

Zoning Board of Appeals MINUTES

Wednesday, March 9, 2022 - 7:00 PM

The Zoning Board of Appeals Public Hearing will be held by remote participation methods.

Public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be viewed via the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/>
2. Real-time access to the Zoning Board of Appeals meeting is available utilizing the Zoom link or telephone number and Meeting ID provided below. Public comment can be addressed to the Zoning Board of Appeals by utilizing the Zoom link or telephone number and Meeting ID provided below:

Join Zoom Meeting Option	Telephone Number Option
https://zoom.us/j/94027743569	888 475 4499 US Toll-free
Meeting ID: 940 2774 3569	Meeting ID: : 940 2774 3569

3. Applicants, their representatives and individuals required or entitled to appear before the Zoning Board of Appeals may appear remotely, and may participate through accessing the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to anna.brigham@town.barnstable.ma.us so that they may be displayed for remote public access viewing.

Copies of the applications are available for review by calling (508) 862-4682 or emailing anna.brigham@town.barnstable.ma.us.

Call to Order

Chair Jacob Dewey calls the meeting to order and takes roll call:

Member	Present	Absent
Dewey, Jacob – Chair	X	
Hirsch, David	X	
Bodensiek, Herbert	X	
Hansen, Mark	X	
Pinard, Paul		X
Walantis, Todd	X	
Johnson, Denise	X	
Webb, Aaron	X	

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. No response.

Minutes

February 23, 2022 – Mark Hansen makes a motion to approve. David Hirsch seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Denise Johnson, Jake Dewey, Aaron Webb
Nay: None

Old Business

7:00 PM

Appeal No. 2022-001

Robert A. Savoie, Trustee Robert A. Savoie Rev Tr

Robert A. Savoie, Trustee of the Robert A. Savoie Revocable Trust has applied for a Special Permit pursuant to Section 240-91 H.3 Developed Lot Protection. The applicant seeks to demolish a 2,529 square foot single family dwelling and construct a 9,409 square foot single family dwelling on a nonconforming lot containing 20,678 square feet. The demolition will include the existing dwelling, shed, and retaining walls. The construction will include the dwelling and retaining walls. The subject property is located at 24 Overlea Road, Hyannis, MA as shown on Assessors Map 287, Parcel 150. It is located in the Residence F-1 (RF-1) Zoning District. Continued from February 9, 2022. The Board received a request to continue to April 27, 2022.

David Hirsch makes a motion to continue Appeal No. 2022-001 to April 27, 2022. Denise Johnson seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Denise Johnson, Jake Dewey, Aaron Webb

Nay: None

Appeal No. 2022-001 is continued to April 27, 2022.

7:01 PM

Appeal No. 2022-002

Sheree Kay, Trustee for SPK Family Realty Trust

Sheree P. Kay, Trustee for the SPK Family Realty Trust has applied for a Special Permit pursuant to Section 240-131.4(D)(2)(a) Change, Expansion, Alteration of structures and Section 240-131.4 (E) Dimensional Relief. The applicant seeks to construct a 14' x 19' carriage shed for the purpose of housing an antique vehicle, which will encroach into the front yard setback of an unconstructed paper way. The proposed shed will have a setback of 10.6 feet where 15 feet is required. The subject property is located at 74 Summerbell Avenue, Centerville, MA as shown on Assessor's Map 226 Parcel 064. It is located in the Craigville Beach District Craigville Village (CBDCV) in the District of Critical Planning Concern (DCPC). Continued from February 9, 2022.

Sitting on this will be David Hirsch, Herb Bodensiek, Mark Hansen, Todd Walantis, and Jake Dewey.

Attorney Michael Schulz is representing the applicant. The property is comprised of approximately 4,326 square feet. It is improved with a single-family dwelling that was constructed in 1875. He had submitted a letter to the Board dated March 3 that contains assessing card records and form b evidencing what was there in 1989 and in 2009. The structure is consistent with the neighborhood in terms of size and setback. As shown on the site plan and the elevations, the proposed carriage shed will encroach into the setback on Spring Avenue, but will maintain the setback requirements on Pleasant and Summerbell Avenue. The carriage shed is open from floor to ceiling, has no interior access from the house, and is unheated and unconditioned. The applicant is requesting a special permit under section 240-131.4 (D)(2) and 240-131.4 (E)(2). The applicant has already received approval from the Historic Commission on December 14, 2021 and has letters of support included as Exhibit 7.

Attorney Schulz submits that the plan complies with regulations: it's in character with the surrounding structures, contributes to the character and historic patterns of the area and minimizes inconsistent development, is stepped back on front and rear corners to preserve the original massing of the structure. It is not a voluntary demolition. It does not represent an increase in gross floor area. It's not capable of being used for human occupancy, but even still it does fall beneath the thresholds if it were ever to be considered gross floor area. It does not increase the lot area over what is allowed. According to the site plan created by Down Cape Engineering, the shed increases lot coverage by 6.1%, which is less than the 10% that existed on November 6, 2009. The shed does not increase flood hazards. It does not impact any views and is not located in a V zone. The applicant represents undue hardship without the relief.

Chair Dewey opens public comment. He reads that the Board received letters of support from Peter Caldera, Dick Delaney, and Gary Walters.

Jeff Plonowski addresses the Board. He owns an abutting property, 66 Summerbell Avenue. He is a licensed architect and building contractor. He says the applicants are trying to get a variance to build in a critical planning zone, and his first concern is that the proposed structure is excessively large to house just a car. He believes a future owner could

easily turn it into a living space. He's also concerned that the zoning summary says the building coverage will go over by 241 square feet. He does not think they have shown hardship. Attorney Schulz responds that he did receive an inquiry from Mr. Plonowski about these concerns and did address them on February 3. Chair Dewey makes a motion to close public comment.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey

Nay: None

The Board deliberates. Herb Bodensiek clarifies that this application is for a special permit, not a variance. He believes the 18 feet to the peak of the roof is necessary because of the slope of the roof, but he agrees that a 14-foot width is a genuine concern that might warrant discussion. Mark Hansen doesn't think the applicant could meet the setback even if they minimized the structure to just enough to open up a car door, so that is the hardship.

Chair Dewey makes findings for Appeal No. 2022-002:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-131.4(D)(2)(a) and 240-131.4 (E) allows for expansion of lawfully existing structures with a Special Permit from the Board.
2. 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.
3. The proposed alteration/expansions are not substantially more detrimental to the environment, community and/or historic character of the neighborhood than the existing building or structure.
4. Contributes to and respects the character and historic development patterns of the area and minimizes inconsistent development and redevelopment impacts to the historic and community character resources in this area.
5. Protects and preserves scenic views and vistas and ways to the water.
6. Protects and improves natural resources, including but not limited to the barrier beach and groundwater and coastal water quality and minimizes development and redevelopment impacts to the natural resources and ecosystems in this district.
7. The development complies with the setbacks and lot coverage requirements set forth herein, and is in character with surrounding structures, particularly structures that predate it. Relief is being requested for expansion of the structure in accordance with § 240-131.4D.
8. The redevelopment complies with the height limitations set forth herein.¹
9. The addition is set back at least 50 feet from the top of the coastal bank resource area.
10. Existing natural vegetation within the fifty-foot buffer area to salt marsh and undisturbed buffer areas 50 feet landward of the mean high-water mark of coastal water bodies shall be preserved to the maximum extent feasible.
11. The expansion does not exceed 25% of the gross floor area of structures in existence as of July 1, 1989, or do not exceed 10% of the gross floor area of structures in existence as of November 6, 2009.²
12. The expansion does not increase lot coverage over what is allowed under § 240-131.6, Coverage limitations, or by more than 10% over what was existing on November 6, 2009, whichever is greater.
13. The expansion does not increase flood hazards in the neighborhood.
14. The expansion maintains views to Nantucket Sound/Centerville River: a minimum 20 foot view shed is existing and maintained.

Todd Walantis seconds.

¹ BUILDING HEIGHT: The vertical distance from the grade plane to the highest point of a gable, hip or gambrel roof and the highest point of the coping of a flat roof. These height limitations shall not apply to chimneys cupolas, flagpoles or other similar appurtenances as approved by the Building Commissioner. (Gable roofs having a slope of 7/12 or greater allowed maximum height; hip and other sloped roofs with a slope of 4/12 or greater are allowed 5 feet less than the max)

² Gross floor area is defined as "the sum of all floor areas within a building or structure, measured from the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features. It shall include all areas capable of being used for human occupancy, including all basement floor areas, mezzanine and attic space and enclosed porches.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey

Nay: None

Mark Hansen suggests adding habitable space restrictions to the conditions. Jake Dewey reads that the appeal is subject to conditions 1-4 on the Staff Report and adds a number 5: The proposed carriage shed shall be restricted to non-habitable space without prior approval from the Board. Attorney Schulz finds the conditions acceptable.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey

Nay: None

Special Permit 2022-002 Sheree Kay is granted with conditions.

New Business

7:02 PM

Appeal No. 2022-004

Coughlin

Patrick K. Coughlin and Kimberly Piculell Coughlin have applied for a Special Permit pursuant to Section 240-131.4D (2)(a) Change, Expansion or Alteration of Uses or Structures and Section 240-131. 4 E. Dimensional Relief for the front yard setback where 15 feet is required and 4.7 feet and 4.8 feet is provided. The Applicants seek to alter/expand the existing dwelling pursuant to the plans prepared by Sullivan Engineering & Consulting, Inc. and Atelier R Design. The existing dwelling contains 2,704 square feet and the proposed dwelling contains 3,264 square feet. The subject property is located at 186 Lake Elizabeth Drive, Centerville, MA as shown on Assessor's Map 226 Parcel 184. It is located in the Craigville Beach District – Craigville Village (CBD-CV) Zoning District in the District of Critical Planning Concern (DCPC).

Attorney Schulz is representing the applicant, and requests a continuance to April 13, 2022. Herb Bodensiek makes a motion to continue Appeal No. 2022-004 to April 13, 2022. Aaron Webb seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Aaron Webb, Mark Hansen, Jake Dewey

Nay: None

Appeal No. 2022-004 Coughlin is continued to April 13, 2022 at 7:01 PM.

7:03 PM

Appeal No. 2022-005

Salazar

Paul Salazar, as lessee of Two Block Realty Trust, has applied for a Special Permit pursuant to Section 240-20 B. (3)(b) of the West Barnstable Village Business District Special Permit Uses, Personal Service. The Applicant is seeking to operate an acupuncture clinic and small herbal retail establishment. The subject property is located at 990 Main Street, Unit 2, West Barnstable, as shown on Assessor's Map 179 as Parcel 001-00B. It is located in the West Barnstable Village Business District (WBVBD).

Sitting on this will be David Hirsch, Herb Bodensiek, Mark Hansen, Jake Dewey, and Denise Johnson.

Paul Salazar, the applicant, addresses the Board. He is a local acupuncturist and has run a small business from his home for four years. The location he would like to move his business to is in an established commercial area, has ample parking, an existing sign, and is basically ready for move-in.

Chair Dewey opens for public comment. The owner of the property at 990 Rte. 6A, Sam Geoffrion, addresses the Board to say she thinks this business would be a good addition to the property and a benefit to the village. Mark Hansen makes a motion to close public comment. Herb Bodensiek seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Denise Johnson, Jake Dewey

Nay: None

Chair Dewey clarifies for the Board that this request falls under conditional approval. He does not see any detriment to the public good or welfare of the area.

Mark Hansen makes findings for Appeal No. 2022-005:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. The proposed use is allowed under Section 240-20 (3) with a Special Permit.
2. 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.
3. A Site Plan has been reviewed and found approvable with conditions. (See letter dated February 4, 2022 and February 15, 2022).
4. Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.
5. Is compatible with and supports the purpose and intent of this section.
6. Mitigates impacts to safety and congestion from development.
7. Protects and preserves water supply for both drinking water and fire protection.
8. Stormwater shall be contained on site and mitigated using best management practices.
9. Manages waste, by-products and other debris that may be associated with artisan and craft use in a manner compatible with abutting or nearby residential uses.
10. Does not generate noise, vibration, smoke, dust or other particulate matter, odors, heat, glare or intrude with similar nuisance on abutting or nearby residential uses.
11. Storage of all raw material and finished product associated with artisan or craft use shall be stored within a duly permitted permanent structure. All outdoor storage associated with artisan or craft use is prohibited.
12. Deliveries may take place not sooner than one hour before, or later than one hour after the permitted operating hours of a business.
13. Vehicles are prohibited from running motors, refrigeration units or other mechanical units outside of permitted hours of operation.

Herb Bodensiek seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Denise Johnson, Jake Dewey

Nay: None

Mark Hansen reads that the appeal is subject to conditions 1-4 from Staff Report dated February 22, 2022. Jake Dewey asks the applicant to clarify their hours of operation. Mr. Salazar responds 8 AM-5 PM, 6 PM at the latest. He confirms that his deliveries do not require large trucks. The applicant finds the conditions acceptable.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Denise Johnson, Jake Dewey

Nay: None

Appeal No. 2022-005 Salazar is granted with conditions.

7:04 PM

Appeal No. 2022-006

White

Allen J. White has petitioned for a Variance from Section 240-24.1.5 B. Dimensional, Bulk and Other requirements in the Single Family Residential District. The Petitioner is seeking a variance from minimum lot area where 20,000 square feet is required and 15,358 square feet is provided and rear yard setback where 10 feet is required and 3 feet

is provided. The subject property is located at 438 South Street. Hyannis, MA, as shown on Assessor's Map 308 as Parcel 123. It is located in the Single Family (SF) Residential District.

Sitting on this will be David Hirsch, Herb Bodensiek, Mark Hansen, Jake Dewey, and Todd Walantis.

Attorney Ted Schilling is representing the petitioner. He informs the Board that the property has been affected by at least 5 various zoning changes from 1977-2005. There is presently a single-family home and detached garage. There will be no new construction. The lot size is in keeping with the neighborhood. The lot on the submitted plan in Plan Book 301 page 01 is the original approval not required subdivision plan that divided the property into two lots in 1975. The petitioner purchased the property in 2003 unaware of the merger that had taken place in 1985. The lot is oddly shaped due to the original subdivision of the lots. No other lot in this area is similarly shaped. The petitioner paid fair market value and has paid real estate taxes on the property since purchase. A literal enforcement of the zoning ordinance would involve a hardship on the petitioner, financially and otherwise since the property without a variance would remain in violation of zoning without any other relief available.

Chair Dewey opens it up to the Board for questions. Mark Hansen asks Attorney Schilling why the petitioner is doing this—is there a pending sale? Attorney Schilling answers yes, the application was precipitated by the Building Commissioner saying the lots have merged after a request for clarification from the buyer's attorney. Mark Hansen asks if the result of this appeal is a condition of the sale. Attorney Schilling answers yes.

Jake Dewey asks for confirmation that the applicant is not looking for relief to make 434 Main Street buildable. Attorney Schilling responds that this appeal is about 438 Main Street only—his client does not own 434 Main Street. Mark Hansen asks for clarification about the distance from lot lines. Attorney Schilling responds that the house is 3 feet from the lot line and 5 feet from the garages, but the garages were preexisting nonconforming. The back of the house has a deck, which was replaced close to the lot line. It provides access to the house, so is important.

Chair Dewey opens for public comment. Mr. Calabro of 439 South Street addresses the Board. He asks if replacing the deck with steps would remove the need for a variance. Attorney Schilling responds that steps would still be in violation. Mark Hansen makes a motion to close public comment. David Hirsch seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Todd Walantis, Jake Dewey

Nay: None

The Board deliberates. Mark Hansen says the plans the Board are looking at are unclear. He asks if there is a rear exit from the house. Attorney Schilling is not sure. Jake Dewey asks if the applicant has been in contact with the owners of 434 Main Street. Attorney Schilling says he could not get ahold of them, but it wouldn't help because there is a statute that says neither owner could buy back the other parcel to re-merge anyway.

The Board expresses confusion over why this appeal is before them if the lot is already developed—it is unclear what has merged, as both lots are separately owned. Attorney Schilling explains that over time, zoning changes caused his client's property at 438 Main Street and a neighboring lot, 434 Main Street to merge when they were under common ownership. At the time his client made the purchase of 438 Main Street, the attorney involved in that did not confirm that the lots were not merged and so sold a nonconforming lot. There is no real complete record so it is very confusing. Jake Dewey questions whether this is a title issue. Attorney Schilling says it is a title issue, but there's no way to fix the title, except with a variance.

Chair Dewey says in his opinion, the applicant's lot is not an unusual shape. Mark Hansen asks if the applicant would be amenable to replacing the deck with stairs to make it less noncompliant. Attorney Schilling says yes, if they had to. The Chairman adds that even so, the Board would still need to grant a variance because it's an undersized lot.

Jake Dewey believes the owner of 434 Main Street needs to be involved in this, and needs to apply for a variance as well. If Attorney Schilling is arguing that these lots are merged right now, the Board can't break 434 Main Street apart from 438 Main Street without involving 434 Main Street. Attorney Schilling believes it doesn't matter because there's nothing the owner of 434 Main Street could do to get 438 Main Street back. That owner will be in the same position whether the Board grants this or not. Todd Walantis thinks that since it's been held in separate ownership paying separate taxes on what they thought were separate lots for so long, it would actually be in the Board's best interest to grant the variance to clear up the mistaken merging or record-keeping. He thinks the hardship is clear in that way.

Herb Bodensiek questions the legitimacy of selling part of a merged lot. Attorney Schilling responds that the merging does not affect the legitimacy of the title, it only affects the marketability of the title. It's merged only for zoning purposes. There is no other option than unmerging the lots, and the Building Commissioner agrees with that. The Board questions why these lots aren't preexisting nonconforming. Attorney Schilling says because it's been affected by common ownership. The Chairman summarizes that the issue is that it became merged during common ownership, and it should not have been sold as two separate lots.

Todd Walantis informs the Board that according to the Assessor's website, the applicant purchased in 2003 both lots, and then sold in 2004 434 Main Street to the current owner. So, since the zoning change, the applicant did own both lots. Attorney Schilling says his client owned the second property in a trust and his daughter was the beneficiary, and anyway, the merger occurred long before that. The Board believes that makes this a self-imposed hardship.

Todd Walantis makes a motion to continue this item to March 23, 2022 so the Board can get clarity on the Assessor's records. Mark Hansen seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Todd Walantis, Jake Dewey

Nay: None

Appeal No. 2022-006 White is continued to March 23, 2022.

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

March 23, 2022, April 13, 2022, and April 27, 2022. The Chairman asks Town Council Liaison David Bogan whether Town Council has decided when to start meetings in person. Councilor Bogan says no.

Adjournment

Mark Hansen makes a motion to adjourn. Aaron Webb seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Todd Walantis, Jake Dewey, Aaron Webb

Nay: None

Respectfully submitted,
Genna Ziino, Administrative Assistant

Further detail may be obtained by viewing the video via Channel 18 on demand at <http://www.town.barnstable.ma.us>