



Town of Barnstable
Zoning Board of Appeals
Draft Minutes
April 11, 2007

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday, April 11, 2007 at 7:04 PM at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. A quorum was met. Also present were Arthur Traczyk, Principal Planner and Carol Puckett – Administrative Assistant.

Zoning Board of Appeals Members:

Gail Nightingale, Chairman	Present
Ron S. Jansson, Vice Chairman	Present
Daniel M. Creedon, Clerk	Present
James R. Hatfield	Present
Randolph Childs	Present

Zoning Board of Appeals Alternate Members:

Jeremy Gilmore	Absent
Shelia Gelier	Present
Kelly Kevin Lydon	Present
John T. Norman	Present

6:30 PM Executive Session

At the request of the Town Attorney's Office an Executive Session is scheduled to discuss pending appeals and litigation

Chairman Gail Nightingale indicates that the Board will be going into Executive Session to discuss pending legislation.

Motion is made to go into Executive Session.

Dan Creedon moves to go into Executive Session.

Motion seconded.

Vote:

AYE: Randy Childs, James Hatfield, John Norman, Kelly Kevin Lydon, Dan Creedon, Sheila Geiler, Gail Nightingale

NAY: None

Dan Creedon makes an amendment correcting the motion to go into Executive Session to discuss pending litigation instead of legislation.

Vote:

AYE: Randy Childs, James Hatfield, John Norman, Kelly Kevin Lydon, Dan Creedon, Sheila Geiler, Gail Nightingale

NAY: None

Board comes back from Executive Session at 7:37 PM

Gail Nightingale reads appeals into the record.

7:00 PM Appeal 2007-011 - Continued Limoncelli
Use Variance – Principal Permitted Uses

Opened February 14, 2007 continued to April 11, 2007
No Members Assigned - No Testimony Taken

Staff Report, Application previously distributed

Susan Limoncelli has applied for a Variance to Section 240-14(A) - Principal Permitted Uses Residence F Zoning District. The applicant seeks to continue the use of an accessory structure as a separate independent dwelling unit on the lot when the zoning district permits only one single-family dwelling per lot. The property is addressed 181 School Street, Cotuit, MA and is shown on Assessor's Map 020 as parcels 090 in a Residence F Zoning District.

Members assigned: John Norman, Dan Creedon, Randy Childs, Kelly Kevin Lydon, Gail Nightingale

Gail Nightingale reads a Request for a Withdrawal Without Prejudice from Attorney Princi on behalf of his client.

Dan Creedon makes a motion to move

Randy Childs seconds.

Vote:

AYE: John Norman, Dan Creedon, Randy Childs, Kelly Kevin Lydon, Gail Nightingale

NAY: None

Appeal 2007-011 has been Withdrawn Without Prejudice

7:15 PM Appeals 2007-020 & 021 - Continued Capizzi

Opened March 14, 2007, continued to April 11, 2007
No Members Assigned - No Testimony Taken

Application, Staff Report and Support Memorandum from Patrick Butler/Liza Cox previously distributed.

Appeal 2007-020 Appeal of the Building Commissioner

Thomas Capizzi, Jr. and Mary A. Capizzi have appealed the January 8, 2007 decision of the Building Commissioner that the proposed addition to the dwelling located at 1010 Craigville Beach Road in Centerville required relief from the Zoning Board of Appeals before a building permit can be issued. The property is located as shown on Assessor's Map 226 as Parcel 004-002, addressed as 1010 Craigville Beach Road, Centerville, MA in a Residence C Zoning District.

Appeal 2007-021 Special Permit Expand Nonconforming Structure

Thomas Capizzi, Jr. and Mary A. Capizzi have applied for a Special Permit pursuant to Section 240-92.B –Expansion or Alteration of a Nonconforming Building or Structure Used as Single- and Two-family Residences. The applicant seeks to expand and alter an existing nonconforming dwelling not in conformity to required setbacks. The property is located as shown on Assessor’s Map 226 as Parcel 004-002, addressed as 1010 Craigville Beach Road, Centerville, MA in a Residence C Zoning District.

No members assigned.

Gail Nightingale reads request for a continuance from Attorney Butler.

Both appeals have been continued to June 20th at 8:00 PM

Continued to June 20, 2007 at 8:00 PM

7:45 PM	Appeal 2007-006 – Continued	Peckham
		Appeal of the Building Commissioner’s Decision

Opened January 17, 2007, continued February 28, 2007, and to April 11, 2007
No Members Assigned – No testimony taken

Application, Staff Report and Memorandum from Attorney Schultz previously transmitted.

Richard Peckham has appeal the Building Commissioner’s Notice to Abate issued on September 29, 2006 citing that the use of the property is in violation of Chapter 240-11 of the Town’s Zoning Ordinance. This appeal was filed pursuant to M.G.L. c. 40A, Sec. 8 and Chapter 240-88 of the Zoning Ordinance. The property is addressed 99 Pine Avenue, Hyannis, MA and is shown on Assessor’s Map 308 as parcel 214. It is located in a Residence B Zoning District.

Members assigned: Kelly Kevin Lydon, John Norman, James Hatfield, Gail Nightingale

Attorney Schultz is representing the client.

Gail Nightingale indicates that there is only a 4 member board and indicates to Attorney Schultz that if they go forward he would need a unanimous vote and asks if Mr. Schultz will go forward. Mr. Schultz indicates that he does not want to go forward with a 4 member board.

Continued to April 25, 2007 at 8:00 PM

8:00 P.M.	Appeal 2005-100 - Continued	Bay Point
		MGL Chapter 40B Comprehensive Permit

Members Assigned: Sheila Geiler, Randolph Childs, James Hatfield, Daniel Creedon, Gail Nightingale

Open November 02, 2005, continued to December 14, 2005, February 15, 2006, April 12, 2006, May 24, 2006, August 23, 2006, November 15, 2006, January 17, 2007, February 28, 2007, and to April 11, 2007

Continued for:

- Update of groundwater issues based upon revised plan submitted at the February 28th hearing by Horsley Witten Group
- Attorney Michael Ford's brief of issues as related to groundwater study and Ch. 40B (copy of April 5, 2007 brief is enclosed).
- Update on affordable housing needs in terms of one-bedroom units.
- Applicant to readdressing nitrogen loading to further reduce overall site loading to groundwater.

At the last hearing, the applicant offered to further fund the groundwater study with an additional \$1,000. The Board voted to accept that offer and the money received (see March 2, 2007 letter to Garreth Markwell - Assistant Treasurer).

A February 28, 2007 Invoice from Horsley Witten Group in the amount of \$1,899.69 was submitted. That invoice was submitted for payment and results in a remaining balance of \$40.56. (see letter of March 28, 2007 to Garreth Markwell - Assistant Treasurer).

Staff has been in contact with Stuart Bornstein and Mark Nelson on the issue and is attempting to resolve the lack of available funds to complete the study.

Bay Point, LLC, Stuart A. Bornstein, Manager has applied for a Comprehensive Permit under the General Laws of the Commonwealth, Chapter 40B "Affordable Housing" to allow the construction of 11, multi-family units to be located on 2.38 acres. Three of the units are to be dedicated as affordable and sold to low and moderate income housing. The property is shown on Assessor's Map 036 as parcel 015, addressed 671 Main Street, Cotuit, MA, in a Residence F Zoning District.

At 7:45 PM Gail Nightingale indicates that she is not opening this hearing at this time but wants to vote on accepting a check from Mr. Bornstein in the amount of \$2800 for additional consultation fees.

Vote to accept check:

Dan Creedon moves that the board accept the check from Mr. Bornstein

Randy Childs seconds

Vote:

AYE: Sheila Geiler, Randy Childs, James Hatfield, Dan Creedon, Gail Nightingale

NAY: None

Gail Nightingale opens this appeal at 8:00 PM.

Gail Nightingale reads the members who are assigned who are: Sheila Geiler, Randolph Childs, James Hatfield, Daniel Creedon, Gail Nightingale

Gail Nightingale indicates that, given the fact that we don't have a report or any further information than they did 2 weeks ago, and that they have only tonight accepted the check from Mr. Bornstein which will allow the continuation of the study, she will continue this hearing.

Ron Jansson indicates that he would take everything under advisement prior to making a decision and indicates that they have the town officials here and would like to hear them.

Kelly Kevin Lydon wants to go ahead and hear from the town officials.

Randy Childs wants to state that the Board had requested the people from the town and airport be present and would like to hear them speak.

Town Attorney - Robert Smith, indicates that he has had a chance to confer with Attorney Gilmore, the Airport Commissioner and the Building Commissioner and indicates that they are willing to come back because of the magnitude of this request. He requests that because of schedules, maybe they could continue to sometime in June.

Ron Jansson asks if Attorney Fitch can give Attorney Gilmore and Attorney Smith a copy of his memorandum of standing. He would also like them to provide a memo on standing merely not to whether the identities and parties, but whether or not, in the context of 40A, the petitioner before the Board is an aggrieved person where basically he is complaining about the potentiality of certain actions that he himself can do because he is a nonconforming use.

Attorney Gilmore indicates he knows that they are not taking evidence tonight, but that he is not sure that his use is not nonconforming but thinks it is totally conforming. However, if the structure is conforming is a different issue. He agrees with Mr. Jansson that some of the issues may touch on section 17, in particular, regarding another case where a competitor is upset with another competitor but will submit a memo on the issue of aggrievement versus whether the right entity is before the Board.

Town Attorney - Robert Smith then indicates that in the audience, the applicant himself who is not represented by council, has a strong position and thinks he should be heard on the issuance on continuance.

Lorraine Cottle and Robert Falanga of Cape Flight, Inc., who are building the hangar in question approach the podium. Lorraine Cottle indicates that they are under construction, they are erecting this hangar right now and have a lot of money invested and wants to know if something is going to change. Robert R. Falanga also is concerned as this is a big investment and construction is under way.

Ron Jansson indicates to Gail Nightingale that they are not the applicant but possibly potential respondents. However, they have an appeal of Phillip Doherty of an inaction of the Building Commissioner regarding the issuance of either the building permit on the alterative, non-enforcement of our zoning by law and isn't sure that that would be an adequate grounds that we should hear the matter tonight. He understands they have some hardship imposed here but they have to deal with Mr. Doherty and the building commissioner.

Mr. Falanga asks if this would hold up the permitting of this building. Mr. Jansson indicates that he believes because of the new statue that it would be at their own peril.

Mr. Falanga questions if he could seek injunction against him for hardship with his attorney.

Ron Jansson indicates that he cannot advise him and refers him to this own attorney.

Gail Nightingale asks the Building Commissioner, Tom Perry, if he ordered a cease and desist on the building of the structure.

Tom Perry indicates no, that the applicant wants him to stop according to the use of the building. The building permit, as far as he knows, has not been appealed

Gail Nightingale then asks if they have rights to continue on with their building permit.

Tom Perry indicates that under chapter 40A, even if the building permit is under appeals, the construction can proceed, however, at their own risk.

Gail Nightingale then asks the Board's feelings on this matter.

Ron Jansson indicates that based upon the fact that the parties here, a representative from the airport, the Town as represented by Mr. Perry, the Town Attorney – Robert Smith, and the petitioner represented here, have all requested a continuance, they should go forward with the continuance.

Continued to May 23, 2007 at 7:00 PM

Ron suggests that we might want to put people on notice that this will be a long hearing.

Ron then again suggests that memos be submitted 7 days prior to the hearing from parties requested.

Board then discusses the recommendations from the Planning Board subcommittee on an ordinance regarding special permit granting authority functions on wind towers being considered by Town Council.

Board agrees to go through the Zoning Board

Motion to adjourn.

Motion seconded.

Meeting adjourned.
