

# Zoning Board of Appeals MINUTES Wednesday, June 8, 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
<a href="https://townofbarnstable-us.zoom.us/j/86152168433">https://townofbarnstable-us.zoom.us/j/86152168433</a>	888 475 4499 US Toll-free
Meeting ID: 861 5216 8433	Meeting ID: 861 5216 8433

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](mailto: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](mailto: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

None.

## Old Business

7:00 PM

Appeal No. 2022-007

Tella

Srikanth and Brigid C. Tella have petitioned for a Variance from Section 240-91(H)(b)(1) Developed Lot Protection. The Petitioners seek a variance to construct a 16' x 32' pool at the property which would increase the lot coverage from 18.38% to 23.87%, exceeding the allowable limit of 20%. The subject property is located at 26 Hidden Lane, Osterville, MA as shown on Assessor's Map 140 Parcel 203. It is located in the Residence C (RC) Zoning District. Continued from March 23, 2022, April 13, 2022, April 27, 2022 and May 11, 2022. Members assigned: Hirsch, Bodensiek, Hansen, Webb, Dewey.

Attorney Michael Schulz is representing the applicant. When he was last before the Board, they had requested he obtain some information from the Building Commissioner. The Commissioner sent a clarifying email dated May 9, 2022, in which he said a proposed site plan prior to construction is what contains the lot coverage and what the town reviews prior to issuing a permit. An as-built plan would not contain lot coverages unless the applicant was required to do so. Attorney Schulz also says this isn't a self-created hardship by the Tellas, nor was it an error by the town. Everyone relied on a professionally drawn and stamped site plan. He believes this can be fixed through a variance. He refers to written proposed findings that he previously sent the Board, and believes they are sufficient to grant the variance.

**Chair Dewey opens for public comment again.** He notes that there were two letters in support submitted. He makes a motion to close public comment. Herb Bodensiek seconds.

**Vote:**

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

**Nay: None**

**The Board deliberates.** Mark Hansen asks whether Commissioner Florence's email suggests that the Board should be using the original site plan in their reviewing of this appeal. Attorney Schulz confirms. Aaron Webb believes granting a variance is correcting a mistake here. Herb Bodensiek believes this will set a precedent and doesn't think he can support it. Attorney Schulz rebuts that variances do not set precedent because each is unique purely to the facts of the case. David Hirsch believes removing the driveway is a fair compromise and does not think it's fair to penalize the applicant for a certified engineer's mistake. Denise Johnson thinks that the support of the neighbors is a big factor, and hopes the Board takes that into consideration. Jake Dewey thinks the history should be taken out of the equation. Attorney Schulz responds that he would agree were it not for the plan specifically showing a "proposed pool." Jake Dewey asks if Attorney Schulz thinks "proposed pool" was sufficient that a pool was expected to be approved and permitted by the town. Attorney Schulz confirms.

Attorney Schulz asks Chair Dewey if he can poll the Board. Aaron Webb is in favor. David Hirsch is in favor. Herb Bodensiek is reluctantly opposed. Mark Hansen is in favor. Jake Dewey is on the fence. Attorney Schulz says with the reduction in hardscape, it's a net benefit of 400 square feet of pervious scape. Chair Dewey says hardscape is not part of lot coverage calculation.

**Mark Hansen makes findings for Appeal No. 2022-007:**

Srikanth and Brighid C. Tella have petitioned for a Variance from Section 240-91(H)(b)(1) Developed Lot Protection. The Petitioners seek a variance to construct a 16' x 32' pool at the property which would increase the lot coverage from 18.38% to 23.87%, exceeding the allowable limit of 20%. The subject property is located at 26 Hidden Lane, Osterville, MA as shown on Assessor's Map 140 Parcel 203. It is located in the Residence C (RC) Zoning District.

The statutory requirement of MGL Chapter 40A, Section 10 for granting a Variance is a three-prong test. The Board is required to find that each of the following three requirements has been met in order to consider granting the variance:

1. owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;

He finds that at the time of the initial submission of the site plan, the town used the lot coverage provided by the stamped plan, and the new information that has come to light does not generally affect the zoning district in which it is located.

2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and

He finds that a literal enforcement would prohibit the applicants from building out the structures as initially proposed and that there would be a loss because the perceived value was greater at the time of the purchase.

3. desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.

He finds that this was a clerical error and that it does not derogate from the intent or purpose of the zoning ordinance, but that the petitioner has worked in good faith and the initial site plan was the instrument by which the Board should consider all facts.

**Vote:**

**Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Aaron Webb**

**Nay: Jake Dewey**

Mark Hansen reads that the appeal is subject to conditions 1-4 from Staff Report dated March 10, 2022, and added an additional condition: The petitioners agree to remove the asphalt driveway and parking and replace it with pervious materials.

**Vote:**

**Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Aaron Webb**

**Nay: Jake Dewey**

**Appeal No. 2022-007 Tella is granted with conditions.**

David Hirsch leaves the meeting at this point.

**7:01 PM**

**Appeal No. 2022-025**

**Howe**

Celeste M. Howe and Michelle A. Aceto have petitioned for a Variance from Section 240-47. 2 C. Accessory Dwelling Units (ADU's). The Petitioners seek a variance to establish a 540 square foot accessory dwelling unit (ADU) in the existing detached garage which is located in a three-unit residential condominium development. The subject property is located at 33 Captain Murphy's Way No. 3, Barnstable, MA as shown on Assessor's Map 317 as Parcel 031-01C. It is located in the Residence F-2 (RF-2) Zoning District. Continued from May 25, 2022.

Sitting on this will be Paul Pinard, Herb Bodensiek, Mark Hansen, Jake Dewey, and Aaron Webb.

Attorney Michael Schulz is representing the applicants. He is joined by Celeste Howe and Michelle Aceto, the applicants. They are seeking a variance from the ordinance that says any commercial use with the exception of permitted home occupations should not be permitted on the property in which there is an ADU. The applicants meet all other criteria for the Building Commissioner to issue an ADU at the property. The property is a 1.08 acre lot with three condominiums. The subject unit, Unit 3, is on a 0.39 acre exclusive use area, which is improved with a dwelling and garage. Ms. Howe's son has received a job on cape and would like to move here to work, but cannot find affordable housing. This was approved by OKH in February. Attorney Schulz suggests that the lot is unusually shaped, and the units being broken into exclusive use areas increases that uniqueness. They are seeking to renovate the garage into a one-bedroom unit. They have four letters of support, two of which are from the other unit owners. In the absence of a variance, the petitioners would suffer hardship because her son would not be able to find affordable housing and accept that job. The ADU ordinance was enacted to provide support to residents with finding affordable housing.

**Chair Dewey brings it back to the Board for questions.** Paul Pinard asks why this is before the Board, as he believes it's as of right. Attorney Schulz says they are requesting a variance from Section 240-47 2 C 12, by recommendation of the town staff and the Building Commissioner, who flagged this as potentially "commercial use" because condominiums are commercial use. Mark Hansen asks for clarification that the current home is a 2-bedroom and they are proposing adding a 1-bedroom, and asks about the septic. Attorney Schulz confirms and says their private septic is set for 3 bedrooms, and this has been approved by the Health Department. Jake Dewey asks whether this would be considered two units in the event of a future sale. Attorney Schulz says it would be considered an accessory structure. The two other condo owners understand that they will not be able to get ADUs in the future if this is approved. Jake Dewey says he believes the property was condo-ized because it couldn't be sold as separate properties, so they will essentially be making it a four-unit property. The intent was not to allow properties with multiple units to add another unit. Attorney Schulz likens it to a single-family home adding an ADU—it's one ADU per property, not per home.

**Chair Dewey opens public comment.** He reads that letters in support were received from Sarah Benson, C. Eager, J. Fraser, and Todd Goyette. Celeste Howe addresses the Board to say she is grateful that the town adopted an ADU program. She says her son is currently living with them and working, and she hopes to find a way to work with the Board to create an ADU. Charlie Eager is a direct abutter and speaks in support. Jake Dewey makes a motion to close public comment. Mark Hansen seconds.

**Vote:**

**Aye: Paul Pinard, Herb Bodensiek, Mark Hansen, Jake Dewey, Aaron Webb**

**Nay:**

**The Board deliberates.** They discuss whether the two other units should submit in writing, as a condition, that they will not attempt to create ADUs. Paul Pinard and Aaron Webb think it is not necessary and would be overreaching. The Chairman reads from the bylaw that only one ADU may be created per lot, and this provision is not subject to variance. He and Mark Hansen feel that it's not about how many structures or properties or owners, it's about the one lot. Attorney Schulz expresses concern that if the bylaws change in the future, the other owners having waived the right to an ADU may create a problem. The Board discusses whether a family apartment would be a better path but decide not. Jake Dewey polls the Board on a decision: all are in favor, but the Chairman expresses concern that the Town Council planned for ADUs to be only on single-family lots.

**Paul Pinard makes findings for 2022-025:**

Celeste M. Howe and Michelle A. Aceto have petitioned for a Variance from Section 240-47. 2 C. Accessory Dwelling Units (ADU's). The Petitioners seek a variance to establish a 540 square foot accessory dwelling unit (ADU) in the existing detached garage which is located in a three-unit residential condominium development. The subject property is located at 33 Captain Murphy's Way No. 3, Barnstable, MA as shown on Assessor's Map 317 as Parcel 031-01C. It is located in the Residence F-2 (RF-2) Zoning District.

The statutory requirement of MGL Chapter 40A, Section 10 for granting a Variance is a three-prong test. The Board is required to find that each of the following three requirements has been met in order to consider granting the variance:

1. Owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;

He finds that it's unique in both the shape of the lot and that the lot is broken into exclusive use areas.

2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and

There would be substantial hardship were the applicants not able to create an ADU to house their son. The applicant and the community have demonstrated the need for this based on the hardship of finding housing in this area.

3. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.

Based on the letters of support, it seems clear it's not detrimental.

Mark Hansen seconds.

**Vote:**

**Aye: Paul Pinard, Herb Bodensiek, Mark Hansen, Jake Dewey, Aaron Webb**

**Nay:**

Paul Pinard reads that the appeal is subject to conditions 1-6 from Staff Report dated May 13, 2022. Regarding condition no. 2, it is referencing the site plan dated May 19, 2022 prepared by Canal Land Surveying and Permitting submitted with the application.

**Vote:**

**Aye: Paul Pinard, Herb Bodensiek, Mark Hansen, Jake Dewey, Aaron Webb**

**Nay:**

**Appeal No. 2022-025 Howe is granted with conditions.**

**7:02 PM**

**Appeal No. 2022-026**

**Howe**

Celeste M. Howe and Michelle A. Aceto, have applied for a Special Permit pursuant to Section 240-47. 1 B. Family Apartments. The Applicant is seeking a Special Permit to establish a 540 square foot Family Apartment to be located in an existing detached garage. The subject property is located at 33 Captain Murphy's Way No. 3, Barnstable, MA as shown on Assessor's Map 317 as Parcel 031-01C. It is located in the Residence F-2 (RF-2) Zoning District. Continued from May 25, 2022.

Attorney Michael Schulz requests to withdraw this without prejudice. Chair Dewey makes a motion to withdraw Appeal No. 2022-036 without prejudice. Herb Bodensiek seconds.

**Vote:**

**Aye: Paul Pinard, Herb Bodensiek, Mark Hansen, Jake Dewey, Aaron Webb**

**Nay:**

**Appeal No. 2022-026 Howe is withdrawn without prejudice.**

**New Business**

**7:03 PM**

**Appeal No. 2022-028**

**Miller**

Joshua Miller has applied for a Special Permit pursuant to Section 240-47.1.B (1) and (4) Family Apartments. The Applicant proposes to construct a 1,785 square foot detached structure that will be greater than 50% of the principal dwelling. The proposed structure will be a 2-car garage with a 2-bedroom Family Apartment above. The subject property is located at 1879 Phinney's Lane, Barnstable, MA as shown on Assessor's Map 277 as Parcel 008. It is located in the Residence G (RG) Zoning District.

Sitting on this is Herb Bodensiek, Paul Pinard, Mark Hansen, Jake Dewey, and Denise Johnson.

Bette Miller addresses the Board about this. It is she and her husband who will be living in the family apartment they are looking to put on their son's property. The land slopes down and the garage will be put in at basement level so the family apartment will be at ground level on two sides for mobility. The land is narrow and long, two acres, and the family apartment won't be seen by the road or by neighbors. Chair Dewey says this falls right under the provision of the bylaw.

**Chair Dewey opens for public comment.** John Field of 1659 Hyannis Road addresses the Board in support. The Chairman makes a motion to close public comment. Mark Hansen seconds.

**Vote:**

**Aye: Paul Pinard, Herb Bodensiek, Mark Hansen, Jake Dewey, Denise Johnson**

**Nay:**

**Chair Dewey makes findings for Appeal No. 2022-028:**

Joshua Miller has applied for a Special Permit pursuant to Section 240-47.1.B (1) and (4) Family Apartments. The Applicant proposes to construct a 1,785 square ft detached structure that will be greater than 50% of the principal dwelling. The proposed structure will be a 2-car garage with a 2-bedroom Family Apartment above. The subject property is located at 1879 Phinney's Lane, Barnstable, MA as shown on Assessor's Map 277 as Parcel 008. It is located in the Residence G (RG) Zoning District.

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. *Section 240-47.1. B. allows a Special Permit for a Family Apartment in a detached structure and 50% larger than the principal dwelling.*
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.
4. The Board is also asked to find that:
5. The proposed family apartment would not be substantially more detrimental to the neighborhood than the existing dwelling.
6. The single-family nature of the property and of the accessory nature of the detached structure are preserved.

Mark Hansen seconds.

**Vote:**

**Aye: Paul Pinard, Herb Bodensiek, Mark Hansen, Jake Dewey, Denise Johnson**

**Nay:**

Chair Dewey reads that the appeal is subject to conditions 1-6 from Staff Report dated May 27, 2022.

**Vote:**

**Aye: Paul Pinard, Herb Bodensiek, Mark Hansen, Jake Dewey, Denise Johnson**

**Nay:**

**Appeal No. 2022-028 is granted with conditions.**

**7:04 PM**

**Appeal No. 2022-029**

**Leveroni**

Maureen Leveroni has applied for a Special Permit pursuant to Section 240.91 (H)(3) Nonconforming Lot and requests a finding under M.G.L. Chapter 40A Section 6 regarding compliance with floor area ratio. The Applicant proposes to demolish two existing single story structures and replace the structures with one, two story structure on the same or smaller footprint. The subject property is located at 14 Beale Way, Barnstable, MA as shown on Assessor's Map 279 Parcel 014. It is located in Residence F-1 (RF-1) Zoning District.

*This item was taken out of order and was heard after 2022-007.*

Attorney Tardif is representing the applicant. He is requesting a continuance to July 13, 2022 because a direct abutter requested a meeting. Chair Dewey makes a motion to continue this to July 13, 2022 at 7:01 PM. Mark Hansen seconds.

**Vote:**

**Aye:** Herb Bodensiek, Mark Hansen, Aaron Webb, Paul Pinard, Denise Johnson, Jake Dewey

**Nay:**

Appeal No. 2022-029 Leveroni is continued to July 13, 2022 at 7:01 PM.

**Correspondence**

**Matters Not Reasonably Anticipated by the Chair**

Chair Dewey says that effective July 27, 2022 the Board will be back in person based on the Governor's order.

**Upcoming Hearings**

June 22, 2022, July 13, 2022, July 27, 2022

**Adjournment**

Chair Dewey makes a motion to adjourn. Herb Bodensiek seconds.

**Vote:**

**Aye:** Herb Bodensiek, Mark Hansen, Aaron Webb, Paul Pinard, Denise Johnson, Jake Dewey

**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>