



# Town of Barnstable

## Zoning Board of Appeals



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

Board Members:

Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek - Clerk  
 Robin Young – Regular Member Jacob Dewey – Associate Member Paul Pinard – Associate Member  
 James Tinsley – Town Council Liaison

Staff Support

Elizabeth Jenkins –Director - [elizabeth.jenkins@town.barnstable.ma.us](mailto:elizabeth.jenkins@town.barnstable.ma.us)  
 Anna Brigham – Principal Planner – [anna.brigham@town.barnstable.ma.us](mailto:anna.brigham@town.barnstable.ma.us)  
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### Minutes

**Wednesday, January 24, 2018**

Selectman’s Conference Room – 2<sup>nd</sup> Floor – 367 Main Street, Hyannis, MA

Alex Rodolakis - Chair	Present
David Hirsch – Vice Chair	Present
Herbert Bodensiek - Clerk	Present
Robin Young	Absent
Jacob Dewey	Present
Paul Pinard	Present

*Also present were Anna Brigham – Principal Planner and Carol Puckett – Administrative Assistant.*

*Since a quorum has been met, Alex Rodolakis calls the hearing to order.*

#### Call to Order

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

*Alex reads the following into the record:*

#### 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

Minutes from May 24, 2017

*Motion is made by David Hirsch and seconded by Paul Pinard to accept the minutes as submitted*

*Vote:*

*All in favor*

*Alex reads the following into the record:*

#### Old Business

**7:00 PM Appeal No. 2017-071**

**Beauregard**

Todd and Anne Beauregard have applied for a Special Permit pursuant to Section 240-92(B) Nonconforming Buildings or Structures used as Single- and two-family residences. The applicants are proposing to construct a two-story, 1,180 square foot addition which will encroach into a front yard setback creating an intensification which requires a Special Permit. The subject property is addressed 8 East Avenue, Osterville, MA, as shown on Assessor’s Map 139 as Parcel 075. It is located in the Residential F-1 Zoning District

*Members assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jacob Dewey, Paul Pinard*

*Herbert Bodensiek asks to recuse himself.*

*Representative: Michael Ford, Esq. wants to consult with his client about going forward with a four member board.*

*Alex Rodolakis tables this matter until Attorney Ford can consult with his client briefly after hearing the Lombardo appeal.*

*Beauregard appeal tabled.*

**Alex then calls the Lombardo appeal and reads it into the record:**

**7:01 PM Appeal No. 2017-072**

**Lombardo**

John & Mary Lombardo have applied for a Special Permit pursuant to Sections 240-91(H)(2) - Developed Lot Protection, 240-7.H.(1) – Setback from Wetland/Great Ponds, and 240-92(B) - Nonconforming Buildings or Structures. The applicants are proposing to demolish an existing single-family dwelling and replace with a 5,445+/- gross floor area, single-family dwelling on a nonconforming lot consisting of two separate dwellings where only one dwelling is allowed under the zoning ordinance. The property is located at 81 Willow Run Drive, Centerville, MA as shown on Assessor's Map 210 as parcel 056. It is located in the Residence D-1 Zoning District.

**Members assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jacob Dewey, Paul Pinard  
Representative: Michael Ford, Esq**

**Attorney Ford gives summary of relief being sought. Also with him tonight are John and Mary Lombardo, Rich Tabaczynski, P.E., from Atlantic Civil Engineers and John Ingwersen from Architectural Design Incorporated. Attorney Ford states that the property is located on Lake Wequaquet, located in the RD-1 and Resource Protection Overlay Districts. It is improved with several structures: one bedroom cottage, 3 bedroom principal dwelling, car port and two sheds. Applicants are looking to raze and replace the main dwelling which dates back to approximately, before 1952 which predates zoning which would make it a pre-existing, nonconforming structure. He notes that the staff report has the year built in the 1960's according to the Assessor's record. He states that the rebuild will be on same footprint, have over 1400 sf. The 5000 sf is for all structures and not just the house. He states that the structure is of a difficult shape, no cellar, only crawlspace. It will not have a cellar when built. They have been to the Conservation Commission (ConComm) and there is an order of conditions. It does not meet the setback requirement from great ponds. He met with the Building Commissioner before coming to ZBA and the existing house is only 40 feet from mean high water mark. Mr. Tabaczynski gives lot coverage of 13.1% of upland. The floor area ratio (FAR) of the new structure is .19 which is under the .30 maximum. He suggests that this request meets all the requirements of the Special Permit and thinks it fits into the neighborhood. He refers to a comment from the Board of Health (BOH) regarding the office on the second floor that was closed off and would be considered a bedroom. The architect will sit down with BOH to satisfy their requirements.**

**Paul Pinard visited it and thinks that this proposal would be an improvement and notes that this structure sits further back. Alex asks about height. Attorney Ford states that the new dwelling is only one story, doesn't have the exact figures but can get that information. Alex asks about the other existing structures on the lot. Attorney Ford states that the other structures will remain. Alex would like to condition the decision so that this will be full build-out and asks Attorney Ford if he is agreeable to that condition. Attorney Ford is okay with that condition. Alex confirms with John Ingwersen that the structure height is 28 feet to the peak.**

**Herb Bodensiek makes findings:**

### **Background**

In application No. 2017-072, the applicants are seeking a special permit in accordance with Section 240-92 B of the Zoning Ordinance. That section of the Zoning Ordinance allows the expansion of a preexisting nonconforming single family dwelling by Special Permit providing the expansion will not be substantially more detrimental to the neighborhood. The Applicants are also seeking a Special Permit in accordance with Section 240-91 H (2) Developed Lot Protection, As of right, merged lots each containing a minimum area of one acre of contiguous upland.

According to the site plan submitted, the subject lot is 49,730 square feet and contains a principal dwelling, a cottage, a carport, and several sheds. The lot overlooks Wequaquet Lake to the northeast and a small wetland to the west.

According to the Assessor's record, the principal dwelling contains 2,440 of gross floor area and has three bedrooms and was constructed in 1965. The cottage contains 817 gross floor area, has one bedroom, and was constructed in 1965. There is a discrepancy in the dates of construction between the application and the Assessors records: the application states the dwellings pre-date 1952. The applicants purchased the property in August 2014.

The existing buildings are nonconforming in that the lot contains two separate dwellings, where only one dwelling is permitted in the RD-1 Zoning District. The principal dwelling is nonconforming in that its setback is 39.8 feet from a Great Pond where 50 feet is required. All other bulk regulations are conforming.

### **Proposal & Relief Requested**

The Applicants, John and Mary Lombardo, seek to demolish the existing principal dwelling and construct a new 3 bedroom dwelling containing 5,445 gross floor **of all buildings on site after construction** (Attorney Ford confirms the language in red) area that will continue to be nonconforming with a 40 foot setback from a Great Pond. All other bulk and dimensional requirements will be conforming, and the applicants proposed replacement dwelling meets all of the requirements of Section 240-7 H. (1) except for the wetlands setback.

Section 240-92 allows for expansion of a preexisting nonconforming single- or two-family dwelling provided that the expansion will not be substantially more detrimental to the neighborhood than the existing structure.

### **Proposed Special Permit Findings**

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

**1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit:**

*Section 240-92 allows for the expansion or alteration of a preexisting nonconforming structure used as a single-family residence with a Special Permit.*

**1. 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.**

Section 240-92 requires the Board to find:

**2. The proposed expansion of the dwelling will not be substantially more detrimental to the neighborhood than the existing building or structure.**

*Alex wants to add that, based on other structures in the neighborhood that are further back, that this would not be more detrimental to the neighborhood.*

**Vote:**

*All in favor*

**Herb Bodensiek makes a motion to grant the relief being sought with the following conditions:**

**Conditions**

1. Special Permit No. 2017-072 is granted to John and Mary Lombardo, to allow for the demolition of the existing principal dwelling and construction of a new principal dwelling with a 40 foot setback from a Great Pond where 50 feet is required. The property is located at 81 Willow Run Drive, Centerville, MA.
2. The proposed alterations will be in substantial conformance with the plan entitled "Proposed Site Plan for 81 Willow Run Drive Barnstable Massachusetts" prepared for John and Mary Lombardo dated April 26, 2017 drawn and stamped by Atlantic Design Engineers Inc. and architectural drawings by Architectural Design Incorporated dated October 25, 2017.
3. This construction shall represent full build-out of the lot. No additional increase in building coverage or gross square footage shall be permitted without prior approval of this Board.
4. This decision shall be recorded at the Barnstable County Registry of Deeds and copies filed with the Zoning Board of Appeals and Building Division. The rights authorized by this special permit must be exercised within two years, unless extended.

**Alex wants to amend #3, no increase or further structures without approval from this board.**

**Vote:**

*All in favor*

**GRANTED WITH CONDITIONS**

**New Business**

**Alex reads the following into the record:**

**7:00 PM Appeal No. 2018-006**

**McSpiritt**

Bonnie and Andrew McSpiritt have applied for a Special Permit pursuant to Chapter 240-91.H(3) – Nonconforming Lot. The applicants are proposing to demolish the existing 1,332 square foot, three (3) bedroom, single-family dwelling and construct a 2,712 square foot, three (3) bedroom, single-family dwelling on a lot containing less than 10,000 square feet. The property is located at 45 Johnny Cake Road, Centerville, MA as shown on Assessor's Map 210 as parcel 026. It is located in the Residence D-1 Zoning District.

**Members assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jacob Dewey, Paul Pinard**

**Representative: Bonnie McSpiritt gives a summary of how she and her husband acquired the house in 2011. She explains that this is a converted summer cottage which they considered renovating but was advised that the house was unsound. There is a mold problem and based on that, they figured it would be cost effective to demolish and rebuild. The basement is included in the square footage. The lot is nonconforming because it is under 10,000 sf. The proposal conforms to the floor area ratio (FAR) and lot coverage as well as complying with the setbacks for the zoning district in which it is located. She does not think that this will be more detrimental to the neighborhood. They have reviewed the staff report and are okay with conditions.**

*Alex asks for public comment.*

*Douglas Rockwell, who is a direct abutter at 57 Yacht Club Road, is in support. William Wright who lives directly across the street at 48 Johnny Cake Road is also in support.*

*Paul Pinard makes findings:*

## Background

Bonnie and Andrew McSpirtt are seeking a Special Permit to allow the demolition of an existing 1,332 square foot dwelling and the construction of a 2,712 square foot single family dwelling at 45 Johnny Cake Road, Centerville.

The subject property is located on the corner of Johnny Cake Road and Yacht Club Road in Centerville. The existing dwelling complies with required setbacks although the deck and shed do not, and the lot contains 9,068 square feet, less than the required 10,000 square feet. The owners seek to construct a new dwelling complying with the required setbacks, lot coverage, and floor area ratio. According to the Assessor's records, the dwelling was constructed in 1959 and has 3-bedrooms with a septic system and is served by public water. Undersized lots appear typical in this area.

## Proposal & Relief Requested

The Applicants are proposing to demolish an existing 1,332 square foot dwelling and construct a 2,712 square foot single family dwelling on a lot of 9,068 square feet of upland, under the required minimum 10,000 square feet as required under Section 240-91 H. (1) "As of Right".

The existing lot coverage is 14.7% and proposed lot coverage is 13.5%, thereby complying with the maximum of 20%.

Section 240-91(H)(3) requires a special permit for all demolition and rebuilding projects if the proposed demolition and rebuilding cannot satisfy the criteria under Section 240-91 (H)(1) "As of Right", but the following criteria must be met:

- Lot Coverage: 13.5% (20% maximum) – 1,224 square feet (1,813 square feet allowed)
- Floor-Area Ratio: 29.9% (30% maximum) – 2,712 square feet (2,720 square feet allowed)
- Building Height: 24 feet 11 inches to top of plate (30 feet maximum), 2 Stories

## Proposed Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

1. **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 by Special Permit.
2. **Site Plan Review is not required for single-family residential dwellings.**
3. **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.**

Further, Section 240-91(H)(3) requires the Board to find that if the proposed demolition and rebuilding cannot satisfy the criteria established in H(1) As-Of-Right, then the Board may allow the demolition and rebuilding by Special Permit provided the Board finds that:

4. **The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building.** The proposed setbacks will comply with the requirements of the Residence D-1 Zoning District.
5. **The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater.** The proposed lot coverage is 13.5%.
6. **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 .299 (29.9%).
7. **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 feet 11 inches to top of plate (30 feet maximum) and the proposed dwelling is 2 stories.

The Board is also asked to find that:

8. **The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.**

**Vote:**

**All in favor**

**Paul Pinard makes a motion to grant the relief being sought pursuant to the Staff Report dated January 5, 2018 as follows:**

**Conditions**

1. Special Permit No. 2018-006 is granted to Bonnie and Andrew McSpirtt for the demolition of an existing dwelling and construction of a 2,712 square foot dwelling at 45 Johnny Cake Road, Centerville.
2. The site development shall be constructed in substantial conformance with the plan entitled "Proposed Site Plan" prepared for Andrew McSpirtt dated December 27, 2017 drawn and stamped by Baxter Nye Engineering & Surveying and the architectural drawings by Giattino Design.
3. The total lot coverage of all structures on the lot shall not exceed 13.5% and the floor-area ratio shall not exceed .299 (29.9%).
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. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
6. 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.

**Vote:**

**All in favor**

**GRANTED WITH CONDITIONS**

Alex recalls the Beauregard appeal and asks Attorney Ford if he has reached a decision. Attorney Ford states that he did reach his client who has requested a continuance. Attorney Ford is also agreeable to filing a time extension for hearing the appeal if necessary.

Motion is made by Jake Dewey and seconded by to continue this appeal to February 14, 2018 at 7:00 PM

Vote:

AYE: Alex Rodolakis, Jake Dewey, Paul Pinard, David Hirsch

NAY: None

ABSTAINED: Herb Bodensiek as he has recused himself from this appeal

**CONTINUED TO FEBRUARY 14, 2018 AT 7:00 PM**

**Alex reads the following into the record:**

**7:01 PM Appeal No. 2018-007**

**MPG Corporation and 1617 Falmouth Rd. Series of PB&C**

MPG Corporation (Centerville Convenience Center) and 1617 Falmouth Rd. Series of PB&C, LLC., as co-applicants, are seeking a Special Permit pursuant to Chapter 240-93 Nonconforming buildings or structures not used as single or two-family dwellings and Chapter 240-94 Nonconforming Use. The Applicants are proposing to demolish the existing gas station and construct a 5,000 square foot building plus canopy and gas islands, service station with gasoline/diesel dispersers, automobile repair, and retail. The building will consist of retail sales, including 14 seats and a drive-through window. Numerous site improvements are also proposed. The property is located at 1617 Falmouth Road (Rte. 28), Centerville as shown on Assessors Map 209, Parcel 085. It is located in the Highway Office (HO) and Residence C (RC) Zoning Districts.

**Members assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jacob Dewey, Paul Pinard**

**Representative: Michael Crossen, Esq.**

**Alex discloses that his client is a tenant and asks if this would be a problem with him sitting on this appeal. Attorney Crossen does not have a problem.**

**Also with Attorney Crossen tonight is Matt Eddy from Baxter Nye Engineering, Peter Garret President, and Colleen Medeiros from McMahon Associates who is the traffic engineer.**

**Attorney Crossen gives summary of relief being requested. Attorney Crossen states that even though this parcel abuts and is in a residential zoning district, none of the work will be performed in that district. It operated as a service center, gas/diesel, auto repair and retail sales. They want to demolish and build retail sales, canopy and pumps with 14 seats and drive-thru window. Matt Eddy explains the zoning information from GIS and Assessor's record. Autos are currently being worked on-site. That use will be going away and noted that in the staff report. The existing canopy is nonconforming and the existing parking is defined. There are currently two entrances that will be reconfigured. The proposal will be for coffee donut/sandwiches and a drive-thru. They met with Department of Transportation (DOT) on a preliminary plan**

and had no objection to the plan. The only item was the sidewalk and was asked to fully reconstruct it which they are willing to do. On the westerly side will be entrance only and the easterly will be exit only. Parking was discussed with the Building Commissioner at Site Plan Review and supported of what they were doing. The dumpster will be enclosed in the rear and complies with setbacks. Two new drainage systems will meet and exceed Department of Environmental Protection (DEP) standards.

David Hirsch clarifies that the existing gas tanks will be removed. Matt Eddy states that they will be replaced and clarifies that the new tanks will have both gas and diesel. Herb thinks it is an ambitious plan for such a busy roadway. He doesn't think it is a good idea. Attorney Crossen states that the traffic engineer is here to answer any questions.

Alex is concerned about the drive-thru and how it will change the traffic flow. Jake Dewey is concerned about the number of pumps. Matt Eddy explains that the fueling truck will fill at a remote/quick fill at the northerly side of the site which will not be a problem for other cars/trucks fueling at the site.

Peter Garrett is the president and a partner in PB&C. He says that most delivers are during business hours and they take up one of the parking spaces. They don't have tractor trailer deliveries and will come through the front door. He explains single stacked fuel islands. They discuss traffic planning.

Jake asks if there is a landscape plan. Mr. Eddy says there is not but he could provide with it and that the front will be landscaped as well as the rear.

Alex asks if there is anyone from the public who would like to speak.

Marcel Poyant, owner of the Centerville Shopping Center, mentions that there are 4 convenience stores within a miles distance in the area and is concerned with the drive-thru window traffic. He states that they have worked and tried to propose signalization but that the owner of the Bell Tower Mall turned down one of those proposals. He thinks that there should be no left turn out of the site. He would suggest that there be a traffic study. Also, he was not aware that this special permit was sought and that there would be any changes except from the ZBA. In the past the Centerville Civic Association and doesn't think that the Centerville Civic Association has had time to review this and voice their comments. He is not opposed to approving this but would like to see the drive-thru removed, have a traffic study done and have no left turn.

Matt Eddy says that Coleen Medeiros is here and had submitted a traffic study to Site Plan Review (SPR). Marcel Poyant would like a copy from the applicant.

Alex explains that no traffic study was submitted to ZBA, only to SPR. Alex doesn't think a traffic study would be helpful but thinks that the drive-thru should be removed. They discuss where the drive-thrus are along Route 28. He would like to see a preventative to taking a left hand turn out of the site.

They board discusses preventing turns by constructing it that way.

Alex notes that other members have concerns about the drive-thru and a landscape plan.

Attorney Crossen suggests perhaps a continuance in order to provide the landscape plan, etc.

They discuss reconfiguring the exit geometrically.

Motion is made by David Hirsch and seconded by Paul Pinard to continue this to February 28, 2018 at 7:00 PM.

Vote:

All in favor

Paul Pinard will not be here on the 28<sup>th</sup>.

## Correspondence

## Matters Not Reasonably Anticipated by the Chair

## Upcoming Meetings

## Adjournment

Motion is made by Alex Rodolakis and seconded by David Hirsch to adjourn

Vote:

All in favor