



**Town of Barnstable**  
**Zoning Board of Appeals**  
**Minutes**  
**January 9, 2008**

*A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday, January 9, 2008 at 7:00 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.*

<i>Gail Nightingale</i>	<i>Present</i>
<i>Ron Jansson</i>	<i>Present</i>
<i>Daniel Creedon III</i>	<i>Present</i>
<i>James Hatfield</i>	<i>Present</i>
<i>Sheila Geiler</i>	<i>Absent</i>
<i>John Norman</i>	<i>Present</i>
<i>Jeremy Gilmore</i>	<i>Present</i>
<i>Kelly Lydon</i>	<i>Present</i>

*Chairman Gail Nightingale opens the hearing and reads a summary of the appeals being heard tonight. She then calls the/Gargan/Gallagher hearing at 7:07 PM.*

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**Appeals 2007-081 & 103 - Continued**

**Gargan**

Both Appeals have been continued to January 9, 2008, to permit re-notice and publication of variance relief under the Gallagher's name.

**Members Originally Assigned:** Ron Jansson, Sheila Geiler, James Hatfield, John Norman, Gail Nightingale  
**Alternates Present:** Jeremy Gilmore, Kelly Kevin Lydon

**Appeal 2007-081**

**Gargan**

**Special Permit – Nonconforming Lots**

Opened October 10, 2007, continued November 28, 2007, and to January 9, 2008.

Joseph E. Gargan & Paula R. Gargan have petitioned for a special permit pursuant to Section 240-91 Nonconforming Lots. The applicants seek to transfer 2,733 sq.ft. of lot area at 621 Scudder Avenue Hyannisport, Mass., to the petitioner's abutting lot at 49 Lafayette Avenue, Hyannisport, Mass. The subject properties are shown on Assessor's Map 287 as parcels 047 and

048, commonly addressed as 621 Scudder Avenue and 49 Lafayette Avenue, Hyannisport, MA. The property is in a Residence F-1 Zoning District

**Appeal 2007-103**

**Gargan  
Bulk Variance**

Opened November 28, 2007, continued to January 9, 2008.

Joseph E. Gargan & Paula R. Gargan have applied for a Variance to Section 240-13.E Bulk Regulations. The applicants seek to transfer 2,733 sq.ft. of lot area from an abutting undersized lot owned by Edward M. Gallagher and Susan P. Gallagher, addressed as 621 Scudder Avenue Hyannisport, MA, to their lot addressed as 49 Lafayette Avenue, Hyannisport, MA. The subject properties are shown on Assessor's Map 287 as parcels 047 and 048, commonly addressed as 621 Scudder Avenue and 49 Lafayette Avenue, Hyannisport, MA. The property is in a Residence F-1 Zoning District.

**Appeal 2008-001 – New**

**Gallagher  
Bulk Variance**

Edward M. Gallagher and Susan P. Gallagher have applied for a Variance to Section 240-13.E Bulk Regulations. The applicants seek to transfer 2,733 sq.ft. of lot area to an abutting lot owned by Joseph E. Gargan & Paula R. Gargan and addressed 49 Lafayette Avenue, Hyannisport, MA. The subject Gallagher lot is shown on Assessor's Map 287 as parcel 048, commonly addressed as 621 Scudder Avenue, Hyannisport, MA. The property is in a Residence F-1 Zoning District.

*Members assigned: Ron Jansson, Dan Creedon, James Hatfield, John Norman, Gail Nightingale*

*Ron Jansson indicates that the Gargans were here before and basically this for the same property. He explains that they should be called together as they are variances that run with the properties.*

*Dan Creedon recommends, for expediency, that he be replaced with another member. Gail Nightingale assigns Kelly Lydon in place of Dan Creedon..*

*Members assigned: Ron Jansson, Kelly Lydon, James Hatfield, John Norman, Gail Nightingale*

*Attorney Tracey Taylor, who is representing the Gargans, and Attorney Peter O'Keefe, who is representing the Gallaghers, are present. Attorney O'Keefe gives a brief summary of relief being sought which is a switch of a strip of land between both properties. He indicates it is subject to a P&S and contingent upon Town approval. Attorney O'Keefe gives examples of problems with the topography and indicates there is a drop off and hilly terrain. He indicates that the financial hardship would be in the transferring of the property. He also does not think it would be a detriment to the neighborhood. Attorney Taylor indicates that there are no new developable lots being derived from this.*

*Gail Nightingale asks if there is anyone here from the public either in favor or in opposition. No one speaks either in favor or in opposition.*

*Ron Jansson does findings.*

*There are 3 appeals: 81, 103 which pertain to Joseph Gargan et ux, for property located on Scudder Avenue and Appeal 2008-001 involving Edward M. Gallagher et ux and wife property located off Scudder Avenue in the village of Hyannis. The property in issue is located in a RF-1 zoning district. The Gargan property is shown as parcels 47 and 48 on Assessor's Map 287. The Gallagher property is shown as parcel 48 on Map 287. The Gargan's parcel of land is known as 621 Scudder Avenue in the village of Hyannisport and the Gallagher's property is known as 49 Lafayette Avenue in the village of Hyannisport. Both of these zoning districts currently require one acre of contiguous upland and neither one of them currently comply. The Gallagher lot currently consists of basically approximately 28,000 square feet with land that has been developed with a single family dwelling together with a swimming pool. The Gargan's piece of land consists of a dwelling, shed, and a cottage on approximately 7500 square feet. Both of these lots currently comply and continue to comply with the shape 22 factor. The applicant is before us because the Gargan's parcel, being a smaller parcel seeks to have about 2733 square feet of land transferred from the Gallagher's' to the Gargans'. This piece of land is best described as no man's land currently. There is a fence on what would be westerly boundary of this property that basically comes up to the rear/side portion of the Gallagher property and there is a significant drop-off, we have heard as testimony, of six feet running throughout this land. The 6 foot drop-off, contours, or elevation matches the contours of the Gargan property. There is, in fact, a topographical condition which currently makes this 2700 square foot parcel separate, apart, distinct, and unusable to the other parcel.*

*Owing to this condition it would be a hardship not to let this land be transferred out to someone else who could utilize it and in essence that is what the applicants are seeking to do.*

*In granting the relief being sought it would not be in derogation of the spirit or the intent of our zoning bylaw because they are trying to create consistency in lot shapes and sizes in this neighborhood. Also, it would correct current nonconformities that do exist on the Gargan lot with the cottage basically bordering on the current Gallagher parcel and would correct that setback deficiency.*

*In granting the relief being sought it would be in keeping with the spirit and intent of our zoning bylaw and would not be detrimental to the neighborhood affected as it is a mutual agreement reached by the parties and works out to everyone's advantage. Those would be his findings with reference to appeals 103 of 2007 and 001 of 2008.*

*Kelly Lydon seconds.*

*Jerry Gilmore suggests a finding be added indicating that it would convey the tax liability to the property in question to the people most suitable to its use where it is currently being paid by the owner. Ron Jansson accepts that finding.*

*James Hatfield seconds that finding*

*Vote:*

*AYE: Kelly Lydon, James Hatfield, John Norman, Ron Jansson, Gail Nightingale*

*NAY: None*

*Ron Jansson makes a motion: Based upon the unanimous findings of the Board he moves they grant the Gallagher's' and Gargans' the variance relief being sought subject to the following terms and conditions*

- 1. This variance is granted to allow 2,733 sq.ft. of land from the Gallagher's, 621 Scudder Avenue lot be segmented and transferred to the Gargan's lot located at 49 Lafayette Avenue. The land to be transferred is shown as Parcel B in a plan entitled "Plan of Land in Hyannisport, MA prepared for Joseph E. Gargan" dated June 11, 2007, as drawn by Down Cape Engineering, Inc.*
- 2. The applicant shall apply to the Planning Board to seek an Approval Not Required Plan for the creation of these new boundaries.*
- 3. Both the Approval Not Required Plan as finally approved by the Planning Board, should that occur in this variance and this variance shall be recorded at the Barnstable Registry of Deeds. A copy of that recorded plan together with this variance shall be submitted to the office of the Zoning Board of Appeals for this relief to be in effect.*
- 4. If the variance and Approval Not Required Plan have not been recorded at the Barnstable Registry of Deeds within one year from the date of issue of this variance, this variance shall expire.*

*Both 621 Scudder Avenue and 49 Lafayette Avenue shall only be used as is currently allowed under zoning for single family use. The two structures located on the 49 Lafayette Avenue lot shall not be sold or deeded into separate ownership nor shall that lot be further divided based upon two structures under what is currently knows as chapter 240 section 81L – Subdivision Control of the State of Massachusetts that predate adoption of the subdivision control law in the Town of Barnstable*

*Kelly Lydon seconds.*

*Gail Nightingale asks if he should refer that when they file the variance with the Registry both lots will have to file a variance.*

*Ron Jansson indicates that he believes they need just one that affects both lots.*

*Attorney O'Keefe indicates that if you just have one variance granted it can be bookmarked under both the chains of title and it will go against each title.*

*Vote:*

*AYE: Kelly Lydon, James Hatfield, John Norman, Ron Jansson, Gail Nightingale*

*NAY: None*

## **GRANTED WITH CONDITIONS**

*Gail Nightingale then asks if they want to withdraw the special permit.*

*Attorney Taylor indicates that she would like to withdraw her request for special permit 2007-081.*

*Ron Jansson moves to withdraw this appeal without prejudice.*

*Kelly Lydon seconds.*

**Vote:**

**AYE:** Kelly Lydon, James Hatfield, John Norman, Ron Jansson, Gail Nightingale

**NAY:** None

**WITHDRAWN WITHOUT PREJUDICE**

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*Gail Nightingale then asks if there is anyone here from Mass Housing. No one is here. She then calls the Limoncelli hearing.*

*Members assigned: Dan Creedon, Ron Jansson, James Hatfield, John Norman, Gail Nightingale*

*Attorney Princi, who is representing the applicant, tonight at 6:45 PM before the hearing handed in materials for the Board.*

**Appeal 2007-087 – Continued**

**Limoncelli  
Appeal of the Building Commissioner**

Opened October 24, 2007, continued to January 9, 2008, at request of applicant.  
No Members Assigned, No Testimony Taken

Staff Report dated December 2, 2008 and supplemental materials are enclosed.  
Application materials as submitted by the Appellant were previously sent.

Susan Limoncelli has appealed the August 6, 2007 denial of a building permit by the Building Commissioner for property located at 181 School Street, Cotuit MA. The appeal was made pursuant to MGL Chapter 40A, Section 8 and 15 and Section 240-125 of the Zoning Ordinance of the Town of Barnstable. The property is addressed as 181 School Street, Cotuit, MA and is shown on Assessor's Map 020 as parcels 090 in a Residence F Zoning District.

*Attorney Princi is representing the applicant. He gives a historical background of when Susan Limoncelli purchased the property in August of 2005 from Ruth Grover. He indicates that it was advertised as a main home with a guest cottage which appeared to be a garage structure on the property. Prior to purchasing, Ms. Limoncelli went to Town Hall and checked the Assessor's record which showed, going back to at least 1989, that the property had been assessed as a 2 family/multi family lot with the garage structure being assessed separately as an apartment and the main home being assessed as the main home. He gives a history of her application process. He indicates that he tried to piece the historical perspective from 1989 through 2005. He indicates that from his facts, this property was used as a multi-family property, contained a rental unit in the garage that was continuously rented from 1981 through 2005 and comments that within 2 weeks of Ms. Limoncelli purchasing the property, she received a letter from Linda Edson indicating her that she had an unlawful rental unit.*

*Dan Creedon asks if Ms. Limoncelli had put an ad in the paper after she bought it advertising it for rent. Attorney Princi indicates that he didn't believe so but believes Ms. Edson found out from the sale of the property. Attorney Princi also indicates that his client asked the tenant at the time of the purchase of the property to vacate so that she could renovate.*

*Attorney Princi indicates that he had presented a permit in May of 2007 and sent Mr. Perry 11 exhibits of historical perspective of the property. He indicates he has had several conversations with John McShane, Buddy Martin and Marjorie Harvey. Attorney Princi explains that Linda Edson knew it was a rental and was friends with the previous owners of the property, the Grovers. Attorney Princi then goes through the materials he had submitted and refers to Exhibit #4 and reads a letter that Linda Edson relied upon from Joe Daluz to Ruth Grover. He reads the letter. He then indicates that there wasn't any permit in 1981 and the only thing they have is this letter. He indicates that, from the letter, he assumed a building permit was issued.*

*He indicates that he called John McShane, who indicated that he did the construction, Ruth got the letter, Buddy Martin knew about this, went down and talked to Joe Harvey and told him to call Buddy Martin. Attorney Princi indicates that Buddy Martin indicated that they knew about the apartment for a long time. He reads a letter from Marjorie Harvey which is Exhibit 15. He then indicates that in 1989, Ruth Grover applies for another addition to the house. At that time, according to what Buddy Martin told him, Linda Edson acknowledged in conversation to his clients, and according to what Marjorie Harvey has attested to and the historical information that was provide to the buyers when she purchased the property that the apartment was there. They approved a building permit for the construction of an addition.*

*Attorney Princi indicates that in 2007, Ms. Limoncelli applied for a building permit to do work on the main house. She then received a letter from the Building Department denying her application for a building permit because her property was noncompliant.*

*Attorney Princi then talks about the assessing records. He then asked Ms. Limoncelli to check the outside electrical meter that has been there since 1981. John Norman indicates that the meter does not necessarily pertain to the building itself, as it could've been just for the wiring that was required back in 1989 which was noted for a sink and for putting wiring out there. Attorney Princi indicates that the garage was there in 1972 and not built as an apartment but a garage converted into an apartment*

*John Norman comments that the sticker could be just be an acknowledgment for NSTAR to mount the meter for the electrical work that was done to meet code which doesn't necessarily mean an apartment, it could've been for a panel to wire up some plugs for a workshop. John also comments that someone can pull a wiring permit or a plumbing permit without a building permit.*

*Attorney Princi indicates that from Joe Daluz's letter that a building permit issued. John Norman comments that he believes Attorney Princi referenced a sink and electric for a workshop. Attorney Princi indicates that Joe Daluz had a conversation with John McShane about that and then when the inspectors went out to inspect they found something different. He also indicates that Mr. Jenkins inspected the furnace in 1981 and at least those inspections did take place in 1981.*

*Ron Jansson comments that this property is in a Residential Zoning District and that the only use is for a single family dwelling and asks for clarification on how the cottage can be allowed.*

*Attorney Princi indicates Chapter 40A, Section 7 which he reads.*

*Ron Jansson comments that as part of that section it states that a building permit must be presented indicating that the cottage would be allowed for which there is no permit.*

*Dan Creedon asks Attorney Princi for clarification on Section 7 for which he is basing this appeal on.*

*Attorney Princi indicates that the statute doesn't say a written building permit, it says the original building permit and there was clearly permission. He indicates that Joe Daluz's letter that a permit was applied for because inspectors went out to do inspections on work. He indicates that the implication is that John McShane might not have done the work in accordance with what he applied for, however, if Joe Daluz sat down with Jack Harvey and modified the building permit to allow the use, whether it was right or wrong and agrees at the time it was RF and probably shouldn't been done, but if Joe Daluz did do that he had the authority to be modified for the construction that took place and had the authority to approve it whether it was right or wrong and it was a clear indication that it was approved. He indicates that Buddy Martin would attest that in fact it has been there, they have known about it, and have accepted it as an apartment. He indicates that they can conclude from inferences that a building permit did issue.*

*Dan Creedon clarifies that it was without a stove to which Attorney Princi concurs. Attorney Princi indicates that Marjorie Harvey was clear that Joe Daluz noted that they could have an apartment, just not a stove.*

*Ron Jansson reads from a letter of November 6<sup>th</sup> which never authorizes the use as an apartment or anything else. He reads the letter indicating it was for a utility sink and heating a garage for an occasional use as a workshop and asks how did it go from a workshop to a cottage. Attorney Princi indicates that from what he read from the affidavit that after meeting with Mrs. Grover's representative, he issued a compliance based upon what was done based on that permit. Ron Jansson indicates that it is not indicated if the compliance was for the use as a workshop or for an apartment. Attorney Princi indicates that Buddy Martin would say the approval was given at that time for an apartment.*

*Dan Creedon indicates that from the records Joe Daluz noted there was a violation but nothing after as to what was done from there.*

*The Board discusses the use versus the dwelling and read Joe Daluz's letter.*

*The Building Commissioner – Tom Perry speaks and indicates that they know the garage existed from at least 1972 and it appears that they put a utility sink in and some heat which would not require a building permit but they do not know what that time frame was all they do know that on November 6<sup>th</sup> a letter was issued indicating that it had beyond what was there.*

*Attorney Princi indicates that inspections were done and are only done if there is a building permit.*

*Dan Creedon asks if Mr. Daluz was ever contacted regarding this and Attorney Princi indicates he was but did not remember what happened.*

*Tom Perry indicates that inspectors might have been there for enforcement and not necessarily there regarding a building permit.*

*Attorney Princi references exhibit 17.*

*John Norman indicates that on June 10, 1981, they pulled a septic permit for a 3 bedroom home 3 months prior to the letter dated November 6, 1981 and why doesn't the septic permit reflect an overall town permit being issued for an approved apartment for 4 bedrooms on the property. John indicates that the septic permit issued is dated 06/10/81 and the only letter they have is the one dated November 6, 1981. John Norman asks if somewhere between June and November they built an apartment and asks if Attorney Princi's contention is that the septic went in before the apartment was approved and if the building permit was issued for a single bedroom apartment to be added they would've required that the septic be upgraded to accommodate a 4 bedroom?*

*Attorney Princi indicates that since 1981 the system has been updated twice, once in the mid 90's and again around 2000. John Norman indicates that in the 1992 permit it was acknowledged because when you got to the BOH they check the assessor's record the BOH will let you pull a permit for what is there.*

*Gail Nightingale comments that they could consider the Amnesty Apartment Program*

*Susan Limoncelli speaks and indicates that they purchased the property in 2005 and that there was a tenant there at that time and were told by Paul Grover that the tenant had been there for 9 plus years and had no idea there would be a problem with that. She indicates that the cottage was important to the purchase and the property was taxed as a two family. She indicates that his has been a financial hardship.*

*Dan Creedon asks Ms. Limoncelli if they have considered the Amnesty Apartment Program. Ms. Limoncelli indicates that she would not want to because it places restrictions on her ability to rent the cottage, indicates that there are some salary restrictions but also restrictions on what they would be able to charge, they would have to pay for the utilities and it requires a deed restriction which would hamper their ability to sell the house with that in tact.*

*Gail Nightingale indicates that they could discontinue the amnesty and then sell the house. Susan Limoncelli indicates that is not how they bought the property. She indicates that they bought it with unrestricted use, it was a rental cottage, there were no restrictions as to whom it could be rented to and for how much and no deed restriction. She indicates that if the former owner was part of the Amnesty Program they would've seen it in the deed restrictions. .*

*Dan Creedon asks how much it was rented for when she purchased the property. Ms. Limoncelli indicates that, at the time, it was rented for \$900 a month but was in disrepair.*

*Dan Creedon asks what she thinks they could rent it for today if there were no restrictions. Ms. Limoncelli indicates that they could possibly get \$1000-1200 per month.*

*Gail Nightingale indicates that they could get that for an amnesty apartment*

*Ms. Limoncelli indicates that then they would have to pay for the utilities, there is a deed restriction and is not how they bought the property, the tenants have to supply tax returns to validate that they meet income requirements and are not responsible for the utilities and the utilities are incorporated into the rent which would lower the rent by a couple of hundred dollars per month.*

*Gail Nightingale asks if there is anyone here either in favor or in opposition.*

*Penny Levert, who lives at 193 School Street, indicates she had bought her house in 1997 and is not in objection to the Board granting it as a legal apartment. Gail Nightingale indicates that they are not here to legalize the apartment, just to uphold the decision of the Building Commissioner.*

*Attorney Princi rebuts a brief summary and asks the Board to overrule the decision of the Building Commissioner.*

*Dan Creedon does findings*

- *On appeal 2007-087 this is appeal of the Building Commissioner's decision for the denial of a building permit for construction renovation of stairs in cottage according to what was submitted.*
- *The application was submitted on June 1, 2007 with the letter from Attorney Michael Princi dated May 29, 2007 and on August 6, 2007 the Building Commissioner issued a denial of that permit.*
- *There was a notice of an appeal timely filed and that brought the case before the Board here this evening. It was timely filed within the 30 days required by 40A.*
- *There is a letter dated in 1981 from the then Building Commissioner - Joe Daluz stating that Mr. McShane had come to the Town and asked if he could obtain permission to install a sink and heating for an existing garage on the property to be used as an occasional workshop.*
- *After that, on November 4<sup>th</sup>, the then Assistant Building Inspector - Alfred Martin, and John Newton, the wire inspector, made an inspection and found, according to Mr. Daluz's letter, a garage with a stove, kitchen sink, refrigerator, bed, and what, according to Mr. Daluz in his letter, might be better described as an apartment unit and by his letter asked Mrs. Grover to come into his office within 7 days of receiving that letter and at that time a determination for compliance may be issued.*
- *Beyond that there was nothing further in the record that has been submitted by testimony or by documentation that anything further happened with respect that letter that Mr. Daluz sent Mrs. Grover.*
- *There has been no building permit from 1981 submitted that a search was conducted of the Town's record and no such building permit was found. From 1981 to 2005 the property has been used as a two family.*

*Ron Jansson seconds.*

*Ron Jansson asks if Dan would consider adding to the findings:*

- *The fact that the Building Commissioner has issued a determination that a current use on the property is not in conformity with the local zoning bylaws.*

*Dan Creedon accepts the additional finding.*

*James Hatfield seconds.*

*Vote:*

*AYE: John Norman, Ron Jansson, Dan Creedon, James Hatfield, Gail Nightingale*

*NAY: None*

*Findings are upheld*

*Based on those findings that the Board uphold the decision of Mr. Perry to deny the building permit requested by the applicant.*

*James Hatfield seconds.*

*Vote:*

*AYE: John Norman, Ron Jansson, James Hatfield, Dan Creedon, Gail Nightingale*

*NAY: None*

***Decision of the Building Commissioner to Deny a Building Permit is Upheld.***

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*Gail Nightingale then asks to take things out of order. She indicates that the Kaschuluk appeal is being asked to be withdrawn without prejudice.*

**Appeal 2007-073 - Continued**

**Kaschuluk  
Demo/Rebuild on Nonconforming Lot**

Opened August 22, 2007, continued September 12, 2007, November 7, 2007, and to January 9, 2007

Continued to allow for finalizing of architectural plans, including basement living area.

Assigned: James R. Hatfield, Sheila Geiler, John T. Norman, Kelly Kevin Lydon, Gail C. Nightingale

Associates Present: Jeremy Gilmore

No revised plan has been submitted and no new communication received.

Deanna Kaschuluk has petitioned for a Special Permit pursuant to Section 240-91.H(2) - Demolition Rebuilding on a Pre-existing Nonconforming Lot of Less than 10,000 Square Feet. The applicant seeks to demolish the existing structure on a lot consisting of 9,973 sq.ft. and rebuild a new single-family dwelling in conformance with current setback requirements. The subject property is addressed as 8 East Avenue, Osterville, MA and is shown on Assessor's Map 139 as Parcel 075. It is in a Residence F-1 Zoning District

***Members assigned: Kelly Lydon, Jerry Gilmore, James Hatfield, John Norman, Gail Nightingale***

*Gail Nightingale reads the letter from Deanna Kaschuluk indicating that because the Purchase and Sales agreement has expired, she is asking to Withdraw without Prejudice.*

*Jerry Gilmore makes a motion to Withdraw without Prejudice.  
Kelly Lydon seconds.*

*Vote:*

*AYE: Kelly Lydon, Jerry Gilmore, James Hatfield, John Norman, Gail Nightingale*

*NAY: None*

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**WITHDRAWN WITHOUT PREJUDICE**

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*At 8:30, Gail Nightingale announces that the Corey appeals are being continued but will wait to until they are called to do so.*

*She then calls the HAC/YMCA appeal.*

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**Comprehensive Permit – 2006-072  
YMCA Site**

**Housing Assistance Corporation –**

**Minor Modification Decisions**

On November 7, 2007, the Board found that the October 29, 2007 request of the Applicant for a modification of the Comprehensive Permit was minor and required no public hearing. The Board and Applicant agreed that they intend to make the necessary modification to specific conditions at the public hearing of January 9, 2008.

Request for a Minor Modification of Conditions of Comprehensive Permit 2006-072 issued to Housing Assistance Corporation for the development of 28 two- and three-bedroom townhouse units on 7.2-acres located at 2239 Iyannough Road (Route 132), West Barnstable, MA. Modifications include elimination of basements in 6 of the 7 buildings, modification of site plan for grading of entrance to common storage area, change of wastewater disposal system, and clarification of rents.

*Members assigned: John Norman, Ron Jansson, Dan Creedon, James Hatfield, Gail Nightingale*

*She indicates that they are just here to approve the final changes.*

*Attorney Peter Freeman is representing the applicant. He indicates that Ruth Weil, Art Traczyk and Attorney Freeman have worked on it and they are all in accord for maybe the rental change*

*Gail Nightingale indicates they have just been handed the proposals and would like time to read it.*

*Attorney Freeman indicates that there was a draft on the rental limit and that they are in accord. The only question in discussions related to findings number 6 and condition #1.*

*Ron Jansson indicates that he had spoken with Ruth about what it all means. He has concerns, and it has been his understanding, that the developer, and the whole purpose of the 40B is that the developer takes on the cost.*

*Gail Nightingale indicates that she was under the impression that there wasn't going to be anything in about the rentals and would like to hear from Ruth Weil – Town Attorney.*

*Ruth Weil – Town Attorney indicates that this is an unusual development as this is 100% affordable and is reaching an affordability which is below the 30% of the 80% which is what is the requirement under Chapter 40B and that is a rental project and the only way they can go forward is with an incredible amount of subsidy. This has received a lot of community support and is a well designed development. She indicates that they have community preservation funds as well tax credit funds and the section 8 vouchers will be sought but it will make the development work. The reason why there is so little rental property because it is so hard to do a development without subsidy. She indicates that there is a profit limitation under 40B if they exceed it there is a monitoring agreement. The rent could not exceed 30% of the 60% as this permit was framed and the only thing they changed was the tenant share is limited to 30% of the 60% and if any of these rental subsidies are received in the future the landlord can receive the additional rent and if there is any concern about exceeding the profit limitation there is that monitoring agreement.*

*Ron Jansson discusses the Holly Hill project indicating that affordable and subsidized were different and realizes they are doing it differently here but has concerns.*

*Attorney Freeman indicates there is distinction because of the nature of the project. He indicates that the Holly Hill project did not have the perpetuity language and documentation and was not 100% affordable. He indicates that in that situation, the subsidy program was eliminated and there wasn't clarity as to perpetuity. It will have the requirement of the Comprehensive Permit and Regulatory Agreement. Attorney Freeman indicates that it couldn't take place here because they are all affordable units and that section 8 does not give a developer project eligibility to be before the Zoning Board.*

*Ron Jansson asks for clarification as to what type of unit, market rate or affordable unit, the section 8 tenant would have to go with.*

*Attorney Freeman indicates that all these units are affordable and that wouldn't happen here*

*Dan Creedon asks Attorney Freeman to quantify how it works with section 8 rents.*

*Attorney Freeman indicates that it changes regionally and annually, HUD publishes and sets the Section 8 rents with utilities and what the HAC would receive if there is a Section 8 would be whatever the Section 8 rent is for the 2 or 3 bedroom unit. Dan asks if it is for whatever the tenant pays and Attorney Freeman indicates yes. The tenant pays no more than or it is set at 30% of their rent that is typically below the 60%.*

*Dan asks for clarification of what the formula is. Attorney Freeman indicates that his understanding is that with section 8 vouchers, they don't earn the 60% but they are actually paying less in dollars. Dan asks if that if every unit was section 8 tenant that would be a*

*scenario where you might end up with a for-rent project over 20% profit, maybe, but that additional money would go back to the Town wouldn't it?*

*Attorney Freeman indicates that it is not the 10 or 20% but, typically depending on the program, on the rentals the excess goes back to the subsidizing agency.*

*Ron Jansson reiterates his concern for people who need affordable housing but don't qualify for section 8.*

*Attorney Freeman indicates that section 8 is regional and goes to the tenant and you can't make those distinctions under the Federal Fair Housing laws and you cannot make that segregation of what type tenants go where.*

*Gail Nightingale then asks if they even have to modify that.*

*Attorney Freeman indicates that he would suggest so and reads the original condition.*

*Gail Nightingale indicates they have a new motion on a new condition #1 under 6. Attorney Freeman indicates that it is a finding of fact #6 and a condition #1. Gail indicates then they have #9 and #12 that is being modified*

*Dan Creedon does findings*

*On Comprehensive Permit 2006-072 for the Housing Assistance Corporation for property located at 2239 Iyannough Road (Route 132) West Barnstable MA, on Assessor's Map 215, Parcels 020 and 028. It is in a Residence F Zoning District. He moves that the decision be modified to find the following facts that relate to Housing Assistance Corporation development of YMCA Site A as it relates being consistent with local needs.*

*Finding No. 6 is modified to read:*

*For each unit, the tenant's share of the monthly unit rent, including utilities, is to be calculated based upon a formula under which monthly housing costs for the household residing in the unit shall not exceed 30% of 60% of the Area Median Income (AMI) of the Barnstable Metropolitan Statistical Area (MSA). Nothing herein shall preclude the landlord from receiving rental assistance to supplement the rent it receives as long as the tenant's share of rent does not exceed 30% of 60% of the Area Median Income (AMI) of the Barnstable Metropolitan Statistical Area (MSA).*

*James Hatfield seconds.*

*Vote:*

*AYE: Dan, Creedon, James Hatfield, John Norman, Gail Nightingale*

*NAY: Ron Jansson*

*Based on those findings he would move to modify the Comprehensive Permit:*

*Condition No. 1 is modified to read:*

*The total number of housing units shall not exceed 10, three-bedroom and 18, two-bedroom units. All of the 28 units shall be dedicated in perpetuity as affordable rental housing units. The units shall be committed in perpetuity to affordability at 60% of the median income level to households in the Barnstable Metropolitan Statistical Area (MSA). The tenant's share of rents for each of the units (including utilities) shall not exceed 30% of the 60% income figure as applicable and adjusted for household size in perpetuity. Nothing herein shall preclude the landlord from receiving rental assistance to supplement the rent it receives as long as the tenant's share of rent does not exceed 30% of 60% of the Area Median Income (AMI) of the Barnstable Metropolitan Statistical Area (MSA).*

*James Hatfield seconds.*

*Vote:*

*AYE: Dan Creedon, James Hatfield, John Norman, Gail Nightingale*

*NAY: Ron Jansson*

*Ron Jansson indicates that he doesn't believe even if they reach the 10% of our housing goals for affordable for this Town it will be sufficient to provide for affordable housing needs as they exist in this Town. As a result, they would have to rely on subsidies beyond 40B and that would include the subsidy which is provided by section 8 housing and to allow one and both to be the same in cases like this deprives us of filling housing needs for people who truly need it.*

*Finding No. 8 is modified to read:*

*Proposed structures consist of two, 4,149 sq.ft., four unit buildings. Each of these buildings contains four, two-bedroom units; the five other buildings are each 4,984 sq.ft. Each of these buildings are to house 4 units which will consist of two, two-bedrooms and two, three-bedrooms. Each two-bedroom unit is to be 1,038 sq.ft. Each three-bedroom unit is to be 1,406 sq.ft. One building, Building #5, is to have a full basement which is to facilitate unit storage for all 28 units. Also, he would move to strike the former ultimate sentence to that finding that says that all of the units are to have full basements.*

*Finding No. 9 is modified to read:*

*The plans for the development were submitted to the Site Plan Review Committee for review and comment. The site development plans are entitled "West Barnstable Communities – Site A Comprehensive Permit Application W. Barnstable, Massachusetts dated June 26, 2006, last revised on November 28, 2006, as drawn by Horsley Witten Group and later modified by a Grading & Drainage Plan with a last revised date of November 9, 2006, submitted with the October 30, 2007, modification request. The entire set of plans consists of 11 sheets. The architectural plans for the proposed structures to be built are entitled "The West Barnstable Communities proposed 28 Unit Family Housing Development – Site "A" Rte 132, West Barnstable, MA - Developed by Housing Assistance Corporation" as drawn by Brown Lindquist Fenucco & Raber Architects, Inc., dated 7-17-*

*06 and consisting of 11 sheets and later modified by a supplemental drawing with a date of issue of October 8, 2007, submitted with the October 30, 2007, modification request.*

*Finding No. 12 is modified to read:*

*The proposed project will be served by public water and an on-site nitrogen reduction wastewater disposal system. The applicant's representatives have represented to the Board that sufficient area with suitable soil has been found to accommodate the on-site septic leaching system. The original proposal was to install a F.A.S.T. Innovative Alternative system, however, that was later modified to a "Presby System". The system will reduce the nitrogen to 19 mg/l or lower.*

*James Hatfield seconds.*

*Ron Jansson indicates that he will be supporting finding #9 and 12 and has very strong concerns about Finding #8 and his reason is that the demonstrated need in the community for affordable housing is for young families and when you remove the ability of these families as was initially presented to this Board for have full storage facilities under each of their units you basically deter those families from seeking this housing in this area.*

*Vote on Finding # 9 and 12:*

*AYE: Dan Creedon, Ron Jansson, James Hatfield, John Norman, Gail Nightingale*

*NAY: None*

*Gail Nightingale indicates that she is voting in favor of all of them but would've like to seen basements but agreed that this was a minor modification.*

*Dan Creedon then moves to modify conditions #2 and #3 as follows:*

*Condition # 2 is modified to read:*

*Development of the site shall be in conformance to the site plans presented to the Board consisting of eleven (11) plan sheets. The Title Sheet of which is entitled "West Barnstable Communities – Site A Comprehensive Permit Application W. Barnstable, Massachusetts" dated June 26, 2006, as drawn by Horsley Witten Group. However, those development plans shall be modified to reflect the last general site plan submitted dated November 29, 2006 and revised to reflect the Grading & Drainage Plan with a last revision date of November 9, 2006. That last plan cited was submitted with the modification request of October 30, 2007, to eliminate the basements in all buildings except Building #5 as shown on the plan. The intent being to consolidate all storage for the units into the one basement level of Building #5.*

*Condition No. 3 is modified to read:*

*The structure to be constructed on the site shall be in strict conformance to the architectural plans presented to the Board consisting of eleven (11) plan sheets. The Title Sheet of which is entitled "The West Barnstable Communities proposed 28 Unit Family Housing Development – Site "A" Rte 132, West Barnstable, MA - Developed by Housing Assistance Corporation" as drawn by Brown Lindquist Fenuccio & Raber Architects, Inc.,*

*dated 7-17-06 and as revised by 15 sheets with a date issue of October 8, 2007. The last revision cited was submitted with the modification request of October 30, 2007, to eliminate the basements in all building but Building #5 shown on the plan. The intent of that modification being to consolidate all storage for the units into the one basement level of Building #5.*

*James Hatfield seconds.*

*The vote on the motion was as follows:*

*AYE: Daniel M. Creedon, James R. Hatfield, John T. Norman, Gail C. Nightingale*

*NAY: Ron S. Jansson*

*Ron Jansson for the reasons stated.*

### ***Modifications Granted.***

*Gail calls a recess at 8:10.*

*Meeting called back into order at 8:18.*

*She then calls the Morin case and reads a letter from Attorney Ford requesting a 6 month extension.*

**Variance 2006-105**

**Jacques N. Morin**

**Request for 6-Month Extension of Variances**

By letter received December 13, 2007 Attorney Michael D. Ford has requested on behalf of Jacques N. Morin a 6-month extension of Variance 2006-105 issued December 20, 2006 to Mr. Morin for property addressed 1358 Falmouth Road (Route 28), Centerville, MA. The subject lot is shown on Assessor's Map 229 as parcel 099. The variance was issued to permit the development of a single-family dwelling on an undersized non-developable vacant lot that had been abandoned under zoning.

*Members assigned: Kelly Lydon, Jerry Gilmore, Ron Jansson, Gail Nightingale*

*Motion is made to extend the variance for a period of 6 months.*

*James Hatfield seconds.*

*Ron Jansson asks if the Board has the authority since it expired prior to the expiration date. Art Traczyk checks and indicates that the request was received by the Board prior to the expiration. Board discusses.*

*Vote:\*

*AYE: Ron Jansson, James Hatfield, Jerry Gilmore, Kelly Lydon, Gail Nightingale*

*NAY: None*

*Variance extended 6 months from December 20, 2007.*

## ***Extension granted.***

*Gail Nightingale then recuses herself from the Corey appeals and turns the Chair over to Ron Jansson.*

*Ron Jansson indicates that there are several appeals for Corey. He indicates that they have only recently received a part of the peer traffic review and as was reviewed by the engineering department. Art indicates that it was only recently received.*

*Attorney Butler indicates that the report that they received from the peer reviewer he has received copies of it and there was a conversation between their experts, VHB, and the peer reviewer to clarify some issues and he anticipates in the short term having a report both by VHB and by the peer reviewer and will be in well ahead of January 30th.*

*Ron Jansson then reads the appeals into the record.*

### **Appeal 2007-009**

### **Conditional Use Special Permit**

Donald J. Corey, Jr., has petitioned for a Special Permit pursuant to Section 240-25(C) Conditional Use in a Highway Business Zoning District. The applicant seeks to designate a 30-foot wide easement from Wequaquet Lane to property addressed as 1030 Falmouth Road (Route 28), Centerville/Hyannis, MA. The easement is to be developed as a driveway for access to and egress from a proposed commercial development of 1030 Falmouth Road. The easement and drive is to be created over land addressed as 28 and 0 Wequaquet Lane, Centerville, MA, and 0 and 1030 Falmouth Road, Centerville/Hyannis, MA. The property is shown on Assessor's Map 250 as parcels 024, 023X02, 023X01 and 065. The land is zoned Residence D-1 and Highway Business.

### **Appeal 2007-010 - Anew**

### **Corey Use Variance for Driveway**

Donald J. Corey, Jr., has applied for Variances to Section 240-11(A) Principal Permitted Uses and Section 240-11(E) Bulk Regulations of the Residence D-1 Zoning District. The applicant seeks to designate a 30-foot wide easement from Wequaquet Lane to property addressed as 1030 Falmouth Road (Route 28), Centerville/Hyannis, MA. The easement is to be developed as a driveway for access to and egress from a proposed commercial development of 1030 Falmouth Road. The easement and drive is to be created over land addressed; 28 and 0 Wequaquet Lane, Centerville, MA, and 0 and 1030 Falmouth Road, Centerville/Hyannis, MA. The property is shown on Assessor's Map 250 as parcels 024, 023X02, 023X01 and 065. The land is zoned Residence D-1 and Highway Business. This Appeal is being re-noticed to allow for a new public hearing if necessary.

*Ron Jansson asks Attorney Butler if it would it be accurate to suggest that the other applications, once these are on the board, should be withdrawn.*

*Attorney Butler indicates that it would be their intention to request the continuance and upon that night determine whether or not the members who sat on the original applications are all*

*present. If they are all present they will proceed with those and ask then to withdraw the new applications. In the event they don't have a full Board made up of 5 members they would proceed under the new applications and reconstitute the board the difference of course being testimony being in but it is still in and they understand they would have to re-brief the Board.*

*Ron Jansson then indicates to Attorney Butler that they would need extensions to be signed and handed in.*

*Attorney Butler agrees.*

*Ron Jansson then reads appeal 2006-024 into the record.*

**Appeal 2006-024 – Continued**

**Corey**

**Conditional Use in a Highway Business**

Members: Ron S. Jansson, James Hatfield, Daniel M. Creedon, Kelly Kevin Lydon, John T. Norman  
No Alternates

Opened March 22, 2006 continued April 12, 2006, May 24, 2006, July 26, 2006, September 13, 2006, November 15, 2006, January 3, 2007, January 31, 2007, March 28, 2007, May 23, 2007, July 11, 2007, September 26, 2007, November 7, 2007, and to January 9, 2008.

Continued for additional review and input, including peer review of traffic.

Donald J. Corey, Jr., has petitioned 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 as 1030 Falmouth Road (Route 28), Centerville/Hyannis, MA, as shown on Assessor's record as Map 250 as parcel 065, in a Highway Business and Residence D-1 Zoning District.

*Ron Jansson then indicates that Attorney Butler requests that this be continued to January 30<sup>th</sup>. Ron then asks if everyone on the Board here tonight is able to be here on the 30<sup>th</sup>.*

*Ron indicates they are not constituting the Board tonight but will on January 30, 2008.*

**Continued to January 30, 2008 at 7:00 PM.**

*Gail Nightingale then takes over the Chair and calls the Ruscitto*

**Appeal 2007-064 - Continued**

**Ruscitto**

**Special Permit Alter Nonconforming**

**Dwelling**

Opened August 8, 2007, continued to October 10, 2007, November 28, 2007, and to January 9, 2008.

Continued to allow for review of relief, possible alternative relief application, and/or development of revised plans. No new communication has been submitted to file. Last letter of November 16, 2007 noted the applicants were working towards an as-of-right building permit.

Robert A. Ruscitto and Bette J. Ruscitto have petitioned for a Special Permit pursuant to Section 240-92.B for the Alteration/Expansion of Nonconforming Buildings Used as Single-family Residences. The petitioners propose to expand the existing dwelling with a two-story addition. The proposed addition is located 14.2 feet off Harbor View Road and is not in conformance with the current required front yard setback of 20 feet. The property is addressed as 73 George Street, Barnstable, MA and is shown on Assessor's Map 319 as parcel 058. It is in a Residence B Zoning District.

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Members Assigned: Ron Jansson, Randolph Childs, James Hatfield, John Norman, Gail Nightingale

Alternates Present: Jeremy Gilmore, Kelly Kevin Lydon

*Gail indicates that Randy Childs is no longer here and assigns Kelly Lydon in his place.*

*No-one is here representing the applicant and there is no correspondence in the file. Gail makes the determination to continue this to January 23, 2008 at 8:00 PM.*

## **Continued to January 23, 2008 at 8:00 PM**

*She then calls the Berry appeal.*

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### **Appeals 2007-107 & 108**

### **Berry**

Opened December 5, 2007, continued to January 9, 2008. Continued to allow review and input/opinion of Town Attorney's Office on wetland area calculation under the zoning ordinance definition.

Members Previously Assigned: Ron Jansson, James Hatfield, Sheila Geiler, John Norman, Gail Nightingale

Alternates Present: Jeremy Gilmore, Kelly Kevin Lydon

### **Appeal 2007-107**

### **Special Permit Demo/Rebuild on Nonconforming**

### **Lot**

John P. Berry and Margaret D. Berry, Trustees of Ocean Street Realty Trust have petitioned for a special permit pursuant to Section 240-91.H(2) – Developed Lot Protection, Demolition and Rebuilding. The petitioners seeks to demolish the existing nonconforming single-family dwelling located on the lot and rebuild a new single-family dwelling maintaining an existing nonconforming front yard setback of 10.7 feet. The property is addressed as 111 Ocean Drive, West Hyannisport, MA, as shown on Assessor's Map 266 as parcel 005. It is in a Residence B Zoning District.

**Appeal 2007-108  
Bulk Variance – Lot Area & Setbacks**

John P. Berry and Margaret D. Berry, Trustees of Ocean Street Realty Trust has applied for a variance to Section 240-11.E Bulk Regulations, Minimum Lot Area and Minimum Front Yard Setback. The applicants seek to demolish the existing single-family dwelling located on the undersized lot consisting of less than 43,560 sq.ft. and rebuild a new single-family dwelling situated 10.7 feet off the front property line. This relief is sought in the alternative to Appeal 2007-107. The property is addressed as 111 Ocean Drive, West Hyannisport, MA, as shown on Assessor's Map 266 as parcel 005. It is in a Residence B Zoning District.

*Members assigned tonight: Ron Jansson, James Hatfield, Kelly Lydon, John Norman, Gail Nightingale*

*Kelly Lydon is assigned in place of Sheila Geiler.*

*Attorney Eliza Cox indicates she is here with Attorney Butler to represent the applicant, Peter Brown, the architect, Lynn Hamlin who is their wetlands expert. She indicates that since the last hearing in December, they altered the footprint and floor area. They submitted revised plans on January 2<sup>nd</sup>. In the letter of January 2<sup>nd</sup> it shows the comparative 2242 which is a reduction of about 178 square feet. The total floor area excluding the garage and the basement on the proposed 2481 square feet which is an increase of 168 square feet. These still comply with the maximum floor area and lot coverage based on their upland calculation that is set forth in section 240-91H.*

*Gail Nightingale clarifies that it doesn't include the garage and indicates it needs to be included.*

*Attorney Cox indicates that there was a mislabeling on the architectural plans and indicates that the south was labeled east and the east elevation was labeled south and will submit the corrected plan. She also indicates that they brought the house very slightly further away from the road. Presently it is about 10.6 feet from the road, the original plans submitted showed the house 10.7 feet from the road. With this minor change they are now at 11 feet. She then indicates that this was continued for determination of wetland definition. Since that hearing they have had hearings with Rob Gatewood – Conservation Agent and Ruth Weil – Town Attorney. They continue to believe that the calculation of 16630 square feet of upland is accurate. They did receive a copy of Attorney Weil's letter to the Board regarding the parsing. She reads Ruth Weil's letter. She then indicates that she has a wetlands expert here. She notes that Lynn Hamlin is a wetland scientist who represented them before the Conservation Commission.*

*Lynn Hamlin speaks and indicates that there is no Town coastal bank regarding this property and that it is determined by two factors: how the slope of the land form intersects the 100 year floor elevation and on this is an elevation of 11, and the slope of the land form up to elevation 11 is less than 18% which is the Town's standard for a steepness of slope to constitute a coastal bank. The State's standard is 10% and this slope is approximately 14%. She also indicates it is not subject to tidal action and is only subject to storm frequency of 1 in 100 years and is not an eroding bank. She indicates that she has emails between her and Bob Gatewood regarding this and hands them to Art Traczyk.*

*Ron Jansson asks Lynn Hamlin how her determination of coastal bank comports with the outline of Attorney Weil's memo and asks if there is any other part of this she excluded.*

*Lynn Hamlin indicates that lowland is a very specific definition of subject to flowage or flooding during the growing season annually and its repeated annual flooding with a frequency of 1 in 100 years. She explains the terms within the definition of coastal bank. She indicates that this is a stable land form and explains the slope.*

*Ron Jansson then asks if Mr. Gatewood concurred with her determination of the term of wetlands.*

*Lynn Hamlin indicates that Mr. Gatewood concurred with her that the delineation was done properly for the Conservation Commission and that the coastal bank definition does not fit into the zoning definition of a coastal bank wetland either.*

*Kelly Lydon asks if there is any danger of the house going into the wetlands. Lynn Hamlin indicates no, and that there is no danger of this shifting and the tide has no effect.*

*John Norman indicates that on the plan there was a picture taken which showed marsh trenches and based on the land is almost a defined line. John asks where her wetland line is. She points it out on a plan and indicates that the line was delineated using plant community and soils analysis. John and Lynn discuss wet meadows and the delineation.*

*Attorney Cox summarizes the relief being sought.*

*Gail Nightingale asks if there is anyone here either in favor or in opposition.*

*No-one spoke either in favor or in opposition.*

*James Hatfield does findings:*

*The applicants are John P. Berry and Margaret D. Berry, Trustees of Ocean Street Realty Trust and the address is 111 Ocean Drive, West Hyannisport, MA, as shown on Assessor's Map 266 as parcel 005. It is in a Residence B Zoning District. The applicants have petitioned for a special permit to demolish the existing nonconforming single-family dwelling located on the lot and rebuild a new single-family dwelling maintaining an existing nonconforming front yard setback of 11 feet.*

*According to the Assessor's information, the overall lot area, including wetlands, is 0.82-acres. It is currently developed with a 1.5-story, three bedroom, single family dwelling that has a gross area of 1,703 sq.ft., and an attached deck consisting of 640 sq.ft. The applicants have had an interest in the property since 1996. The Assessor's record cites that the current building was built in 1965.*

*The new home that the applicants are seeking to build would have a total footprint, including the decks of 2422 square feet and a total floor area including the garage of 2772 square feet. Attorney Butler confirms that figure.*

*Based on the upland area of 16630 square feet, the changes for this new structure would comply with 240-91H.1.B of the zoning code which would allow in this particular lot up to 3324 square feet of lot coverage and up to 4989 square feet of floor area.*

*The proposed new dwelling wouldn't be substantially detrimental to the neighborhood than the existing dwelling that is there now.*

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

*That 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.*

*Kelly Lydon seconds.*

*Vote:*

*AYE: Ron Jansson, James Hatfield, John Norman, Kelly Lydon, Gail Nightingale*

*NAY: None*

*Motion: Based on the positive findings move to grant the special permit along with the following conditions:*

- 1. Redevelopment of the property shall be as proposed in plans submitted to the Board. The proposed site plan is entitled "Title 5 Site Plan of 111 Ocean Drive West Hyannisport prepared for John & Margaret Berry" dated September 13, 2007, last revised October 3, 2007 as drawn by Down Cape Engineering, Inc. The Architectural Plan for the proposed dwelling is entitled "Renovations to the Residence of Mr. and Mrs. John P. Berry, 111 Ocean Drive West Hyannisport Massachusetts 02672" as drawn by Peter G. Brown, Architect dated January 9, 2008 and consisting of 4 sheets (A1, A2, A3, A4) to be signed by the Chairperson.*
- 2. The location of the proposed structure shall conform to plans cited. The proposed front yard setback is based upon the existing front yard setback which is 11 feet off Ocean Drive. The side yard setback shall conform to the minimum district requirements of 10-feet.*
- 3. The dwelling shall be for single-family use only.*
- 4. Construction shall comply with all applicable building and fire codes.*
- 5. Development shall comply with any order of conditions issued by the Conservation Commission and with any requirements of the Board of Health and the variance issued for the on-site septic system.*
- 6. During all stages in the demolition and reconstruction of the dwelling, all vehicles, equipment and materials associated with the demolition/reconstruction shall be required to be located off the right of way of Ocean Drive except as may be required to install utilities and landscape and then only on a temporary basis.*

7. *All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be located so as to conform to the minimum required setbacks for the district. All mechanical equipment shall be screened from neighboring homes and ways.*
8. *The development authorized by this decision shall be considered full buildout of the lot and there shall be no further construction permit including expansion of the building in terms of footprint or in terms of gross building area. **Without further permission of the Zoning Board.** (added)*
9. *This decision must be recorded at the Barnstable Registry of Deeds and a copy of that recorded document must be submitted to the Zoning Board of Appeals Office and to the Building Division before any demolition or building permit is issued. The relief authorized must be executed within one year of the filing of this decision.*

*Kelly Lydon seconds.*

*Ron Jansson asks if there is another set of plans. Gail Nightingale indicates there is another site plan. Attorney Butler indicates it is Title V site plan which is updated and was originally dated September 13, 2007 and revised October 11, 2007 and December 31, 2007.*

*Kelly Lydon seconds that.*

*Attorney Butler requests that the condition #8 be modified to so that in the future, someone could come back and expand with the Board's approval.*

*Gail Nightingale concurs*

*Kelly Lydon seconds the amendment.*

*Vote:*

*:*

*AYE: Ron S. Jansson, James R. Hatfield, John T. Norman, Kelly Kevin Lydon, Gail C. Nightingale*

*NAY: None*

## **SPECIAL PERMIT GRANTED**

*Attorney Cox then requests to withdraw without prejudice, the variance that they also submitted.*

*Ron Jansson moves on appeal 2007-108 to allow the applicants to Withdraw without Prejudice.*

*James Hatfield seconds.*

*Vote:*

*AYE: Ron S. Jansson, James R. Hatfield, John T. Norman, Kelly Kevin Lydon, Gail C. Nightingale*

*NAY: None*

## **VARIANCE IS WITHDRAWN WITHOUT PREJUDICE**

*Gail Nightingale then calls the MacDonald remand appeal.*

**Remand Appeal 2004-143**

**McDonald  
Bulk Variance to Separate Merged Lots**

Opened August 8, 2007, continued September 26, 2007, November 7, 2007, November 28, 2007, and to January 9, 2008.

Members Assigned: Ron S. Jansson, James R. Hatfield, John T. Norman, Kelly Kevin Lydon, Gail C. Nightingale - Associates Present: Jeremy Gilmore

Confirmatory Memorandum dated November 27, 2007 and signed by Tom Perry, Building Commissioner has been submitted to the file documenting Commissioner's agreement that the subject lot is a buildable lot as-of-right. Continued to allow processing at Superior Court a stipulation of dismissal of the appeal filed against the Boards decision to not grant appeal 2004-143.

By mutual agreement, Appeal 2004-143 of Thomas F. McDonald and Patricia S. McDonald has been remanded back to the Zoning Board of Appeals for a variance to Section 240-13E – Bulk Regulations, Minimum Lot Area (formerly Section 3-1.3(5) of the Zoning Ordinance). The variance seeks to divide two undersized merged lots so that each would be considered separate buildable lot under zoning. The subject lots are addressed as 242 and 244 Rolling Hitch Lane, Centerville, MA as shown on Assessor's Map 193 as Parcels 239 and 240. The property is in a Residence C Zoning District.

*Members assigned tonight: Ron Jansson, James Hatfield, John Norman, Kelly Lydon, Gail Nightingale*

*Attorney Patrick Butler is representing the applicants. He indicates that a stipulation of dismissal with prejudice was filed in the Barnstable Superior Court based upon a written determination of the Building Commissioner. He indicates that he is orally report that this stipulation of dismissal with prejudice was filed and requests that this appeal be withdrawn with prejudice.*

*Motion is made to withdraw with prejudice.*

*James Hatfield seconds.*

*Vote:*

*AYE: Ron Jansson, James Hatfield, John Norman, Kelly Lydon, Gail Nightingale*

*NAY: None*

**WITHDRAWN WITH PREJUDICE.**

*Gail Nightingale then gives a summary on her amnesty program tonight. One was continued and one received a 6 month extension to the DaSilva appeal.*

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*At 10:08 she calls the Ford appeal*

**Appeal 2007-086 – Continued**

**Ford  
Special Permit for Demo/Rebuild**

Opened October 24, 2007, continued November 28, 2007, and to January 9, 2008.  
Continued to allow review and input/opinion of;

- Town Attorney's Office on wetland area calculation under the zoning ordinance definition,
- Building Commissioner on floor area ration and gross building area calculation.
- Staff review of revised plans submitted at hearing

Members originally assigned: Ron Jansson, James Hatfield, John Norman, Sheila Geiler, Gail Nightingale  
Alternates Present: Jeremy Gilmore, Kelly Kevin Lydon

William P. Ford, Jr., and Kathleen M. Ford, have petitioned for a special permit pursuant to Section 240-91.H(2) - Demolition Rebuilding on a Pre-existing Nonconforming Lot not in conformance to the required setbacks for the district. The petitioners seek to demolish the existing structure on a lot and rebuild a new larger single-family dwelling. The location of the proposed structure does not conform to the required 20-foot front yard setback off Goodview Way but is not more intrusive than the existing dwelling. The subject property is addressed as 116 Goodview Way, Barnstable, MA and is shown on Assessor's Map 319 as parcel 086. It is in a Residence B Zoning District.

*Members assigned tonight: Ron Jansson, James Hatfield, John Norman, Jerry Gilmore, Gail Nightingale*

*Alternates Present: Kelly Kevin Lydon.*

*She replaces Sheila Geiler with Jerry Gilmore.*

*Chris Childs of Patriot Builders is here representing the applicant. He indicates that following the last hearing, they have submitted a revised plan which brought the FAR into conformity. Also, on January 4<sup>th</sup> the Town Attorney had reviewed the wetland definition for the limit of upland calculation that they could use the bottom of the bank. They submitted a revised plan with additional floor area on the second floor in the hallway or loft space immediately adjacent to the garage which they have added approximately 116 square feet. The new FAR is 4074 which does conform to the FAR in the bylaw.*

*Gail Nightingale asks if Art Traczyk confirmed the measurements which he indicates that he has not but suggests they are correct.*

*Ron Jansson asks what the difference is in the last and new plans are. Art Traczyk indicates that the second floor is extended several feet out over the garage area on the first floor and there are slight adjustments to make the additional footage. Ron Jansson asks if it is an increase in the overall size of the house.*

*Chris Childs indicates that they did not increase the overall size of the house they increased some floor area in a space already built and they essentially have revised the plan to eliminate two bedrooms above the garage and brought the wall back. He points it out of the plan. He indicates that when they received the determination that they had more room available so they shifted the wall to make this space more usable. It doesn't change the roofline or exterior appearance.*

*Ron Jansson asks how many bedrooms it will have now. Chris Childs indicates three.*

*Ron Jansson asks what the existing height from the median ground to the peak of the roof. Chris Childs indicates 31.5 foot. Ron asks how high to the plate. Chris Childs believes it to be 20 or 22 feet.*

*Ron Jansson asks what the current house height is. Chris Childs indicates it is presently a 1.5 story house and it is currently 16 or 18 feet from ground level up to the ridge line.*

*Ron Jansson asks if the proposed footprint is larger than the existing. Chris Childs answer yes.*

*Gail Nightingale indicates that there is a letter in the file dated January 2, 2008 from John W. & Kathleen P. Maloney, abutters on Goodview Way. She reads the letter which indicates that he had spoke at the last hearing and is still in opposition to massing of the house on the lot. He indicates that when Mr. Ford asked the neighbors to sign the petition for the demo/rebuild he showed no plans.*

*Chris Childs indicates that the lot is 18295 square feet and the upland consists of 13679 square feet which can be used. He then shows photos of other houses similar to what they are proposing.*

*James Hatfield asks what the new number for the square footage is now. Chris Childs indicates the floor area is 4074 square feet which includes the garage.*

*James Hatfield asks what it was at the last hearing. Chris Childs indicates that it was over 5000 square feet if the garage area was included. He has now eliminated the two bedrooms above the garage and vaulted the garage ceiling to eliminate that floor area and brought it into conformance. They submitted a new plan as allotted to the bottom of the coastal bank which added some square footage to take advantage of the additional square footage.*

*Jerry Gilmore asks for clarification on what the square footage was and now is.*

*Gail Nightingale asks about the plan for the third floor. Chris Childs indicates that there is no third floor but there is an attic space. Gail asks if he included that in the floor area. Gail Nightingale clarifies that if attic space, if livable, is included. Art Traczyk indicates that he believed it was suppose to be braced.*

*Chris Childs points out the attic space accessible by a scuttle and is not a living space and that there is a window for aesthetics. They discuss the definition of half-story.*

*Jerry Gilmore asks if the ridge and plate is in conformance. Chris Childs indicates that it is in conformance.*

*Gail Nightingale indicates that the sketch shows windows. Chris Childs indicates that the plan she is referencing was done for the Old King's Highway file.*

*Gail Nightingale asks if he has lowered the roof since. Chris Childs indicates that Old King's Highway was also concerned with the height and they lowered the plate and the pitch of the roof to bring the scale down.*

*Gail Nightingale asks about dormers over the garage. Chris Childs indicates they have eliminated the dormers over the garage. Gail wants to know if they have a complete new set of plans.*

*Ron Jansson indicates that the Board has a revised floor plan submitted on December 28<sup>th</sup> but no elevations. Chris Childs indicates that they did not revise the elevations.*

*Gail Nightingale indicates that the plans dated January 8<sup>th</sup> shows windows over the garage. Chris Childs indicates there are windows in the gabled ends and did not change any exterior structure of any portion of the building. All they did is eliminated the floor area within the garage by vaulting the ceiling so that the space above the garage cannot be developed into living space and the windows in the attic above the main living space are in the gabled ends only. There were eye browed dormers which have been eliminated.*

*Jerry Gilmore clarifies that the dormers over the garage were eliminated because of the elimination of those two bedrooms. Chris Childs answers no, the eye browed were over the main house. Jerry comments that the further development over the garage included dormers and asks if that is what he eliminated. Chris Childs answers no, the dormers over the garage are still there. Jerry comments that he thought he had just said that just the ones on the gabled ends. Chris Childs said that the windows on the gabled ends of the attic, and he was speaking about the attic. Chris Childs indicates that the eye browed dormers in a plan that was never submitted to this Board have been eliminated but the windows in the gabled ends of the attic have remained.*

*Gail Nightingale indicates that because of the multiple plans before them they are looking at the January 8<sup>th</sup> plans and asks if the exterior has changed since. Chris Childs indicates that it is the same as was submitted in September.*

*Ron Jansson asks Chris Childs indicates that the FAR is at .29%. Ron Jansson comments that he is concerned about consistency with the neighborhood and appreciates their attempts to comply.*

*James Hatfield indicates that he is also concerned as it is a small neighborhood and that a smaller house would be more suitable but notes the efforts to reduce the house and would support what is being proposed.*

*Gail Nightingale comments that the height of the house would hinder other neighbor's views.*

*Mr. Ford indicates that the garage is higher than what is presently there but the base is about the same. He indicates he would like a larger house in order to accommodate his family when they are here.*

*Chris Childs indicates that the roof starts just above the second floor and lowering it anymore reduces the usable second floor area as there are sloping roofs in a lot of those rooms which makes those rooms smaller than they appear on the plan because the plan just shows the floor area which is included in the FAR. The garage roof it was a choice to leave the garage height where it is in terms of the eave line around the building it all lines up with each other and is an aesthetic choice to leave it that way. If it is lowered it may be disconnected from the main house and not be in proportion with what is there.*

*James Hatfield asks what the living area is minus the garage. Chris Childs indicates it is 3507 square feet with the garage it is 4074 square feet and is not counting the attic. He understood that the attic was not counted as it was not habitable space.*

*James Hatfield does findings:*

*Regarding appeal 86 of 2007, the petitioner is William P. Ford, Jr., and Kathleen M. Ford. Property address is 116 Goodview Way, Barnstable, Assessor's Map 319 as parcel 086. It is in a Residence B Zoning District. The applicants have petitioned for a special permit pursuant to Section 240-91.H(2) - Demolition Rebuilding on a Pre-existing Nonconforming Lot not in conformance to the required setbacks for the district.*

*The applicants want to demolish the existing structure on a lot and rebuild a new larger single-family dwelling.*

*The location of the proposed structure does not conform to the required 20 foot front yard setback off Goodview Way.*

*The existing dwelling is situated 10.4 feet off Goodview Way to the westerly side of the lot.*

*The subject lot has 13,203 sq.ft. of upland as measured to the top of the coastal bank.*

*The subject lot was created by Land Court Plan 19221-A filed with the Registry of Deeds on October 26, 1944.*

*Chris Childs interjects and indicates that it is 13,679 square feet to the bottom of the coastal bank.*

*The existing structure dates aback to 1952. It is a one-story, 1,026 sq.ft., three-bedroom, single-family dwelling with an attached 492 sq.ft., garage and two attached decks that total 744 square feet*

*The property is located in that area of Barnstable generally known as "Common Fields". This area was developed with single-story seasonal cottage structures on small lots.*

*The applicants want to replace the current home with a new, 2.5 story structure that will have a total square footage of 4074 square feet and will have 3 bedrooms plus a den and a 3 season enclosed porch.*

*Chris Childs interjects and indicates that it is not a 3 season porch, just a screened in porch.*

*James Hatfield asks if the elevations are the same. Chris Childs indicates yes. James Hatfield then continues and says that architectural plans shows that the building measurements to be 88 X 48 feet overall. The structure measures 32.5 feet to the highest point ridge and 19 feet to the highest roof plate. Chris Childs informs him that it should be 31.5 feet to the highest roof ridge. James Hatfield accepts the correction.*

*The new home will be situated 12 feet off Goodview Way as that roadway borders the lot on the westerly side. That intrusion is not more detrimental than what is already there.*

*The applicant has been before the Old King's Highway and the proposed home was approved by them.*

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

*It falls within the category specifically excepted in the ordinance for the grant of a special permit.*

*After evaluation of all the evidence presented it fulfills the spirit and intent of the zoning ordinance and wouldn't represent a substantial detriment to the public good or neighborhood affected.*

*Jerry Gilmore seconds.*

*Vote:*

*AYE: James Hatfield, Jerry Gilmore*

*NAY: Ron Jansson, John Norman, Gail Nightingale*

*Ron Jansson finds it would be substantially detrimental and this is not consistent with the overall sizes overall in the neighborhood in terms of both length and height and that a smaller house could be built on the lot to be more consistent with the overall size of the houses on Goodview and surrounding roadways.*

*John Norman indicates that he would find that the massing on this lot would not be in keeping with the neighborhood as it exists and would create a substantial detriment to the surrounding neighborhood*

*Jerry Gilmore indicates that he is voting in the affirmative as it comports to all regulations to height to plate, lot coverage, and living area.*

*Gail Nightingale indicates that she is voting in the negative under 240-91-H-2 (c), as she feels the proposed new dwelling cannot comply with that and that it would be more detrimental to the neighborhood than the existing dwelling.*

*She indicates there are 3 negative and 2 positive votes and needs a positive motion.*

*Chris Childs asks if they could ask for a continuance at this*

*James Hatfield moves that they grant the special permit to the applicants for the demolition and rebuilding according to section 240-91-H-2.*

*Jerry Gilmore seconds.*

*Vote:*

*AYE: James Hatfield, Jerry Gilmore*

*NAY: John Norman, Ron Jansson, Gail Nightingale*

*Motion does not carry.*

*Board and applicants discuss what can be done with other plans.*

## **NOT GRANTED**

*Ron Jansson explains that he come back with substantial changes to the plan.*

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*Gail Nightingale then wants everyone to review the minutes to accept the minutes.*

*Motion to adjourn.*

*Motion seconded.*

*Meeting adjourned at 10:50 PM.*

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