



# Town of Barnstable

## Zoning Board of Appeals



**Board Members:**

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

**Staff Support**

Elizabeth Jenkins –Director - [elizabeth.jenkins@town.barnstable.ma.us](mailto:elizabeth.jenkins@town.barnstable.ma.us)  
 Anna Brigham – Principal Planner – [anna.brigham@town.barnstable.ma.us](mailto:anna.brigham@town.barnstable.ma.us)  
 Carol Puckett – Administrative Assistant – [carol.puckett@town.barnstable.ma.us](mailto:carol.puckett@town.barnstable.ma.us)

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BARNSTABLE  
TOWN CLERK

### Minutes

**Wednesday, July 10, 2019**

Hearing Room – 2<sup>nd</sup> Floor – 367 Main Street, Hyannis, MA

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

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

*As a quorum has been met, Alex Rodolakis calls the hearing to order at 7:00 PM.*

**Call to Order**

Introduction of Board Members – *All members present introduce themselves*

*Alex reads the following with no response:*

**Notice of Recording**

Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

*Alex reads the following into the record:*

**Old Business**

**7:00PM**

**Appeal No. 2019-033**

**Ferrill**

Forrest and Linda K. Ferrill, II, are appealing a decision from an Administrative Official which was a denial of a building permit. The Building Commissioner has denied the issuance of a building permit in reference to Section 240-43 citing that the request for the 40 foot by 60 foot metal pole barn is not customary or incidental to a single-family dwelling and that the structure becomes predominant and thus the principal use. The subject property is located at 34 Cammett Road, Marstons Mills, MA as shown on Assessor’s Map 079 as Parcel 020. It is located in the Residence F (RF) Zoning District.

*Continued from June 12, 2019 and June 26, 2019. Members assigned: David Hirsch, Herbert Bodensiek, Jacob Dewey, Paul Pinard, Mark Hansen*

*By an email dated July 8, 2019, Attorney James R. McMahon has requested that this be continued to July 24, 2019 so that the Building Commissioner can be present.*

*Motion to continue to July 24, 2019 at 7:00 PM is made by David Hirsch and seconded by Paul Pinard*

**Vote:**

*All in favor*

**CONTINUED TO JULY 24, 2019 AT 7:00 PM**

7:01 PM

Appeal No. 2019-034

Tardanico

Charles Tardanico, Trustee of the Construction Associates Realty Trust, has petitioned for a Variance in accordance with Section 240-91.H(1)(b)[1] – Developed Lot Protection, Demolition and Rebuilding on Nonconforming Lot. The Petitioner is requesting relief from the maximum 20% lot coverage in order to construct a 16 foot by 36 foot pool resulting in a lot coverage of 21.6%. The property is located at 158 Parker Road, Osterville, MA as shown on Assessor's Map 116 as Parcel 037. It is located in the Residence C Zoning District.

No members assigned, no testimony taken.

*Members assigned: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey, Mark Hansen*

**Members assigned tonight: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey, Mark Hansen**

**Representative: Michael Schulz, Esq.** who gives summary of where this property is located and notes that he submitted a memo yesterday to the board (Exhibit A). He notes that the dwelling is in keeping with other houses in the neighborhood and that it was permitted as a demolition/rebuild as-of-right. However, the petitioner has lost a couple of buyers because most people are looking for pools. The applicants are now seeking a smaller pool which he believes is de minimis over the 20% lot coverage. He believes that a literal enforcement of the zoning ordinance would result in a financial hardship and thinks that it has been shown by the loss of the buyers and what is permissible under the lot coverage right now looks like a big hot tub and a potential buyer would like something that would represent a pool.

David Hirsch asks where the mechanical equipment would be placed. Attorney Schulz confers with his clients, Charles Tardanico and Ron Welch who are in the audience. Attorney Schulz states that the mechanical would meet the setback requirements from the rear lot line. Mark doesn't think that the equipment counts towards the lot coverage.

Herb Bodensiek asks if there is any comment from neighbors. Schulz notes that there is a letter in the file in support from the Holdens.

Alex asks for public comment. No one speaks.

Board deliberates. Alex isn't a fan of variances and struggles with the hardship and understands what they are trying to do however, he doesn't see how it fits within the 3 prong test and not a hardship not to have the pool.

Attorney Schulz states that it would be hard pressed to make an argument to one of these three elements but has seen that in some cases they have issued a variance and that there is an appeal period after a grant of the relief that would give anyone an opportunity to appeal. They are not asking for a full size pool but something just a little bit more that would help in not having buyers disappear. Jake understands that the area is changing but notes the intent of the ordinance.

Mark Hansen asks how long this property has been on the market. Attorney Schulz confirms with the applicants that it is approximately 8 months. Charles Tardanico speaks and states that some people feel that if they are going to spend money for a pool they would rather a bigger pool.

Attorney Schulz asks the members if there would be more documentation he could provide to them and perhaps continue this. Alex still isn't convinced. David Hirsch and Herb Bodensiek do not have any concerns. Mark Hansen states that he is on the fence and can empathize with this being a luxury property and this being a hardship because of the pool.

Jake asks for clarification as to what the 3 prong test is. Mark Hansen thinks the physical size of the lot is the topographical element and that the financial hardship is because buyers are being lost and doesn't think it is a detriment to the neighborhood. Herb agrees.

Attorney Schulz recommends continuing this for two weeks until he gets more information and perhaps documentation from those who didn't purchase the property.

Hansen is trying to gauge what the hardship is if there is no pool. Attorney Schulz thinks that in this price range a pool is wanted.

**Motion to continue to July 24, 2019 at 7:00 pm is made by Mark Hansen and seconded by Herb Bodensiek**

**Vote:**

**All in favor**

## CONTINUED TO JULY 24, 2019 AT 7:00 PM

### New Business

7:00 PM

Appeal No. 2019-037

Heslinga

Steven G. and Lynn E. Heslinga have applied for Modification of Special Permit 1992-04 in order to relocate a non-conforming apartment unit/garage structure to a different location on the same property. The property is located at 1643 Hyannis Road, Barnstable, MA on Assessor's Map 299 as Parcel 001-001. It is located in the Residence G (RG) Zoning District.

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

**Alex discloses that Mr. Boudreau has represented him in the past regarding real estate transactions and can recuse himself if there are any objections. No objections noted.**

**Representative: Philip Boudreau, Esq. who is also here with the applicants and their son, Paul. Attorney Boudreau gives a summary of what currently exists on the lot and that there is existing relief in the form of a special permit from the Zoning Board of Appeals for the garage with an apartment above it. The garage/apartment special permit was granted because Hurricane Bob had destroyed the nonconforming structure. They are currently here seeking to take that structure and move it to another location on the same lot. It will be put on another cement slab towards the back of the lot and will meet all the required setback requirements for the zoning district in which it is located. The reason they are planning on moving the garage/apartment structure is in order to demolish the current single-family dwelling and to rebuild it in the same place as the garage/apartment structure which they are planning on moving. They are not contemplating any structural changes to the garage/apartment structure and feels it will not be a detriment to the public good affected nor to the neighborhood. As for the staff report, Attorney Boudreau would like to have Condition #3 removed as it would hinder the proposed future demo/rebuild of the single-family dwelling.**

**Alex Rodolakis notes that there are two letters of support in the file; one from Gerard & Jeannine Madden who reside at 50 Maushop Avenue and another from Pam Mayone and James Luster at 1657 Hyannis Road.**

**Alex asks for public comment. No one speaks.**

**Paul Pinard makes findings:**

**Proposal & Relief Requested**

Steven G. and Lynn E. Heslinga have applied for Modification of Special Permit 1992-04 in order to relocate the non-conforming garage/apartment unit structure to a different location on the same property. The property is located at 1643 Hyannis Road, Barnstable, MA on Assessor's Map 299 as Parcel 001-001. It is located in the Residence G (RG) Zoning District. The relief is sought pursuant to Section 240-92 (B) Nonconforming buildings or structures used as a single- and two- family residences, and 240-94 Nonconforming use.

The applicants plan to relocate the garage/apartment to another location on the same lot, and pursuant to separate building permit application, to demolish the existing principal dwelling and cottage and construct one new principal dwelling. The sheds will remain.

**Other Approvals**

On September 12, 2018, the Applicant received a Certificate of Demolition or Relocation as submitted. At the meeting, the applicant brought documentation that showed the dwelling built in the 1900's, probably between 1930-1940. A member of OKH had the opinion that the house has been significantly altered and agreed with the applicant that the structure was not constructed in the 1700's.

**Proposed Special Permit Findings**

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-92 (B) Nonconforming buildings or structures used as a single- and two- family residences, and 240-94 Nonconforming use allows for alterations. -
2. Site Plan Review is not required for single family residential dwellings.
3. 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.

**Vote:**

**All in favor**

**Paul Pinard makes a motion with the following conditions and with removing Condition #3**

**Conditions**

1. Special Permit No. 2019-037 is granted to Steven G. and Lynn E. Heslinga, Trustees of Giant Clam II Realty Trust to relocate the existing garage/apartment to another location on the same lot at 1643 Hyannis Road, Barnstable, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan of #1643 Hyannis Road, Barnstable, MA" prepared by Down Cape Engineering, Inc., dated May 8, 2019.
- ~~3. The proposed redevelopment shall represent full build-out of the lot. Further alteration or expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.~~
4. All mechanical equipment associated with the dwellings (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
5. The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

**Vote:**

*All in favor*

## **GRANTED WITH CONDITIONS**

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### **Correspondence**

- Received June 21, 2019 – Chapter 91 pier application for a state license to permit and maintain an existing dock at 88 Connors Road, Centerville
- March 26, June 23, and June 25, 2019 – Emails from Phil Macallister and Janet Virkus regarding concerns on Special Permit No. 2018-068 McKinley/Boris issued for property located at 166 Seventh Avenue, Hyannis (Hyannisport), MA

### **Matters Not Reasonably Anticipated by the Chair**

### **Upcoming Meetings**

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

### **Adjournment**

*Motion to adjourn is made by Paul Pinard and seconded by David Hirsch*

*Seconded by*

*Vote*

*All in favor*