



Town of Barnstable Zoning Board of Appeals



Board Members:

Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek - Clerk
Jacob Dewey – Regular Member Paul Pinard – Regular Member
Todd Walantis – Associate Member Mark Hansen – Associate Member Robert Twiss – Associate Member
James Tinsley – Town Council Liaison

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, December 11, 2019

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

Alex Rodolakis - Chair	Present
David Hirsch – Vice Chair	Present
Herbert Bodensiek – Clerk	Present
Jacob Dewey – Regular Member	Present
Paul Pinard – Regular Member	Present
Todd Walantis – Associate Member	Present
Mark Hansen – Associate Member	Absent
Robert Twiss – Associate Member	Present
Vacant	

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

As a quorum has been met, Alex 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 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Minutes

July 24, 2019, August 7, 2019, August 21, 2019, September 11, 2019

A motion was made to accept the July 24, 2019 minutes by David Hirsch and seconded by Paul Pinard

Vote:

All in favor

A motion was made to accept the August 7, 2019 minutes by David Hirsch and seconded by Paul Pinard

Vote:

All in favor

A motion was made to accept the August 21, 2019 minutes by David Hirsch and seconded by Herb Bodensiek

Vote:

All in favor

A motion was made to accept the September 11, 2019 minutes by Jake Dewey and seconded by Todd Walantis

Vote:

All in favor

Alex reads the following into the record:

Old Business

7:00 PM Appeal No. 2019-050 1000 Main, LLC.

1000 Main LLC., has applied for a Special Permit pursuant to Section 240-20.B – West Barnstable Village Business District. The Applicant is seeking relief in order to store small traditional sailboats and to continue the pre-existing use of three residential units in the dwelling. The subject property is located at 1000 Main Street, West Barnstable, MA as shown on Assessor's [Map 179 as Parcel 002](#). It is located in the West Barnstable Village Business District (WBVBD) and the Residence F (RF) Zoning Districts.

Continued from September 25, 2019. Members assigned: Alex Rodolakis, Herbert Bodensiek, Paul Pinard, Todd Walantis and Bob Twiss.
Time Extension Signed and Time Stamped – Decision due January 3, 2020.

Members assigned tonight: Alex Rodolakis, David Hirsch, Herb Bodensiek, Todd Walantis, Bob Twiss

Representative: Charles Sabatt, Esq. who explains that he was contacted recently by the applicant, Peter Eastman, and is asking for continuance in order to look into that petition as there may be a need to request additional relief if appropriate.

He would like to review and would like to meet with the neighborhood to see if they can come to some understanding or alleviate concerns, he has also met with Building Commissioner but has further thoughts and would like to meet with him again. He is requesting a further time extension and is looking to continue to April 8, 2020 if that is acceptable.

Motion is made to continue to April 8, 2020 at 7:00 PM by Paul Pinard and seconded by Todd Walantis

Vote:

All in favor

CONTINUED TO APRIL 8, 2020 AT 7:00 PM

Alex reads the following into the record:

7:01 PM Appeal No. 2019-038 Shoestring Properties

Stuart Bornstein, Shoestring Properties, has appealed the Building Commissioner's determination that vehicles parked on a vacant lot at 53 South Street are not an allowed use as a matter of right. The Appellant has also requested zoning relief. The subject property is located at 53 South Street, Hyannis, MA as shown on Assessor's Map [326 as Parcel 125](#). It is located in the Harbor District (HD) Zoning District.

Continued from August 7, 2019, September 11, 2019 and October 30, 2019. Members assigned on 08-07-19: Alex Rodolakis, David Hirsch, Jake Dewey, Herb Bodensiek, Paul Pinard. Members assigned on October 30, 2019 were: Alex Rodolakis, Robert Twiss, Jacob Dewey, Herbert Bodensiek and Mark Hansen.

Members assigned tonight: Alex Rodolakis, David Hirsch, Jake Dewey, Herb Bodensiek, Paul Pinard

Representative: Jeffrey Johnson, Esq. Attorney Johnson states that since the last time this was heard, he has had a conversation with Town Attorney – Ruth Weil, it is her opinion, and suggestion that the conditions were not technically to overturn the Building Commissioner but rather they should be called findings that what the petitioner has represented would be a way to solve that issue. He did submit a suggested set of conditions but suggests to change them from conditions to findings. As for the present update, the parking lot has been fenced off for the season; no cars on the wrong side of fence, in the spring will increase their signage and will have a limited time period, which will cause a car to be towed.

Alex says that staff has not released another staff report as of yet. They talk about a continuance.

Attorney Johnson asks for a continuance to January 22, 2020 at 7:00 pm.

Motion is made by Paul Pinard and seconded by Jake Dewey

CONTINUED TO JANUARY 22, 2020 AT 7:01 PM

Alex reads the following into the record:

7:02 PM Appeal No. 2019-064 Klamon or Nominee

Mark Klamon or Nominee as prospective owner, has petitioned for a Variance pursuant to Section 240-35 Groundwater Protection Overlay Districts, A and B. The Petitioner seeks to remove an underground storage tank but under DEP requirements, the site must be cleaned up to strict drinking water standards. The relief being sought is a determination by the Zoning Board of Appeals that since the subject property sits atop brackish water that it has no impact on the aquifer and as such is not aquifer protected. The subject property is located at 3224 Main Street (Route 6A) Barnstable as shown on Assessor's Map [299 as Parcel 029](#). It is located in the Residence F-2 and Village Business A (VBA).

Continued from November 13, 2019. Members assigned were Alex Rodolakis, David Hirsch, Herbert Bodensiek, Jake Dewey and Paul Pinard

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

From a letter dated December 3, 2019 from David Lawler, Esq., the applicant has requested to Withdraw without Prejudice.

Motion to withdraw is made by Paul Pinard and seconded by David Hirsch

Vote:
All in favor

WITHDRAWN WITHOUT PREJUDICE

Alex reads the following into the record:

New Business

7:03 PM

Appeal No. 2019-058

Conrado

Ricardo Conrado, as prospective owner, has applied for a Special Permit pursuant to Section 240-94 – Expansion of a Pre-Existing Nonconforming Use. The Applicant is proposing to construct a detached four-car garage with a two-bedroom living unit above on a lot where there presently exists a two-family dwelling in a single-family residential zoning district. The subject property is located at 60 Nautical Road, Hyannis, MA as shown on Assessor's Map [307 as Parcel 235](#). It is located in the Residence B (RB) Zoning District.

Members assigned tonight: Alex Rodolakis, David Hirsch, Jake Dewey, Paul Pinard, Herb Bodensiek

Representative: Ricardo Conrado, the applicant, is asking for continuance in order to look for legal assistance, which was recommended.

Motion to continue to January 22, 2020 at 7:01 by Paul Pinard and seconded by Herb Bodensiek

Vote:

All in favor

CONTINUED TO JANUARY 22, 2020 AT 7:01 PM

Alex reads the following into the record:

7:04 PM

Appeal No. 2019-067

Mackie

Allison S. and Victoria E. Mackie have applied for a Modification of Variance No. 1998-62B, Condition No. 1 to allow the transfer to new ownership. The Applicants are proposing to continue to operate the owner-occupied Bed & Breakfast Ashley Manor as has been done. The subject property is located at 3660 Main Street, Barnstable, MA as shown on Assessor's Map 317 as Parcel 021-001. It is located in the Residence F-2.

Members assigned tonight: Alex Rodolakis, David Hirsh, Herb Bodensiek, Jake Dewey, Paul Pinard

Representative: Kate Mitchell, Esq. Attorney Mitchell explains that this is a request to grant a special permit and a variance because there will be new owners and nothing else will change. This is an operating 6 bedroom, 12 occupancy bed and breakfast since 1988. The special permit is to allow the B&B, and the variance is to allow 3 additional rooms. The current owners came back because one of the conditions of the 1988 is about change of ownership transfer. Within the package she submitted is a Purchase and Sales Agreement with the prospective owners (Mackie) as well as septic design and there will be no change except different owners. She has a mortgage plot plan and is consistent with the layout from 2004. As for the variance, it would be a financial burden if the transaction does not go through.

Alex asks if she has seen the staff report. Attorney Mitchell states that she has seen the staff report and that the conditions are acceptable to her client.

Alex asks for public comment. No one speaks.

Board deliberates

Alex makes findings on 2019-067 and 2019-068 to allow transfer and modification for the special permit and variance to transfer.

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. This is a modification of conditions of Special Permit No. 1998-61B for relief granted under Section 240-11C. (6).**
- 2. 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.**
- 3. A Site Plan has been reviewed and found approvable with conditions. (see letter dated June 24, 2004).**

Further, Section 240-125 (C) (1) (a) requires the Board to find that:

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

Special Permit Conditions

1. Special Permit No. 2019-068, a modification of Special Permit No. 1998-61B to transfer the ownership, is granted to Allison S. Mackie and Victoria E LLC for the property located at 3660 Main Street, Barnstable, MA.
2. Special Permit No. 2019-068 is not transferrable without prior permission from the Board.
3. All other conditions in Special Permit No.'s 1998-61B, 2001-23, and 2005-109 remain in full force and effect.
4. No further additions or alterations shall be permitted without approval from the Board.
5. 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 Special Permit must be exercised within two years, unless extended.

Vote:

All in favor

Motion to grant 2019-067 is made by Alex Rodolakis with the following findings and conditions:

Variance Findings

To grant a modification of the variance, the Board may wish to confirm that, through the issuance of Variance No. 1998-62B, the site has been shown to meet the statutory requirements of MGL Chapter 40A, Section 10 for granting a 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; and
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner.

And, the Board should find that the proposed modification to that use variance:

1. 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.

An application for a variance that has met all three requirements "does not confer ... any legal right to a variance." The Board still has the discretionary power to grant or not to grant the variance.

Variance Conditions

1. Variance No. 2019-067, a modification of Variance No. 1998-62B to allow the transfer of ownership, is granted to Allison S. Mackie and Victoria E LLC for the property located at 3660 Main Street, Barnstable, MA.
2. Variance No. 2019-067 is not transferrable without prior permission from the Board.
3. All other conditions in Variance No.'s 1998-62B, 2001-24, and 2004-110 remain in full force and effect.
4. No further additions or alterations shall be permitted without approval from the Board.
5. 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.

Vote:

All in favor

GRANTED WITH CONDITIONS

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

January 8, 2020, January 22, 2020, February 12, 2020

Adjournment

Motion to adjourn is made by Paul Pinard and seconded by Herb Bodensiek

Vote:

All in favor