

ZONING BOARD OF APPEALS

MINUTES OF OPEN AND PUBLIC HEARING

May 24, 2006

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday, May 24, 2006 at 7: 03 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 Leandra Nicolo Administrative Secretary.

Zoning Board of Appeals Members:

Gail Nightingale, Chairman

Ron S. Jansson, Vice Chairman

Dan Creedon II, Clerk -absent

Randolph Childs

James Hatfield

Zoning Board of Appeals Alternate Members:

Kelly Kevin Lydon

John T. Norman

Shelia Geiler

Jeremy Glimore

Summary

Appeal 2004-009 Schooner - Village Realty Trust Chapter 40B Comprehensive Permit

Appeal 2006-032 Hostetter - Special Permit Modification to Include Personal Services

Appeal 2006-050 Hostetter - Special Permit Modification to Include Personal Services

Appeal 2006-31 Cote - Appeal of the Building Commissioner

Appeal 2006-033 Soares - Side Yard Setback Variance for a She

Appeal 2006 -024 Corey- Conditional Use in a Highway Business

Appeal 2005-100 Bay Point- Chapter 40B Comprehensive Permit

Gail Nightingale called the hearings to order at 7:03 PM. She read the agenda with start times.

Appeal 2004-009 – Continued Schooner Village Realty Trust Chapter 40B Comprehensive Permit

No Members Assigned – No testimony taken

Open January 14, 2004 continued to February 25, 2004, April 28, 2004, May 26, 2004, June 23, 2004, September 01, 2004, October 27, 2004; December 08, 2004; March 2, 2005, September 14, 2005, March 1, 2006 and May 24, 2006

Note – The Schooner Village PI-AHD - Private Initiated Affordable Housing Development Special Permit was issued by the Planning Board on March 27, 2006, signed by the Town Clerk on April 18, 2006.

A request for a continuance was submitted into the file. Schooner Village Realty Trust comprehensive permit will be continued to September 6, 2006 at 7:00 p.m.

Appeal 2006-032 – Continued Hostetter Special Permit Modification to Include Personal Services

Members Assigned- James Hatfield, Shelia Geiler, John Norman, Kelly Lydon, and Gail Nightingale.

Opened on April 26, 2006 and continued to May 24, 2006, at the request of the applicant and to allow for a new advertisement and public notice to correct the name of the Applicant to Adam's County Place Realty Trust, Pricilla M. Hostetter Trustee).

This application was withdrawn without prejudice.

Appeal 2006-050 – New Hostetter Special Permit Modification to Include Personal Services

Members assigned: John Norman, Gail Nightingale, Ron Jansson, Randolph Childs, and James Hatfield. Kelly Lyndon, Shelia Geiler, and Jeremy Gilmore were also present.

Adams Country Place Realty Trust, Priscilla M. Hostetter Trustee, has applied for a Modification of Special Permit 1981-13 issued to Daniel C. Hostetter or a Special Permit pursuant to Section 240.94 Nonconforming Uses to allow the uses on the property to include Personal Services. The property is addressed 89 South Main Street, Centerville MA, as shown on Assessor's Map 228 as parcel 127. It is in Residence C Zoning District.

Attorney Michael Shultz represented the applicant. Daniel Hostetter, the property owner and Mr. Lafaria, the dog groomer were also present. The personal services use has currently occupied the building. There is a hair salon also located in the building since the early 1980's. The applicant received approval from Site Plan Review. This new service will have less traffic. No animals will be boarding on the premises. The grooming service is by appointment only. There would be no increase onsite or offsite noise. All the animals would be kept within the unit. The hours of operation will be from 8am to 5pm. The unit in the rear of the building is the unit available for the dog grooming service.

Ron Jansson expressed concern on understanding the matter. A catering service was the previous tenant in that space. The applicant is looking to modify a decision that is 25 years old. The applicant is seeking to add personal services. The applicant is seeking to modify office use for personal services. There are currently 2 retail units, 2 personal services units and two apartments. There will be two apartments above. Ron Jansson expressed concern that personal services are broad uses to grant due to traffic and parking.

Randolph Childs wanted to know which unit was being changed- The unit in the rear of the building.

Jim Hatfield expressed concern regarding noise since there are apartments above? The apartments are not above this unit. Also, there is a great deal of green space as buffer.

John Norman wants the applicant to maintaining the parking lot and line strip the designated parking spots.

Mr. Lafaria will be grooming 10 dogs per day. He works with one other groomer. His current place of business is on Cooperation Road behind the Cape Cod Mall.

Public Comment:

Royden Richardson of 129 South Main Street, Centerville, a direct abutter spoke in opposition. He is concerned due to the fact that this is a residential area. He expressed concerns. Increase of activity. There is no dog grooming establishments in residential areas. Concerned about dogs being walked in the area? He is opposed.

Sheila Burns's a resident of West Barnstable spoke in favor. She is a customer of dog groomer. She stated that his establishment is always clean.

Paula Martel, not a resident of Barnstable, spoke in favor. She stated that the animals are well mannered and well groomed. He does a fabulous job.

Gene Mulligan a Centerville resident, he is a long time customer of Roy's establishment. He handles the dogs well. He is in favor.

Frank Kersh, a resident of Mashpee, stated that Roy manages the nicest grooming place on the Cape.

Joseph J. Gentile of 17 Cedar Pond Circle, a direct abutter, spoke in opposition of the dog grooming establishment.

David Collins a resident of Hyannis and a customer of the dog groomer. He spoke in favor. He stated that the barking will not affect the neighbors.

Denise McCellen a resident of Centerville spoke in favor. It is clean establishment.

Jay Jackson a resident of Centerville spoke in favor. There will be no problem with any of the noise. Centerville will be lucky to have him.

Closing Statements:

Michael Shultz stated that the health department has done a site visit. This would be a reduction in the number tenants.

Ron Jansson stated that this property was before this board in 1981. This property was changed from a gas station use to apartments and other allowed uses. In section 240-94 A. pre-existing non-conforming use to another nonconforming use. He stated that the zoning bylaw only allows one non-conforming use on the property. Do we have the authority?

Gail Nightingale stated that in 1981 the property consisted of 3 offices, 2 retail space, 1 retail or office and general store. This permit gave them more than one nonconforming use.

Michael Shultz stated that the applicant only wants to modify one use under 240-94A.

Ron Jansson stated that historically the board has not allowed more than one non conforming use on one particular property. He also stated that he did not have an issue with applicant's proposal. However, this may be an ethical and legal issue.

Gail Nightingale stated that when this permit was granted in 1981 the existing permit gave the applicant 3 office spaces, 2 retail spaces, 1 retail or office use. That permit gave them more than one non conforming use. He already has been given that.

Ron Jansson stated that applicant wanted to add the use and not subtract a use.

Mr. Shultz stated that the applicant would swap a use on a 1 to 1 basis.

Randolph Childs stated that the Board could add a condition which would entail that if the applicant left the property the permit would be null and void.

Jerry Gilmore stated that the Board should ask the question, is this use more detrimental to the neighborhood? The ownership of pets is local and a neighborhood location is entirely appropriate for this use.

Gail Nightingale mentioned adding a one year review?

Ron Jansson- are we legally able to do so?

We will have to request for the opinion of the Town Attorney. Continued this appeal until June 7, 2006. A mixed use was in 1981 Historically, has been a mixed use. Delayed until we get the advice of the Town Attorney.

2006-033 – Continued

Soares

Side Yard Setback Variance for a Shed

Opened on April 26, 2006 continued to May 24, 2006 at the request of the applicant to allow for Old Kings Highway Historic District Committee review and issuance of a Certificate of Appropriateness.

Copy of April 26, 2006, Old Kings Highway Historic District Committee minutes enclosed. OKH review was continued until after the Zoning Board of Appeals decision.

Members Assigned: Ron Jansson, Gail Nightingale, Randolph Childs, James Hatfield, and Kelly Lydon. Shelia Geiler and John Norman were also present.

Opened on April 26, 2006 continued to May 24, 2006 at the request of the applicant to allow for Old Kings Highway Historic District Committee review and issuance of a Certificate of Appropriateness.

Copy of April 26, 2006, Old Kings Highway Historic District Committee minutes enclosed. OKH review was continued until after the Zoning Board of Appeals decision.

Richard Soares has applied for a Variance to Section 240-14 (E), Bulk Regulations, Minimum Side Yard Setback. The applicant has demolished an existing shed structure that was situated within the required side yard setback and is now seeking to rebuild a new shed of 374 sq.ft. not in conformity to the required 15-foot side yard setback. The property is addressed 18 Spruce Street, West Barnstable, MA and is shown on Assessor's Map 216 as parcel 021. The property is zoned Residence F Zoning District.

Richard Sores represented himself. He purchased the home a year ago. The home was built in 1910. There was a previous shed on the property. In one of the large storms the part of the shed was destroyed. He then demolished the shed. There was a large foundation left on the ground. He recently had a new septic system placed in his back yard. With the septic system in place and the topography of the back yard there is no other place to build the shed. He submitted a letter from the Realtor stating the condition of the shed. The Building Commissioner had a stop work order placed on the

James Hatfield expressed concern about the location of the shed. The shed is two feet off the property line.

Kelly Lydon wanted to know what would be stored in the shed. Tools, lawnmower, etc would be stored there.

Ron Jansson went to the site. He stated that it looked like a very large shed, one floor, and shingled. Mr. Jansson showed a picture of the shed he is replacing. He also stated that the stone wall appears to be the property line. He also stated that there is significant drop off in topography on the property. He doesn't understand why it has to be so large in size. There were signs outside saying Soares construction. There was a large storage trailer outside storing construction materials. Richard Soares did not get permission for the storage trailer. He did not know he needed to. This shed is on the property line. The lot is less than a half acre in size.

Richard Soares stated that the storage trailer was temporary.

Kelly Lydon wanted to know if there were any problems with his neighbors and the old shed? Mr. Soares stated he had problems with his neighbors.

Randolph Childs stated that the shed was large in size. He does agree with Mr. Jansson that the shed can be placed in a different spot on the lot. The shed is massive. Stone wall is on the west side of the house.

Public Comments: no one spoke in opposition or in favor. No letters were submitted to the file.

Closing Statements:

Ron Jansson stated that the applicant had a pre existing non conforming structure. The pitch of the roof is substantial.

James Hatfield wanted to know where the well was located. The well is located in the North West corner of the lot.

Randolph Childs would like to see the roof line brought down a little bit.

Gail Nightingale stated that there was a dormer on the shed and the shed is on the property line.

Kelly Lydon stated that he would vote in favor.

There is a letter from the Building Commissioner stating that the existing shed was 10X 20 ft shed.

Gail Nightingale stated she would not vote in favor. She would like to see modification in the plans.

Ron Jansson stated that the location and the size must be changed.

John Norman wanted to see the as-built.

Gail Nightingale stated that according to there measurements, he could move the shed and it would not be on the septic system.

Ordered:

Appeal 2006-033 will be continued to June 7th, 2006 at 7:35 pm for a modification of plans.

Appeal 2006-31- Continued Cote
Appeal of the Building Commissioner

Open April 12, 2006, and continued to May 24, 2006, at the request of the applicant

Appeal Application as submitted by Attorney Paul Revere

A May 17, 2006, Memorandum in support of the Building Commissioner's actions submitted by Attorney Patrick M. Butler is enclosed.

Steven and Angela Cote have appealed the January 25, 2006 decision of the Building Commissioner to issue a building permit for the remodeling and expansion of an existing single family dwelling. The property is located 174 Bayshore Road, Hyannis, MA, as shown on Assessor's Map 325 as parcel 084, in a Residence B Zoning District.

Members assigned: James Hatfield, Randolph Childs, Ron Jansson, Gail Nightingale, and Shelia Geiler.

Paul Revere represented the applicants Steve and Angela Cote. Mr. Revere withdrew the application with prejudice.

Ron Jansson: Withdraw his application with prejudice.

Vote:

AYE: James Hatfield, Randolph Childs, Ron Jansson, Gail Nightingale, and Shelia Geiler

NYE:

Appeal 2006 -024 – Continued Corey Conditional Use in a Highway Business

Open March 22, 2006 continued April 12, 2006, and to May 24, 2006, at request of applicant

No Members assigned

Donald J. Corey, Jr., has applied for a Special Permit pursuant to Section 240-25 (C)(1) Conditional Use in a Highway Business District and a Modification of Special Permit 1969-66 issued to Father McSwiney Associates Inc. The applicant seeks to demolish the existing Knights of Columbus Hall and redevelop the site with a 9,801 sq.ft. retail building and related site improvements. Use of the site is to be that of retail sales of liquor. The property is addressed 1030 Falmouth Road (Route 28), Centerville/Hyannis, MA, as shown on Assessor's Map 250 as parcel 065, in a Highway Business and Residence D-1 Zoning District.

Gail Nightingale and Randolph Childs are not able to sit on this appeal due to a conflict of interest.

Ron Jansson was delegated as Chairman. Mr. Jansson read the legal into the record.

Pat Butler represented the applicant Donald J. Corey Jr. Mr. Butler requested a continuance.

Ordered: A continuance on Appeal 2006-024 to July 26, 2006 at 7:45 pm.

Appeal 2005-100 BayPoint, LLC. MGL Chapter 40B Comprehensive Permit

Gail Nightingale read a letter that was submitted into the file on from Edwin E. Taiple on behalf of Bay Point, LLC. This letter was submitted requesting a continuance to August 23, 2006.

Ordered: A continuance on Appeal 2005- 100 to August 23' 2006 at 7:45pm.

Chairman's Discussion

Ron Jansson expressed changes in the administrative code/ Town Counsel wanted the members to reword particular sections. 41 Section 81AA specified staggered terms.

Mullin Rule- Board Members who missed testimony on one meeting- can review the tape and material from the missed meeting. You can only miss one hearing.

Ron Jansson attended another ZBA meeting on the cape. He stated that if any member of the board sits on a hearing 300 ft radius from their property and does not to disclose that information, it is a crime.

Meeting Adjourned 8:59 pm.

Respectfully submitted,

Leandra J. Nicolo