



**Town of Barnstable**  
**Zoning Board of Appeals**  
**Minutes**  
**February 27, 2008**

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*A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday, February 27, 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>Absent</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>Absent</i>

*Gail Nightingale reads a summary of the appeals into the record.*

*She announces that the Corey appeals will be continued. Since there are only 4 members, she announces to those with appeals. She takes a brief recess.*

*Attorney Doug Murphy arrives and Chairman Nightingale asks Attorney Murphy if he would like to wait until the 5<sup>th</sup> member arrives. Attorney Murphy indicates that he would like to wait for the 5<sup>th</sup> member.*

*At 7:14, Chairman Nightingale gives a summary of the amnesty apartment programs and what was granted.*

*She then reads the Oyster Harbor appeals into the record in anticipation of Ron Jansson arriving.*

*At 7:15 she recesses again until Ron Jansson arrives.*

*Ron Jansson arrives at 7:20 PM and meeting is called back in session.*

*At 7:21, Gail Nightingale calls the Oyster Harbors Club appeal.*

Oyster Harbors Club, Inc. has petitioned for Special Permits pursuant to Section 240-93.B Alteration and Expansion of a Nonconforming Buildings or Structures Not Used as Single or Two-Family Dwellings; and Section 240-94.B Expansion of a Preexisting Nonconforming Use. The petitioner seeks to remodel an existing 573 sq.ft., children's play center and to add another accessory building consisting of 1,096 sq.ft., to also be used as a children's play center. The buildings and use is accessory to the principal nonconforming use of the property as a Club House. The subject property is located as shown on Assessor's Map 053 as Parcel 012 Lot 001, addressed as 170 Grand Island Drive, Osterville, MA 02655, in a Residence F-1 Zoning District.

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

*Attorney J. Douglas Murphy is representing the applicant. Attorney Murphy gives a history of the past special permits and variances granted. He indicates that they have been before the Cape Cod Commission and have been issued a minor modification. They seek to upgrade an existing building that is used as a children's activity center and by adding an additional building as per plans filed with this application. He then gives a history of the property since the 1920's. He indicates that the lot is approximately 12 acres, it is in a RF district, and that the club house has been found on several visits by the Board to be a legal pre-existing nonconforming use. They would like to alter by adding one small building to the northerly portion of the lot. No increase in numbers of people using the facility which is primarily a children's center as it has limited membership. There will be no additional children over and beyond what is there. He indicates that perhaps adults could also use this addition for other functions as well as a children's center and there is a fenced in area in conjunction with outdoor activities and will be continued. The proposed building contains handicapped restroom facilities and a ramp but did not provide a walkway. He indicates that they are prepared to provide conforming handicapped access walkway to that ramp. He indicates that it was also suggested, a handicapped access to the existing building and they are prepared to put in the necessary walkway. He indicates that they are agreeable to conditions pertaining to such.*

*Gail Nightingale asks if this is a new building close to the property line. Attorney Murphy answers yes. Gail asks what is going to be done with the current "Pooh's Corner". Attorney Murphy indicates that it will be maintained and that there are no plans to alter the footprint. Gail clarifies that both the new and existing addition will be for a children's use. Ron Jansson if this is a licensed daycare. Attorney Murphy indicates that they are not seeking that.*

*John Norman asks if they ever considered expanding "Pooh's Corner" rather than building a new addition against the property line. Attorney Murphy indicates that the building lies within the Conservation Commission jurisdiction and would also require some additional action with the Cape Cod Commission as he understand it. They went back to the CCC because they have a approval from them based upon certain plans and didn't want to be construed as violating those including a site plan. They issued a minor modification that it required no further proceedings and continued to be an exempt use proposal from their standpoint. As far as Conservation Commission activity, the location currently would not require further filing with the Conservation Commission. He indicates that if they were to expand the existing building they would require that additional process, to his understanding.*

*John Norman asks about setbacks to which Mr. Peter Sullivan of Sullivan Engineering points out the areas to the Board and shows the line where the coastal bank is. He indicates the objective was to place it outside of the conservation area. Ron Jansson asks for clarification as to why*

*they couldn't place it much closer. Attorney Murphy indicates that if the proposed structure is placed closer to the existing, it would impede the use of that area.*

*Ron Jansson asks for clarification of what will become of the existing children's area. Attorney Murphy indicates that it will continue as a children's facility.*

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

*Helen Beatty Westland, whose family owns the adjacent property, speaks and gives a history of the property and indicates that the building in question was once a salon then a children's center. She indicates she has a hard time understanding this request since there are 12 acres and thinks they could add on to the children's center that exists. She believes that this will be an impact to her abutting property line and could be placed elsewhere.*

*John Norman questions her if her grandparents were ever approached by Oyster Harbors and she indicates no and had no notification.*

*Attorney Ed Kirk is representing the Beatty Family Trust and indicates that he has materials that he would like to pass out to the Board. He gives a history of the building and believes there wasn't any relief granted in 1970 allowing for the expansion or an extension or change of the existing use. He indicates that the children's activity center was not part of the lawfully protected use as it was a recent occurrence. Under the case of Chuckran and other cases that follow it the Board has to approve changes that take place if they affect the neighborhood or they are different in character or quality or if the nature of the use has changed. There is a difference between having a country club and the pace of activity and then having an outside activity, a full scale playground for children although they are children of the members. He indicates that there is an underlying assumption here that the so-called activity center is somehow a lawful nonconforming use and he is suggesting that he is not so sure it is a valid assumption. He believes that this question has to be answered. He indicates that his client's property would be 20 feet away from this addition. He indicates that the existing children's area is enclosed within a picket fence and indicates that they want to move that out and nearer to his client's part of the property. He suggests it is more detrimental than what is already there and whether the bylaw exists to accommodate expansion or extension of a nonconforming use assuming that this is. He indicates that the Board needs to determine if the use of the children's activity center is a lawful nonconforming use, that the bylaw allows the creation of a new structure to house a nonconforming use, and that this is not more detrimental.*

*Ron Jansson asks if this use was considered to be an accessory use, incidental to the predominate use of the club, and asks if that wouldn't address the issue of it not having to be pre-existing, nonconforming. Attorney Kirk indicates that accessory use is a term that is applied to a principal permitted use and then do something different because it's accessory, it has to pass the test in order to stay within the protection that you started with as in the Chuckran or the Powers test.*

*Gail Nightingale asks if both attorneys could submit briefs. Ron Jansson indicates that he would like to see briefs providing authority whether a legal pre-existing nonconforming use can have an accessory use. They discuss the bylaw requiring setbacks and then indicates that she would like to continue this.*

*Gail Nightingale asks again if there is anyone here that would like to speak.*

*Jerry Gilmore asks Attorney Kirk for clarification from his memo regarding children's activities.*

*Gail asks again if anyone would like to speak. No one else speaks.*

*Gail Nightingale asks Attorney Murphy if he would like to rebut. Attorney Murphy indicates that he would like to remind the Board that this is a country club and has been a recreational facility with children for a great number of years.*

*There is a discussion and it is decided to continue this.*

## **CONTINUED TO MARCH 12<sup>th</sup> at 7:30 PM**

*Gail Nightingale then calls the Holmes & Holmes appeal as they are withdrawing. She reads the letter from the applicants regarding the Building Commissioner's decision and asks to withdraw this appeal*

**Appeal 2008-002 - Continued**

**Holmes & Holmes  
Modification of Use Variance 1996-152**

Opened January 23, 2008, continued to February 27, 2008. Continued to allow for review by Building Division for an as-of-right family apartment. Letter to Building Commissioner enclosed.

From discussion with the Commissioner, Staff believes he will be allowing this unit as a family apartment as-of-right.

Members Assigned: James R. Hatfield, Sheila Geiler, John T. Norman, Kelly Kevin Lydon, Gail C. Nightingale. Associate Present: Jeremy Gilmore

Mark S. and Austin S. Holmes have applied for a modification of Use Variance 1996-152, Condition No. 3 that restricted that variance to a Karen J. Lovasco-Sutton. The variance allowed for a studio apartment within the existing dwelling and the applicants seek to have that variance transferred to them. The subject property is shown on Assessor's Map 270 as parcel 016, commonly addressed as 90 Dunn's Pond Road, Hyannis, MA. The property is in a Residence B Zoning District.

*Gail Nightingale makes a motion is made to grant withdrawal without prejudice.*

*Jerry Gilmore seconds.*

**Vote**

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

**NAY: None**

***Withdrawn without prejudice.***

*At 8:04, Gail Nightingale calls the Setterlund/Salted Realty and reads it into the record. She indicates that per Staff's request, Attorney John Kenney, who is representing the applicant, is asking for a continuance.*

**Appeal 2008-018 - New**

**Setterlund/Salted Realty Trust  
Bulk Variance Minimum Lot Area**

Richard Setterlund, Trustee of Salted Realty Trust, has applied for a Variance to Section 240-13.E Bulk Regulations, Minimum Lot Area. The applicant is seeking the variance for a 33,390 sq.ft., undersized non-buildable lot to be developed for zoning purposes and to construct a single-family dwelling. The property is addressed as 71 Tonela Lane Cummaquid, MA, as shown on Assessor's Map 336 as parcel 063. It is in a Residence F-1 Zoning District.

**CONTINUED TO MARCH 26<sup>th</sup> at 7:00 PM.**

*Gail Nightingale then turns the chair over to Ron Jansson to call the Corey appeals.*

**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, January 9, 2008, January 30, 2008, February 13, 2007, and to February 27, 2008.

Continued for Peer Consultants review of traffic and rework of conditions based upon revised plans submitted that eliminated the access roadway onto Wequaquet Lane.

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.

**Appeals 2007-009 & 010 – Continued**

**Corey**

Opened January 31, 2007, continued March 28, 2007, May 23, 2007, July 11, 2007, September 26, 2007, November 7, 2007, January 9, 2008, January 30, 2008, February 13, 2007, and to February 27, 2008.

Given the plan changes, Staff anticipates that Appeals 2007-009 & 010 will be requested to be withdrawn.

**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**

**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.

**Noticed Anew - Continued**

**Corey**

**Appeal 2006-024, Appeal 2007-009 and Appeal 2007-010**

These appeals were also re-noticed anew to allow for a new public hearing to be heard should it be necessary for quorum. Public Notices were the same as above with the notation "This Appeal is being re-noticed to allow for a new public hearing if necessary."

Opened January 9, 2008, continued to January 30, 2008, February 13, 2008, and to February 27, 2008.

No Members Assigned - No Testimony taken

*Ron Jansson notes that Attorney Butler is asking for a continuance of the Corey appeals because of a lack of quorum.*

*Extensions are to be signed and this will be continued*

***CONTINUED TO MARCH 26<sup>th</sup> at 7:45 PM***

*Ron Jansson then turns the Chair back over to Gail Nightingale*

*At 8:07 PM, Gail Nightingale calls the Sprinkle appeal. She reads it into the record. No board members are assigned.*

**Appeal 2008-003 - New**

**Sprinkle  
Expand/Alter Nonconforming Two-Family**

Brad K. Sprinkle has petitioned for a Special Permit pursuant to Section 240-92.B, Expansion/Alteration of a Nonconforming Buildings or Structures Used as Single- and Two-Family Residences. The petitioner seeks to expand and alter the two existing nonconforming residential dwellings located on the property. The property is addressed as 3600 Falmouth Road (Route 28), Marstons Mills, MA, and is shown on Assessor's Map 077 as parcel 005. It is in the Residence F Zoning and Resource Protection Overlay Districts

*Attorney David Nunheimer is representing Brad Sprinkle and indicates that he would like to ask for a continuance.*

**CONTINUED TO MARCH 12<sup>TH</sup> AT 7:45 PM.**

*At 8:09, Gail Nightingale then calls the Berkshire Development/Circuit City appeals*

**Appeals 2008-010, 011 & 012 - Continued  
City**

**Berkshire Development - Circuit  
Redevelopment**

*Opened February 13, 2008, continued to February 27, 2008.*

*No members previously assigned and no testimony taken*

**Appeals 2008-010 - Bulk Variance Min. Front Yard and Lot Coverage**

Berkshire Development, LLC has applied for a Variance to Section 240-25.E Bulk Regulations, Minimum Front Yard Setback off Route 132 and Section 240-35(F)(3) Lot Coverage in the Groundwater Protection Overlay District. The applicant seeks to locate the proposed building 45 feet off Route 132 where a 100-foot front yard setback is required and to maintain the existing lot coverage that does not meet with today's 50% maximum lot coverage by impervious surfaces. The property is addressed as 624 and 640 Iyannough Road (Route 132), Hyannis, MA. The lots are shown on Assessor's Map 311 as parcels 012 and 013. The property is in the Highway Business, B Business, Groundwater and Wellhead Protection Overlay Zoning Districts.

**Appeal 2008-011 - Highway Business Conditional Use Permit**

Berkshire Development, LLC has petitioned for a Special Permit pursuant to Section 240-25(C)(1) Conditional Use in the Highway Business Zoning Districts. The petitioner seeks to redevelop the site with a 23,500 sq.ft., building to be used for retail sales of electronics. The property is addressed as 624 and 640 Iyannough Road (Route 132), Hyannis, MA. The lots are shown on Assessor's Map 311 as parcels 012 and 013. The property is in the Highway Business, B Business, Groundwater and Wellhead Protection Overlay Zoning Districts.

**Appeal 2008-012 - Expand/Alter Nonconforming Building Structure**

Berkshire Development, LLC has petitioned for a Special Permit pursuant to Section 240-93 Nonconforming Buildings or Structures Not Used as Single- or Two-family Dwellings. The petitioner seeks to redevelop the site with a 23,500 sq.ft., retail store and associated site improvements. The permit is sought to allow for the alteration and expansion of certain nonconformities on site, including impervious coverage. The property is addressed as 624 and 640 Iyannough Road (Route 132), Hyannis, MA. The lots are shown on Assessor's Map 311 as parcels 012 and 013. The property is in the Highway Business, B Business, Groundwater and Wellhead Protection Overlay Zoning Districts.

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

*Ron Jansson discloses that he has spoken to the Ethics Commission as, in the past, he had represented a competitor and did not have time to file disclosure letter because he had just*

*received the opinion from the commission yesterday and indicates that he will recuse himself if anyone is in opposition. Board members indicate that they are okay with it. Attorney Michael Ford is representing the applicants and indicates that he would like a minute to confer with his clients regarding the disclosure. Attorney Ford then indicates that there is no problem. Attorney Ford then indicates he is accompanied with representative of Berkshire Development and from VHB.*

*Attorney Ford then gives a history of the existing property as it relates to its location and Highway Business and Business zoning district and indicates that it is also in a Groundwater Protection Overlay District. Ron Jansson asks if it is also in Well Head Protection District. Attorney Ford indicates it is hard to tell but seems only a small portion. Attorney Ford describes the permits granted to the existing buildings on both parcels. He also indicates that another parcel of property involved in this petition which he will refer to as the mitigation parcel is the Chili's parcel. This parcel exists in two parcels, one a small parcel between the rotary and the Wendy's facility and then the Chili's parcel itself of the other side of Route 132. Attorney Ford then goes on to describe that on the site there is a total 3 buildings and that of all 3 buildings will be removed and a new proposed single retail structure consisting of 22475 square feet to house Circuit City is proposed to be constructed there. He gives a history of the project. He indicates the Cape Cod Commission jurisdiction was invoked, the applicant applied for a change of use, a permit from the CCC deemed it a change of use which needed to be reviewed as DRI in four separate issues and the Town of Barnstable referred it to the CCC. The project in the course of the CCC review underwent detailed studies regarding stormwater, community character, transportation which was one of the central issues of the commission and also the issue before the CCC of stormwater discharge at the site as this is an area of significance under the CCC act and local ordinance. During the course of the CCC's review, the building underwent a number of iterations in order to come into compliance with the minimum performance standards of the regional policy plan. He indicates no portion of the building longer than 50 feet can occur under their standards without there being a jog of at least 10 feet in the building; therefore as to meet the minimum performance standards for community character. Additionally, a great deal of time was spent in terms of site layout as it relates to that issue of community character and in particular, the layout of the parking on the site and the entrance to the site. The current site has two curb cuts, one for each one of the enterprises on each one of the lots. Their proposal is one curb cut. The other feature of site layout, was the parking. The CCC has a minimum standard that parking is to be to the side or rear and not in front. He indicates that the Town of Barnstable Ordinance 240-54 also requires parking to be to on the side or the rear of the structure. He indicates that because of these standards, it became impossible to meet that standard and also comply with the front yard setback in the Highway Business zone which is 100 feet for a structure. Ron Jansson quotes Section 240-54 and asks why that would have an adverse environmental impact or is infeasible due to the configuration of the site. Attorney Ford indicates that he will be addressing that issue during the rest of his presentation. He then indicates that he has two plans that comply with the front yard setback and another that does not. Attorney Ford then indicates that the alternate plan, which has been approved by the CCC, shows the structure in compliance with the front yard setback and is 119 feet off Route 132 but on the plan they are unable to get the parking for the building to the side and the rear and some of the parking is to the front of the building and this plan does not need a variance but the other one does.*

*He indicates that the applicant was proposing mitigation and re-striping of the rotary, there were 4 peer reviews of that proposal. The Town was not satisfied with the rotary re-striping plan*

*so the town encouraged the applicant through mitigation. He indicates that there is an ongoing Hyannis Access Traffic study and the applicant was asked to look at the potential acquisition of the Chili's parcel so that it would be undeveloped, the Town could be the title holder of that particular piece, thereby permitting the Town to have Chili's removed, all the curb cuts associated with that parcel closed off and that property be undeveloped and no further structures on it and some portion could be used down the line for reconfigurations of the rotary area depending on what direction the Town and the State intend to take to the whole rotary as plans go forward. The applicant obtained a Purchase and Sales for Chili's and the Town, through the Town Council, appropriated \$880,000 toward that purchase, the applicants contribution will be \$800,000 towards the purchase of that property and that will be the traffic mitigation and offset by the vehicle trips by the retail store on this particular site.*

*Ron Jansson questions how long Chili's has been closed as the only way the restaurant could exist was by a special permit. He comments that, if in fact, the suppositions for reduction of traffic are based upon the fact that traffic from that restaurant is no longer there but it is not going to be there anyways as it has been abandoned, he has difficulty with that. Attorney Ford indicates the memo that indicates that there will be 124 fewer trips on that roadway if this store is built and Chili's is gone, doesn't take into consideration that they are also removing the Star City Grille and the Rogers and Gray Insurance building. He indicates that the memo sought to show the analysis of the benefits in undeveloping the Chili's parcel versus the construction of this store without taking credit for the removal of the Star City Grille and the curb cut associated with that.*

*He indicates that without including Chili's, there is an 84% reduction in waste water flows from 7300 gallons per 1175 gallons per day between Star City Grille and Rogers and Gray and the new proposed retail store. He also notes that they are on sewer. Attorney Ford indicates that water consumption will also go from 3650 gallons per day to 588 gallons per day for the retail store and don't account for the undevelopment of the Chili's parcel. He cites page 13 of the CCC's DRI decision, under WR3 regarding the state-of-the-art stormwater system that is being proposed. He indicates that because of the parties involved that this is time sensitive in reference the purchase of the Chili's property. He then gives a summary of the relief being sought.*

*Ron Jansson asks what the average vehicle trips are for the Star City Grille and the Rogers and Gray Insurance Company. Randy Hart, traffic engineer from VHB, speaks and indicates that he has counts that were done at the facilities and that the figures for the Star City Grille were done after it was closed but there was some activity regarding the movement of equipment, etc. He indicates that they estimated on a daily basis that if you combine the two parcels that about 250 trips would be generated in congregate, weekday mornings about 32 trips, total weekday evening about 30, Saturday about 414, Saturday midday about 58 trips and that was when Star City Grille was not in full operation. Ron Jansson indicates that he is concerned that even though right-in, right-out maybe in place, people will still try to make a left hand turn into the property. Attorney Ford asks if they are better off with right-in, right-out or what is currently is existing Ron Jansson asks for figures based on if it was still operational as a restaurant.*

*Ron Jansson clarifies that the figures he is looking for is what the ITE trip generation for that size restaurant generated for this site will be. Randy Hart indicates he doesn't have an actual number because in all the analysis they gave they gave a conservative number. Ron Jansson indicates that he would still like to have figures. Randy Hart indicates that he could testify that*

*the numbers will easily offset the generation numbers they are talking about for proposed facility and would include the Saturday traffic. Randy Hart indicates that he has a trip generation manual and will take a couple of minutes to figure this out.*

*Attorney Ford then goes on to give the criteria for meeting a special permit. He indicates that they also have to meet the general criteria for a special permit. He indicates that from the site plan, he cannot represent that the airport has approved an emergency access but has made inquiry from the Fire Department if they had adequate access. He indicates that the Board should have an email from Lieutenant Chase with respect to the Fire Department's opinion that they are satisfied that there is adequate access for fire and safety simply coming in from Route 132. They will probably go back to the airport for emergency access approval. Attorney Ford then indicates that the building needed to be approved by the airport and if there is a navigation easement that this might interfere with and they have checked and there is no easement and does not trigger a filing under the Town ordinance with respect to the airport. He will file form 7460 as it will be required for a building permit and would agree to a condition pertaining to that.*

*Gail Nightingale clarifies that this is not within the airport's approach and Attorney Ford indicates that there is no navigational easement and has checked that.*

*Ron Jansson asks if had spoken to the abutter, the airport, as to whether they had a problem with this project. Attorney Ford indicates that early on, the applicants representatives, got on an agenda for the airport commissioners, explained the project, talked to them about the emergency access, their concern with allowing full access off the properties off this road that at some time the Town is going to be looking for some Federal money to upgrade this for an access to the airport in reference to airport expansions but are not in the position to do so but they kept the airport commission fully informed of this project.*

*Attorney Ford then goes on to describe an issue on this site of pervious versus impervious coverage as they are in a recharge area, GP and WP zone, the ordinance provides that they can't have more than 50% of the site impervious by way of pavement, buildings, and structures. Existing conditions, on the plan in a table that VHB has done, show an impervious of 61.7%. The caveat of that is that there is a hard pack gravel parking lot behind the insurance agency and a portion behind Star city which was counted in that figure as part the impervious. It is an area that does not drain and has had gravel placed over the years. Including that, they are at 61.7%. They are proposing to cover 59.5% of the site with pavement and buildings. Additionally, there are some parking spaces that because they needed them to meet the minimum parking requirements under the parking requirement but did not want to exceed the impervious cover that was there, the design is to be pervious grass pavers and are shown on the plan, C2.*

*Attorney Ford then gives the grounds for asking for a variance in the alternative. He indicates the GP district came in November of 1987, adopted at Town meeting. The Assessor's record shows that the Rogers and Gray site was improved and built in 1973. The Star City Grille site was initially constructed in 1963 and expanded in 1983. to the best of his knowledge, there have not been improvements since then in the case of parking or structures on the site. Therefore, he would suggest to the Board that they could make a finding that the conditions exist that are in excess of 50% are indeed pre-existing and nonconforming.*

*Gail Nightingale asks if there is any proof if the parking areas were put into that extent. Attorney Ford indicates that conferring with the owners of the Star City Grille and Rogers and Gray there hasn't been any changes in parking or building since 1983.*

*Attorney Ford then informs the Board that from Mr. Bloom there has been no changes in parking since 1983 and then informs the Board that Chili's was closed in October of 2005. He also indicates that Randy Hart has some figures for the Board regarding vehicle trips.*

*Attorney Ford indicates that one other issues that was raised on the staff report was regarding coverage. He indicates that Art Traczyk had taken data from the non-variance where the building is 119 feet back and took the total square footage of the pervious pavers. He then computed it into a percentage of approximately 11%, added the 59.5% that they are proposing for to be impervious and came out with a figure a little over 70% and indicated that they are short. Attorney Ford indicates that if you take the numbers from the variance plan as opposed to the non variance plan, the amount of pervious pavers is less, it's actually 10.39% and if you add it to the 59.5% you come in at 69.7%; therefore, are in compliance with the 30% and will give the figures for the record and had them done by the site engineer. On the non-variance plan, they still are at 70.3% so they are a little short of the 30%. He indicates that there are a couple of options, which currently, if they take the lawns out, it is 8600 square feet currently or 7.8% of the site, if you add the lawns in, they are using green space, the site is right at 30% currently. If you take all the green space you are at 30%. If the Board decides to go with the variance plan they comply even adding the pervious pavers. If the Board decides not to go with the variance and grant the special permit for the non variance plan they are at 70.3% and they could get down to 70% if that is what the Board would want them to do with the elimination of two extra parking spaces that they have.*

*Ron Jansson asks about mature trees on the site. Attorney Ford indicates they are able to save certain trees. Steve Chouinard, P.E. from VHB, points them out on the plan.*

*Ron Jansson asks if there are plans for site access to McDonald's. Attorney Ford indicates that no request was made in that regard.*

*Attorney Ford then indicates that they have also applied for a variance for the 100 foot front yard setback. He indicates that the Commission Staff and the Growth Management Department preferred to have the building brought closer to the road and not have parking apparent at the front of the building and have a better site plan in terms of community character. The applicant agreed to bring forward the site plan that shows the building 45 feet back with heavily vegetated areas and had to balance that with that before the Commission and the section which is the parking to the side, but, this site is a site that lies between two roads and as a result, wherever you put that building in terms of getting your setback you end up, unless you are in the setback zone, you end up having parking either in front of the building potentially in violation unless someone wants to declare that it is infeasible of 240-25E or you turn out to be in violation of the front yard setback of Route 132. The applicant, because of the unique shape of this parcel which is in part is because of its location between two major roadways and that is a condition that is applied to this particular property and use and he suggests that the Board find it unique. He indicates that it also fits with the two other prong testing for a variance.*

*Ron Jansson comments that other buildings are setback.*

*Randy Hart of VHB indicates that he has calculated 2 peak hours, the Evening Commuter Peak Hour, the Saturday Midday and then the Weekday Daily Number as well as the Saturday Daily Number and have so for each of the three uses, the Star City Grille, Rogers and Gray, individually and in aggregate, and have also looked at the Circuit City proposal, has subtracted the 2 to give you a sense of a plus or minus based on what he has looked at.*

Time Frame	Star City Grille	Rogers & Gray	Total	Circuit City	Grand Total
Evening Commuter Peak Hour	70 vehicle trips	7 vehicle trips	77 vehicle trips	24 vehicle trips	-52 vehicle trips
Saturday Midday Peak Hour (Retail Peak)	132 vehicle trips	0 vehicle trips*	132 vehicle trips	52 vehicle trips	-80 vehicle trips
Weekday Daily Number	724 vehicle trips	47 vehicle trips	771 vehicle trips	238 vehicle trips	-533 vehicle trips
Saturday Daily Number	931 vehicle trips	0 vehicle trips	931 vehicle trips	596 vehicle trips	-335 vehicle trips

*\*Randy Hart indicates that he is not sure how accurate that number may be.*

*Attorney Ford then indicates there are a number of letters in support that were also submitted to the Cape Cod Commission and that he will submit those to the file. He reads who the letters are from. Gail Nightingale asks if they are the same ones referred to in the Cape Cod Commission's decision and is told yes.*

*Ron Jansson comments to Randy Hart that the figures he has just given are not consistent with the CCC findings figures on Page 17 of their report. Ron comments that in particular, Circuit City's figures are showing 952 vehicle trips per day, the average Saturday will be 1334 trips, the average Saturday Peak Hour will be 135 vehicle trips. Randy Hart indicates that the figures he gave this Board do not include credit for passby and other means. He indicates that the passby is the trip that is already on the roadway that happens to make a stop because the facility happens to be there. He indicates that the number he has given the Board are the fully calculated numbers which are new vehicle trips which represent the credit for passby. Ron comments that the CCC report does not distinguish between passby and everything else. Randy Hart comments that it was part of the discussion and is absolutely what they allowed them to do as well as the Town of Barnstable. He indicates that he could've calculated without*

*the passby but chose to use the new number because it is most pertinent. He indicates that the delta between the existing and proposed condition would be the same.*

*At 9:30, Gail Nightingale calls for a five minute break.*

*\*\*Back in session at 9:42 PM.*

*Attorney Ford indicates that they have an article from the Cape Cod Times September 8, 2005 that reporting the closing of Chili's as well as the agenda from the Licensing Committee for 2004 where they were able to get their 2005 license from the Town. He also indicates that he has talked with the owner of the Star City Grille, Mr. Bloom, and they closed the month after Chili's closed.*

*Gail Nightingale comments that when they put a condition on this there are two separate lots under two separate ownerships and two separate leases and they are good for twenty years and asks what happens at the end of twenty years, the area where the insurance agency is and most of the parking, if they decide not to renew that lease, they could have a building without any parking. Attorney Ford indicates that it will be a conditioned use and that it will be controlled by one entity, Berkshire Development LLC and if the Board conditions it that way then it wouldn't be problematic.*

*Gail Nightingale asks if there is an amendment to the memorandum of lease for Star because the other one doesn't say it had to be extended, that one does says it has to be extended and if not acted upon by July...she then reads from the Star Nominee Trust which indicates that "in the event of the fixed term commences on a date other than July 15, 2007, landlord and tenant shall execute an amendment to this memorandum of lease" and she hadn't seen that. Gail indicates that the other lease doesn't say that. Attorney Ford indicates that he will talk with the other parties involved and asks for a minute. He then comments that this is for the memorandum of lease and not for the ground leases but the ground leases are fully executed. Gail asks if they have been submitted to the file. Attorney Ford indicates that the Board could make it a condition that they file one without that in the file. Gail Nightingale clarifies that she would like to have it for reason of standing. Attorney Ford agrees and will provide something to the Board.*

*Gail Nightingale comments that under parking requirements, C2, it designates how many parking spaces and it says road shop, auto repair and asks if there is going to be auto repair. Steve Chouinard, P.E. from VHB, indicates that it is for the installation of sound systems in cars. Attorney Ford comments that it is a general category and that there will be no auto repair.*

*John Norman clarifies that the rendering drawings shown are with the 45 foot setback. John then asks about signage and is told that it will be what is allowed and is told it has not been designed as of yet.*

*John Norman asks if the developer could live with a condition that the rear entrance was to be utilized for construction only and that the Route 132 entrance be sealed off during construction. Attorney Ford indicates that he doesn't believe they would have a problem with it but that they would have to get permission from the airport and would be agreeable to a condition pertaining to this.*

*John Norman indicates that he would prefer the 100 foot setback as other buildings on Route 132 are also situated back from the road.*

*Ron Jansson asks for clarification on the access Road. Attorney Ford indicates that it is a gated road and that they would need permission from the Airport Commission in order to utilize the road and are conducive to seeking that permission.*

*Ron Jansson asks if the Fire Department will have enough access to the parking area for emergency purposes. Attorney Ford indicates that the Fire Department has looked at that issue and are okay with what was presented at the Site Plan Review.*

*Ron Jansson asks Randy Hart from VHB if the trip generation figures are based on high drawing retail stores and regular retail stores. Randy Hart indicates that there is a category for large and medium stores and there is a specific category for retail electronic stores. He indicates that he was asked to get projection figures but used the empirical figures which were conservative.*

*Ron Jansson asks if drainage will all be on site and is told by Attorney Ford that is correct.*

*Ron Jansson asks for clarification about lighting on the site and site clearance. Steve Chouinard, P.E. from VHB, goes over the lighting and then points out, on the plan which he indicates was submitted to the Zoning Board and Site Plan Review but on the Cape Cod Commission they have increased the size of the right-in right-out driveway. He indicates that they have tapered it back further and indicates it is 14 feet wide going to 16 feet wide into the site and points it out on the plan. He indicates it was done to greatly reduce the chance of anyone trying to take a left-hand turn into the site. Attorney Ford clarifies that it is C2 included in the package.*

*Ron Jansson asks about a proposed median strip and is told by Attorney Ford that, through the discussions with the public safety officials of the Town as well as the CCC, it presented problems.*

*Ron Jansson asks about the memorandum of lease, where they exceed 7 years, if they have been recorded. Attorney Ford indicates that he is unsure if they are required to be recorded and they are longer than seven years and will be recorded.*

*Ron Jansson inquires as to what the vote was with the Commission. Attorney Ford indicates that at the subcommittee, 3 were in favor, one opposed, and one abstention which was Ms. Kadar. The vote at the full commission was 10 in favor, 3 opposed. Ron asks why the 3 votes were in opposition. Attorney Ford indicates that Ms. Kadar's, as well as with Elizabeth Taylor of Brewster and Allan Plak of Wellfleet, one of their concerns was economics as they were not sure of the benefits of creating jobs in a retail store such that they could find but when they got to the balancing test where the detriments outweigh the benefits, it was their concern. Attorney Ford indicates there might've been other reasons but cannot recall the details.*

*Gail Nightingale asks if there is anyone here either in favor or in opposition. Attorney Ford indicates that there are people in the audience, the owners of the property as well as people from Berkshire Development, who are in favor.*

*Patty Daley, Director of Growth Management, indicates that her department has been closely monitoring this and indicates that she is satisfied with their conservative traffic analysis of the proposed Circuit City and in the reduction of traffic volume. She indicates that she also supports the funding and purchase of the Chili's parcel and is a worthy goal. She also indicates that that parcel will be an asset in trying to address larger traffic impacts in that area. She indicates that she would ask for the interconnect to the McDonald's parcel but is looking at long term solutions to the traffic in this area. She indicates that she would like to see the potential for utilizing the rear access but understands it is owned by the inhabitants of the Town of Barnstable but under the control of the Airport Commission. She indicates that the Growth Management Staff, local safety personnel, including both fire and police, did not support a partial median which was originally proposed by Circuit City positioned in front of their parcel. She indicates that the problem would be people trying to do U-turns which would create more chaos and feels they need a full median strip in conjunction with other major road improvements.*

*Ron Jansson asks if placement of bollards in the roadway has been considered. Patty Daley indicates that they have considered it. She also indicates that, in the future, Growth Management will be asking for the placement of parking to the rear and sides of the buildings instead of in the front. Ron Jansson asks about future possible road expansion in that area and if the buildings are placed closer to the road if this would create potential problems. Patty Daley indicates that they don't see road expansion in the immediate future as they are trying to stay within the layout. Ron Jansson asks about putting agreements in place with the owners of the property for the possible expansion of Route 132. Patty Daley indicates that Growth Management would support a condition to that effect.*

*Gail Nightingale asks if there is anyone here either in favor or in opposition. No one speaks. Attorney Ford indicates he would answer any other questions the Board has.*

*Gail Nightingale asks with no exit off the rear and there was an accident in the entryway, how would vehicles, including emergency vehicles get in and out of the property. Steve Chouinard, points out on the plan, and indicates that they have provided for a driveway with a breakaway gate but do not have permission as of yet. Gail also asks about a walkway to McDonald's. Attorney Ford indicates that there is no objection on their part and could make a request of the other property owner.*

*Ron Jansson asks if something could be explored to determine how this project and others can be given full access over that roadway. Attorney Ford indicates that the applicant would be agreeable to a condition regarding this.*

*John Norman asks why the developer prefers to be closer to the roadway. Attorney Ford indicates that Growth Management and Cape Cod Commission had suggested the building placement because of future development and they have made this their preferred design.*

*Gail Nightingale indicates that she couldn't see variance conditions pertaining to the setback. Attorney Ford indicates that he would concur but because of the dilemma of the setback and the parking to the side and rear they couldn't meet both. Attorney Ford clarifies the reasoning for the special permit and variance requests.*

*Ron Jansson and Attorney Ford discuss the future expansion possibilities on Route 132.*

*The Board and Attorney Ford discuss and come to an agreement to continue this to a special meeting in order to do findings and make a decision. Attorney Ford then asks if this will be open to the public for comment. Gail Nightingale indicates that it will be closed to public input and continue for just a decision on March 4, 2008.*

*Attorney Ford asks if the only issue for the continuance is to be able to do findings and conditions or if anyone has a real problem with the issuance of the special permits. Gail indicates that it sounds like 3 of the members want it to go without a variance and want it to be placed 100 feet back, if the other 2 agree to go forward then that is how it is going to be. Attorney Ford indicates that normally, in those types of situations where the vote doesn't add up for a variance you will generally see him ask to withdraw without prejudice on behalf of the applicant. However, given the CCC decision and a requirement that we request the variance, he thinks he would have to have the board vote on it in order to be consistent. Gail concurs.*

**CONTINUED TO A SPECIAL MEETING ON TUESDAY, MARCH 4, 2008. HEARING ROOM OR TO BE DETERMINED.**

*Gail Nightingale then calls the Ladner appeal.*

Appeal 2008-005 - Continued

Ladner

Bulk Variance, Minimum Front Yard Setbacks

Opened January 23, 2008, continued to February 27, 2008. Continued at request of applicant's representative.

No Board Members assigned. Needs staff report and information to Board

Thomas Ladner has applied for a Variance to Section 240-11.E, Bulk Regulations, Minimum Front Yard Setbacks. The applicant seeks to maintain a recently built attached garage, mudroom and deck to remain as built located 11.3-feet off Frost Lane where a minimum 20-foot front yard setback is required. The property is addressed as 101 Frost Lane, Hyannis, MA and is shown on Assessor's Map 289 as parcel 013. It is in a Residence B Zoning District.

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

*Gail Nightingale gives a brief summary of what had transpired leading to the request for the variance.*

*Mr. Ladner is here representing himself. The Board discusses and determines to do findings.*

*Ron Jansson does findings*

*Thomas Ladner has applied for a Variance to Section 240-11.E, Bulk Regulations, Minimum Front Yard Setbacks. The applicant seeks to maintain a recently built attached garage, mudroom and deck to remain as built located 11.3 feet off Frost Lane where a minimum 20-foot front yard setback is required. The property is addressed as 101 Frost Lane, Hyannis, MA and is shown on Assessor's Map 289 as parcel 013. It is in a Residence B Zoning District.*

*The applicants recently built an attached garage and a mudroom and a deck on his property and it was located, instead of 20 feet as required, was setback 11.3 feet. This was done by a mistake and it was also done with the then approval of the Building Commissioner's department who is under the mistake regarding the setback requirements in this particular area given the fact there were dual setbacks.*

*According to the Assessor's record, the subject lot is a 0.27-acre lot developed with a 1.3/4-story, three-bedroom dwelling consisting of 1,727 sq.ft. of living area. The applicant has owned the property since 1995.*

*In late July of 2007, the owner, through his contractor, Leif Bottcher, sought a building permit to add an addition to the existing dwelling. According to the building permit application, the addition was to accommodate a 24 by 28-foot garage and a 10 by 24 foot mudroom. Plans submitted also showed a small proposed deck to the rear of the addition.*

*An error occurred and the addition as described previously was built:*

- *9.5 feet off the side property line where 10 feet is required. A 0.5 foot infringement, and*
- *13.0 feet off the front property line along Frost Lane where a 20 foot setback is required. A 7.0 foot infringement.*

*The construction of this addition was done with the approval of the Building Department; there was no intent to violate the zoning bylaw.*

*He cannot make specific all the findings under Chapter 40A Section 10 regarding soil condition, shape or topography but he would find it would be a significant financial hardship if the applicant were required to remove the structures as built and put them into conformity with the zoning bylaw.*

*In view of the neighborhood involved the additions as they are built would not represent any substantial detriment to the neighborhood but the additions are actually in conformity with the neighborhood*

*James Hatfield seconds.*

*Vote:*

*AYE: Jerry Gilmore, James Hatfield, John Norman, Ron Jansson, Gail Nightingale*

*NAY: None*

*Ron Jansson makes a motion based on positive findings that the Board grant according to the following conditions:*

1. *This variance is granted only to those infringements as shown in the October 18, 2007 Foundation Plan submitted as drawn by Yankee Land Surveyors & Consultants—that being for the garage and mudroom addition. All future construction, including all decks and porches, shall be required to conform to the required setback for the district.*
2. *That addition that infringes shall not now or in the future be further added to or expanded including the addition of any second floor level.*
3. *This decision must be recorded at the Barnstable County 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 within one year of it being issued and prior to the issuance of any final occupancy permit for the addition.*

*James Hatfield seconds.*

*Vote:*

*AYE: Jerry Gilmore, James Hatfield, John Norman, Ron Jansson, Gail Nightingale*

*NAY: None*

### **GRANTED WITH CONDITIONS**

*Gail Nightingale then calls the McKeon appeal at 9:46 PM and reads it into the record.*

Keith W. and Candace A. McKeone have petitioned for a Special Permit for a home occupation pursuant to Section 240-46.C. The petitioner is seeking a special permit to park one work truck relating to a landscaping business at his home. The property is located at 936 Wakeby Road, Marstons Mills, MA, as shown on Assessor's Map 012 as Parcel 006. It is in the Residence F Zoning, Resource Protection Overlay, and Groundwater Protection Districts.

*No members assigned. She indicates that as agreed with the applicants, she will continue this to March 12 at 7 pm.*

### **CONTINUED TO March 12, 2008 at 7:00 PM.**

*Gail Nightingale then calls the Berkshire Development/Circuit City back for the remainder of the hearing. See above\*\*.*

*Motion to adjourn*

*Meeting adjourned at 11:05 pm.*

