



Town of Barnstable

Zoning Board of Appeals



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Board Members:

Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek – Clerk Robin Young – Regular Member Matthew Levesque – Associate Member
 Spencer Aaltonen – Associate Member Jacob Dewey – Associate Member
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Staff Support

Elizabeth Jenkins – Director - 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, August 9, 2017

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

Alex Rodolakis - Chair	Present
David Hirsch – Vice Chair	Present
Herbert Bodensiek - Clerk	Present
Robin Young	Present
Matthew Levesque	Absent
Spencer Aaltonen	Present
Jacob Dewey	Present

Also present were Elizabeth Jenkins – Director, Ann Brigham – Principal Planner and Carol Puckett – Administrative Assistant

As a quorum has been met, Alex Rodolakis opens the hearing at 7:00 pm

Call to Order

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

Alex reads the following with no response:

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.

Alex reads the following into the record:

Old Business

7:00 PM Appeal No. 2017-051

Julius, Wentzel, Dubec

John Julius, Laura Wentzel and Susan Dubec have filed a “Notice of Appeal” of a Site Plan Review Committee decision (#024-17) issued for a non-profit educational group residence operated by Homeless Not Hopeless, Inc. at 95 Chase Street, Hyannis. The subject property is located at 95 Chase Street, Hyannis, MA as shown on Assessor’s Map 307 as Parcel 134. It is located in the Residence B (RB) Zoning District. Continued from July 26, 2017. No members assigned, no testimony taken.

Members assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek, Robin Young, Spencer Aaltonen

Alex states that there is a request to withdraw by John Julius who is present tonight. Alex confirms with John Julius that he will be withdrawing.

Motion is made by David Hirsch and seconded by Spencer Aaltonen to withdraw.

Vote:

All in favor

WITHDRAWN

Alex reads the following into the record:

New Business

7:00 PM Appeal No. 2017-058

Ciccarelli

Eugene C. Ciccarelli, III, individually and Eugene C. Ciccarelli, III, and Susan C. Evans, Trustees of the Margaret E. Ciccarelli 1999 Trust, are seeking a decision from the Board upholding the Building Commissioners issuance of Building Permit No. 17-1781 for the construction of a single-family home on a nonconforming lot. Pursuant to Section 240-88, the Applicants are seeking a review of materials and a decision supported by specific findings that no merger has occurred. The property is located at 40 Hathaway Road, Osterville, MA as shown on Assessor's Map 115 as Parcel 016. It is located in the Residence F-1 (RF-1) and Resource Protection Overlay Zoning Districts.

Members assigned tonight: Alex Rodolakis, David Hirsch, Herb Bodensiek, Robin Young, Spencer Aaltonen

Representative: Albert Schulz, Esq., who is representing the appellants. Attorney Schulz gives summary as this is an appeal of the issuance of the building permit and thinks that his clients are presumptably, as abutters, aggrieved. They are seeking assistance with issues first brought to attention by the town and town attorney's office and the building inspector. At the time a building permit was applied for at 40 Hathaway, Paul Roma – Interim Building Commissioner, brought up the question of possible merger. He states that there were zoning changes in 1968 and 1983 when 40 Hathaway Road was conveyed to the Ciccarelli Land Trust. Attorney Schulz attended a meeting at the town offices with Mr. Roma, John Kenney, Esq., who represented the prospective purchaser, Michael Gil who represented the owner of 40 Hathaway Road, David Houghton – First Assistant Town Attorney, and Mr. Roma. At that meeting there was a discussion about the possible merger of the lots. At that meeting, Mr. Roma agreed to issue that permit with the understanding that they would get the matter before the Zoning Board of Appeals for resolution as to whether there was any merger that occurred on these two occasions. What they are seeking are some findings which he has proposed (Exhibit A) the most important of which is finding #8 and 12 that at specific points in time there was separate ownership and not common ownership of 40 and 58 Hathaway Road. The Ciccarelli's purchased Lot 64 (the improved residential lot) on Land Court Plan 26672 in 1961. They built the residence in 1962 and also purchased the vacant lot next door in 1962 (Lot 63) both as tenants in entirety. The lots were conforming lots at that time and remained conforming lots until 1968. In 1967, prior to the zoning change in 1968, the Ciccarelli's conveyed the vacant lot Dr. Ciccarelli individually. In 1968 the zoning changed to one acre. In June of 1980, the Ciccarelli Land Trust was created. He explains the trust terms.

Alex states that there are no notes on the permit subject to an appeal being filed and what the board is being asked is to eliminate all potential risks on the permit and doesn't think that it would be binding. Alex thinks that what Attorney Schulz is asking is if this was a validly issued permit/confirmation that it was properly issued. Alex states that he is not sure that, jurisdictionally, it is appropriate.

Attorney John Kenney, who is representing the potential buyer of the lot, refers to the meeting at which they talked about coming to the board. He explains how his client is aggrieved and agreed at the meeting with Paul Roma that they would bring this before the board.

Attorney Kenney and Alex Rodolakis discuss the concerns of the board and the procedural hurdle.

Alex asks for public comment.

Michael Gil is representing the owner of the property and agrees that this is a jurisdictional issue. He believes that the board has three options: to affirm the issuance of the building permit, reverse it, or decline jurisdiction. No evidence has been provided in order to reverse issuance of the building permit, and there has been play of good arguments that Attorney Schulz has given to the building permit and why merger has not occurred. They are here because Paul Roma had asked them to come before the board for an advisory opinion. He believes the law is murky about lot merger. He believes that there is standing and asks to affirm the permit rather than decline jurisdiction.

The board discusses. Alex asks the attorneys to see if they want to continue, withdraw or go with a vote.

Motion is made by Alex Rodolakis to find that the Zoning Board of Appeals does not have jurisdiction to hear this appeal.

Vote:

All in favor

Attorney Kenney would like clarify that they are denying this because the building permit was validly issued. Alex reiterates that they don't have jurisdiction to hear this.

BOARD FINDS THAT THEY DO NOT HAVE JURISDICTION TO HEAR THIS

Alex reads the following into the record:

Elie Bassil, Trustee, has applied for a Modification of Conditional Use Special Permit No. 2015-016 in order to convert approximately 285 square feet of retail space to food service within the existing convenience store. The property is located at 199 Falmouth Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 079. It is located in the Highway Business (HB) and Groundwater Protection Overlay Zoning Districts.

Members assigned: Alex Rodolakis, Robin Young, David Hirsch, Herb Bodensiek, Jake Dewey

Hal Choubah, consultant, is representing the applicant. They were here in 2015 for a conditional use special permit to convert the garage into a convenience store. He gives summary of relief being sought and to modify the previous special permit. He states they went through Site Plan Review which was approved.

Mr. Choubah states that they did come previously to sell alcohol but there are no licenses available for that use. Mr. Choubah explains that this is a small space and is similar to Cumberland Farms with prepared food and will not be pre-packaged. He will have grease trap, will not be a traffic destination, and could have a deli or some kind of food preparation area. Seats will be to the rear and seasonal. He shows the floor plan submitted with the application. He states that if the board is so inclined to put a condition prohibiting the sale of liquor, his client is okay with that condition in order to grant this permit or if a license is available in the future they would need to come back before this board.

Spencer asks Mr. Choubah to point out the area that's being converted. Herb is concerned about traffic flow.

Alex asks for public comment. No one speaks.

The board discusses. Alex thinks that this is small and would favor this over the retail sales of liquor and feels comfortable with the condition regarding the liquor sales should they get a license.

The board discusses.

Jake Dewey makes findings:

Special Permit Findings

- **The application falls within a category specifically excepted in the ordinance for a grant of a special permit. The proposed use is allowed under Section 240-21 with a Conditional Use Special Permit.**
- **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.**
- **A Site Plan has been reviewed and found approvable with conditions. (see letter dated July 6, 2017)**

Further, Section 240-25 (C) (1) (a) requires the Board to find that:

- **Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.**

Vote:

All in favor

Jake makes a motion to grant the relief being requested with the following conditions and to add Condition #5

Conditions

1. Special Permit No. 2017-059 is granted to Elie Bassil, as Trustee of the Bassil Brothers United Trust for a modification of Conditional Use Special Permit No. 2015-021, which permitted a retail convenience store. The applicant is adding a restaurant use to the retail convenience store use. The property is located at 199 Falmouth Road, Hyannis, MA.
2. The applicant is required to attain all required permits and licenses for the proposed new use.
3. There shall be no temporary signage displayed in the windows or doors beyond that permitted by the Sign Code.
4. The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance building permit. The rights authorized by this special permit must be exercised within two years, unless extended.
5. **If in the future, an alcohol license becomes available, the applicant will come back before this board for approval**

Received 07-24-17 from Cape Cod Commission (CCC) – Development of Regional Impact Decision for the Cape Cod Five Hyannis Banking Center project that was approved by the CCC on July 20, 2017.

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

August 23, 2017, September 13, 2017, September 27, 2017, October 11, 2017, October 25, 2017, November 8, 2017, December 13, 2017
Alex states that he will be recusing himself from the Cape Cod Five Cents hearing and perhaps another appeal at the next meeting.

Adjournment

Motion is made by Jake Dewey and seconded by Robin Young to adjourn.

Vote:

All in favor