carports in the neighborhood (Exhibit A). She also states that since the last time, she was asked to get a scale drawing and measurements. She notes that her lot is irregularly shaped due to the moving of the lot line sometime ago which has also made the placement of the carport problematic. As for financial hardship, in order to put the carport in a more conforming site, she would have to relocate the septic system which would be a huge expense, remove the bulkhead, or place it in the front setback which would still not conform. She states that her immediate neighbors have no objection to this project and believes that this would not be a detriment to the neighborhood and would increase her property value. Brian Florence asks her how the repositioning of the lot line would affect the project if it had not been done. Ms. Haddock believes that even without the repositioning of the lot line that she would still not be able to meet the setback requirements.

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

Alex Rodolakis would be okay with the carport as long as it remains fully opened. Ms. Haddock is asked by Brian Florence if she would be objectionable to a condition to that effect. Ms. Haddock is okay with that additional condition.

Alex Rodolakis makes findings:

Based on testimony from the applicant and the opportunity for public comment:

Variance Findings

The applicant has met 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; particularly due to unique shape, in particular, a bump out from the abutting property which makes it impossible to locate a carport anywhere else on the property,**
- **a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and due to shape and the need for the carport which the applicant has testified the hardship,**
- **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.**

Variance Conditions

1. Variance No. 2016-006 is granted to allow the construction of a carport within the required 15 foot side yard setback at 108 Buckwood Drive, Hyannis.
2. The carport shall not be closer than two (2) feet from the property line.
3. The carport shall be constructed in substantial compliance with the plans submitted to the Zoning Board of Appeals file entitled "Proposed house with new carport" and "Front elevation with proposed carport" drawn by Gale Force Construction dated January 16, 2016.
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 a building permit. The rights authorized by this variance must be exercised within one year, unless extended.

Alex wants to add:

#5 No filling in of the walls of the carport will be constructed without further relief from this board

Seconded by David Hirsch

Brian Florence asks Ms. Jenkins why that piece of the lot was carved out. Ms. Jenkins explains that it is unclear but perhaps, the lots were under the control of the developer and to accommodate the setback requirements of the foundation perhaps.

Brian Florence notes that in this case he can see past this as a shape issue

Vote:

All in favor

GRANTED WITH CONDITONS

Alex Rodolakis recuses himself on the L.I.F.E. case:

New Business

7:00 PM Appeal No. 2016-017

L.I.F.E. Inc.

Living Independently Forever (L.I.F.E.) Inc. has requested a major modification of Comprehensive Permit Nos. 1995-020, 1992-068, 2010-036 and 2014-039 to allow the addition of eight (8) one-bedroom condominium units within two multi-family buildings to the existing twenty (20) units on the L.I.F.E. Hyannis campus. This request is being made pursuant to 760 CMR 56.05(11)(a) – Changes after Issuance of a Permit. The modification is to add eight (8) units in two (2) phases; each phase will consist of one, four-unit multi-family building. The campus is an affordable housing development under Chapter 40B restricted to adults with learning disabilities who are capable of living independently and who work in the community with some guidance and assistance from staff. The property is located at 550 Lincoln Road Extension, Hyannis, MA as shown on Assessor's Map 272 as Parcel 025. It is located in the Residence C-1 Zoning District and is located within the GP Groundwater Protection Overlay District.

Members assigned: Brian Florence, David Hirsch, Robin Young, Spencer Aaltonen
Representative: Attorney Peter Freeman

Attorney Freeman is aware that there is only 4 members. Ms. Jenkins states that a 40B only needs a simple majority.

Also with him are: Dan Ojala from Down Cape Engineering, LIFE Project Manager – Ed Whalen and Steve Shuman from AKRO Architects. Attorney Freeman explains that this is an existing comprehensive permit and gives background on LIFE, Inc. He explains that currently, there are 20 units on the campus. The proposal, in phases, one full unit, is to add at one corner of the property which is currently vacant, one, 4 unit building. Also, at the other end coming from Castlewood Circle, they are proposing the same type of building. The affordable units will be rentals. They also met with the Growth Management Department who suggested that they go through the steps. He points out the Lincoln road extension property. There is a big demand and because of that demand they are requesting 8 units. He states that they have also met with Site Plan Review and has a letter of approval with conditions and will work with the fire department on renumbering the units. They have sent a letter to the Town Manager who issued a support letter which acknowledged that there is a need for these types of units. They have a Department of Housing and Community Development (DHCD) approval letter as well as an approval letter from the Cape Cod Commission. He states that each unit = 857 sf each, 1 bedroom unit. All waivers will be carried forward and do not think they need anymore. There will be Very little automobile usage by the residents. He shows a picture of the existing buildings (EXHIBIT A). Next slide is the new parcel for the proposed building. Next shows common area and office.

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

Brian Florence clarifies what units will be affordable and for rent. Attorney Freeman states that there are 16, 2 bedroom units of which 4 were affordable rentals. Brian Florence would like to see one of the new units as a 2 bedroom unit.

Attorney Freeman clarifies that they have read the staff report and have discussed it with staff and notes that they will also have to sign an amended regulatory agreement. Elizabeth Jenkins states that there was a small update to the staff report that did not make it into the staff report that the members had received regarding Condition #13 that just clarified that the monitoring will be in accordance with regulatory agreement and that the town does play some role in the monitoring agreement in addition to DHCD.

David Hirsch asks Attorney Freeman that if an owner moved out of state what would be the process be for the selling of their unit. Attorney Freeman states that there are eligibility requirements in the condo documents and that the occupants have to comply with requirements spelled out therein. They also sign a service agreement.

Robin Young makes findings:

Findings

The following findings in support of modification of the LIFE, Inc. Comprehensive Permit have been drafted for the Board's consideration:

1. By reference, the Board incorporates all finding of fact with regards to standing and consistency with local needs made in Comprehensive Permit Nos. 1995-020 and 2010-036 except to the extent those findings are further modified herein.
2. On March 11, 2016, Living Independently Forever, Inc. (LIFE, Inc.) ("Applicant" or LIFE, Inc.) submitted a request to substantially modify a comprehensive permit to the Zoning Board of Appeals Office requesting to expand the development authorized in Comprehensive Permit No's. 1992-68, 1995-20, 2010-036, and modified March 15, 1993, December 1, 1995, December 19, 2002, November 3, 2010 and June 25, 2014. The current application seeks to construct a sixth and seventh multi-family building on the property.
3. In accordance with the ZBA Rules and Regulations for review of Comprehensive Permits, LIFE, Inc. submitted a Notice of Project Change, site development and utility plans, preliminary architectural drawings, and a tabulation of proposed buildings.
4. The Applicant received a project approval letter from the Department of Housing and Community Development (DHCD) on April 4, 2016.
5. According to the Department of Housing and Community Development's December 5, 2014 Subsidized Housing Inventory (SHI) the Town of Barnstable had a total of 1,373 low or moderate income housing units, or 6.7% of the total housing stock. The Town has not met the goal of Chapter 40B to provide 10% of its year round housing stock as affordable housing nor has it satisfied any of the statutory minima.

6. The proposed modification locates both new structures on "Parcel B". The subject property is located at 550 Lincoln Road Extension, Hyannis, MA as shown on Assessor's Map 272 as Parcel 025. The property is owned by LIFE, Inc.
7. The development is commonly referred to as "LIFE at Hyannis", a condominium development of five multi-family building totaling 20 two-bedroom units and an office/recreation building. Occupancy of the units is restricted to learning-disabled adults only. The applicant provides on-site support services to the residents. The support services are designed to provide necessary assistance, yet foster independent living within the community.
8. Granting of this Comprehensive Permit application would result in the development of the 3.99 acre site into a condominium development consisting of:
 - 16, two-bedroom residential townhouse and ranch units within 4 multi-family buildings totaling 24,250 sq.ft., located on Parcel B,
 - 4, one-bedroom, single-level residential townhouse units within 1 multi-family building totaling 4,000 sq.ft., located on Parcel A, and
 - 8 one-bedroom units, 857.5 square feet each, located within two newly constructed multi-family buildings (four units each) located on Parcel B,
 - Recreation/office building, shed, fenced tennis court, and on-site parking for 24 vehicles located on Parcel B and six (6) additional on-site parking spaces on Parcel B.
9. The Applicant submitted this project to the Site Plan Review Committee to allow Town officials to review the proposal for compliance with all site development standards. The Committee issued a letter dated February 4, 2016 approving the project with conditions.
10. In addition to the existing five (5) two-bedroom units dedicated in perpetuity as affordable, the grant of this modification will add two more units dedicated as affordable in perpetuity. The existing affordable units are all owned by Living Independently Forever Inc., who leases those units to income qualified persons at affordable rents. The existing affordable units are Units A-1, B-2, C-4, D-3, and D-4.
11. The two affordable units shall be owned by LIFE and rented as affordable to income-eligible persons earning no more than eighty percent (80%) of the annual median income of the Barnstable Metropolitan Statistical Area (MSA) as required by the Department of Housing and Community Development's Local Initiative Program. The two proposed affordable units will remain affordable in perpetuity, secured by the DHCD Local Initiative Program Regulatory Agreement.
12. The proposed units to be added are each approximately 857.5 square feet, two-level, one-bedroom, apartment units. Additional storage space is provided for each of the unit in the basement area of the proposed building.
13. Upon implementing this modification the total number of bedrooms on the site would be 44. The density of the development is approximately eleven (11) dwelling units per acre. All of the units will be served by public water and connected to Town sewer.

David Hirsch notes that #7 should read that there should be 16, 2 bedroom units where as it stands right now it says 20, 2 bedroom units.

Attorney Freeman states that in #12, the units themselves are not two levels but there are two levels in the building.

Vote:

All in favor as amended.

Motion is made by Robin Young to grant with the following conditions:

Conditions

1. All terms, conditions and restrictions of Comprehensive Permit No. 2010-036, and incorporation and modification of Comprehensive Permit Nos. 1995-020 and 1992-068, as modified, shall remain in full force and effect except as further modified and conditioned herein.
2. This modification is granted to allow eight (8) one-bedroom residential condominium units within two new multi-family buildings located on "Parcel B".
3. The sixth and seventh multi-family building to be developed on the site shall be substantially in conformance with architectural plan submitted to the Board entitled "Living Independently Forever, Inc.", drawn by AKRO Associates dated January 16, 2016, and "Site Plan Phase 5 & 6", drawn and stamped by Down Cape Engineering dated January 28, 2016 (last revised March 14, 2016).
4. Final approval of the plans in accordance with all recommendations of the February 4, 2016 Site Plan approval letter shall be granted prior to issuance any of building permits.
5. The construction of the proposed new development may occur in two phases, one building and associated improvements in each phase. Provided that this permit has been exercised in accordance with 76 CMR 56.05(12)(c), the Applicant shall have the right to complete phase two of the development without additional review or approval by this Board upon a demonstration of compliance with all conditions of this permit.

6. Occupancy of the housing units is limited to learning-disabled adults. The Applicant shall maintain on-site support services designed to foster independent living within the community.
7. In addition to the 5 two-bedroom units already dedicated as affordable under the Local Initiative Program (LIP), two of the proposed new one-bedroom units, one in each building, (so that there will be one new affordable unit in each phase), shall be dedicated as affordable in accordance with the conditions of this decision.
8. The affordable units shall be owned by Living Independently Forever, Inc. and rented to income qualified individuals, as defined herein and as allowed by the Department of Housing and Community Development and the requirements of the Local Initiative Program. Living Independently Forever, Inc. shall not transfer ownership of the affordable units to any other entity without permission from the Board.
9. The two units shall be dedicated in perpetuity as affordable units as that term is currently defined by Massachusetts Department of Housing and Community Development. The affordable rents, inclusive of utilities, shall not exceed 30% of 80% of the Area Median Income (AMI) of the Barnstable-Yarmouth Metropolitan Statistical Area (MSA), based on household size, and shall not exceed the Maximum Allowable Rents as set by the U.S. Department of Housing and Urban Development (HUD) of the Barnstable-Yarmouth MSA.
10. The affordable units shall only be rented to income eligible individuals and households, defined as those whose maximum income does not exceed eighty percent (80%) of the median income of the Barnstable-Yarmouth Metropolitan Statistical Area, adjusted for household size. All of the units shall be made available on a fair and open basis. Services and facilities shall be provided equally to all market rate and affordable units.
11. The project shall comply with all Local Initiative Program requirements and any conditions the State may insert upon the grant of this permit, to the extent that they are not inconsistent with this decision.
12. A new or modified Amended and Restated Regulatory and Use Agreement, pursuant to the Local Initiative Program and consistent with the terms of this Comprehensive Permit, in form and content approved by the Town Attorney, shall be executed by the Subsidizing Agency, the Town of Barnstable by its Town Manager, and the Applicant. Said Agreement shall be recorded at the Barnstable County Registry of Deeds prior to the issuance of any building permits.
13. Monitoring of the development shall be consistent with the terms outlined in the Amended and Restated Regulatory and Use Agreement. The Applicant shall provide the Town Growth Management Department with necessary monitoring information and shall timely supplement said information upon request. All costs associated with monitoring for consistency with the Regulatory Agreement shall be borne by the Applicant.
14. The Applicant shall prepare an Affirmative Fair Housing Marketing Plan (AFHMP), prepared in accordance with Section III of the 40B Guidelines and approved by the Department of Housing and Community Development prior to the issuance of a Certificate of Occupancy for the first unit of the proposed new development.
15. The units shall have energy efficient heating, low flow toilets and showers, and thermal windows and doors. The attics and basements of the structure shall not be developed as a habitable area.
16. All of the new units, like all existing buildings, shall be connected to public water supply and the Town's Wastewater Treatment Facility. The applicant shall assume full financial responsibility for all the costs to connect to town water and sewer including responsibility for connection permits and user fee charges for each unit.
17. In addition to the 24 on-site parking spaces located on Parcel B and 6 on-site parking spaces on Parcel A, there shall be two on-site parking spaces on Parcel B as shown on the plan referenced in Condition No. 3 herein.
18. The applicant shall, to the greatest extent possible, attempt to preserve the existing trees and under-story vegetation on the lot to preserve screening to abutting properties. There shall be no clearing within 5 feet of the side property lines.
19. Addressing and labeling of all buildings on the site shall be coordinated with and completed to the satisfaction of the Hyannis Fire Department and Department of Public Works.
20. Upon completion of all work in each phase, a registered engineer or land surveyor shall submit a letter of certification that all work has been done in substantial compliance with the approved site plan. This document shall be submitted prior to the issuance of the final certificate of occupancy.
21. The applicant shall comply fully with all conditions imposed in the project eligibility letter from the Department of Housing and Community Development.
22. This comprehensive permit modification is granted to LIFE, Inc.; it shall not be transferred to any other person or entity without prior written approval of the Zoning Board of Appeals.

Prior to the issuance of any permits for the development, this decision shall be recorded at the Barnstable Registry of Deeds. A copy of the recorded document shall be submitted to the Zoning Board of Appeals file.

Seconded by David Hirsch

Brian Florence asks about having handicapped units. Steve Shuman states that the first floor units are capable of being handicapped accessible.

Vote:

All in favor

Motion is made by Robin Young to grant the request for waivers as follows:

Request for Waivers

The following is proposed for the Board's consideration regarding waivers necessary for the proposed project:

1. Comprehensive Permit No. 1995-020 granted waivers/variances from the Town's zoning and subdivision regulations and are itemized therein.
2. Comprehensive Permit No. 1995-020 provided relief from required on-site parking requirements. Further relief is granted to allow 32 parking spaces to serve 28 units.
3. No waiver of fees in connection with this modification has been requested or is granted.

Seconded by David Hirsch

Vote:

All in favor

GRANTED WITH CONDITIONS

Correspondence

Section 14 Certificate from Cape Cod Commission for Chick-Fil-A project, approved on April 7, 2016

Elizabeth Jenkins explains the correspondence.

Upcoming Meetings

May 11, May 25, June 8

Adjournment

Motion is made by David Hirsch and seconded by Robin Young to adjourn.

Vote:

All in favor