

**ZONING BOARD OF APPEALS
MINUTES
Wednesday, March 23, 2022**

Chair Jake Dewey opened the meeting at 7:01 PM with following narrative:

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

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/91955601391	888 475 4499 US Toll-free
Meeting ID: 919 5560 1391	Meeting ID: : 919 5560 1391

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

Introduction of Board Members

Chair Jacob Dewey took roll call of members:

Member	Present via Zoom	Absent
Alves E.		Absent
Bodensiek H.	Present	
Dewey J.	Present	
Hansen M.	Present	
Hirsch D.	Present	
Johnson	Present	
Pinard P.		Absent
Walantis T.		Absent
Webb, Aaron	Present	

Also in attendance were David Bogan, Town Council Liaison, Anna Brigham, Principal Planner and Karen Herrand, Principal Assistant, of Planning & Development Dept., Assistant Town Attorney Charles McLaughlin.

Executive Session

The Zoning Board of Appeals may vote to enter into an Executive Session under G.L. c. 30A section 21(a)(3), to discuss litigation strategy with respect to the pending appeal Ciluzzi v. Zoning Board of Appeals, 149 Beech Leaf Island Road, if the Chair declares that an open meeting may have a detrimental effect on the litigating position of the Town.

Chair Jacob Dewey entertains a motion, moved by Aaron Webb to convene into Executive Session under G.L. c. 30A section 21(a)(3) to discuss the matter of the pending appeal by Ciluzzi v. Zoning Board of Appeals based on the Chair’s declaration that an open meeting discussion may have a detrimental effect on the litigating position of the Zoning Board of Appeals in the appeal and that the Board return to open session at the conclusion of the Executive Session, seconded by Mark Hansen,

ROLL CALL VOTE:

- David Hirsch - aye**
- Herb Bodensiek - aye**
- Mark Hansen - aye**
- Aaron Webb - aye**
- Denise Johnson - aye**
- Jake Dewey - aye**

Members return – Executive Session has ended.

Notice of Recording

Please note that this meeting is being 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.

None.

Minutes

None

Old Business

7:00 PM	Appeal No. 2021-057	O’Neill and Dunbar Point LLC
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J. Brian O’Neill, Miriam O’Neill, and Dunbar Point LLC have applied for a Special Permit pursuant to Section 240-91 F Merged Lots. The Applicant seeks to relocate the property line between 689 and 697 Scudder Avenue which would result in the cottage to be part of 689 Scudder Avenue. The subject properties are 689 Scudder Ave and 697 Scudder Ave, Hyannis, MA on Assessors Map 287, Parcels 061 and 062. It is located in the Residence F-1 (RF-1) Zoning District.

Continued from December 8, 2021, January 12, 2022, and February 23, 2022

Chair Jake Dewey – Attorney Revere has requested to continue to May 11th 2022. based on constructive approval.

Motion made by Herb Bodensiek to continue to May 11th, 2022, seconded by Mark Hansen,

Roll Call Vote

- David Hirsch - aye**
- Herb Bodensiek - aye**
- David Hansen - aye**
- Aaron Webb - aye**
- Denise Johnson - aye**
- Jake Dewey - aye**

7:01 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. **Continued from March 9, 2022.**

Chair Jake Dewey – Attorney Schilling has requested to continue to April 27, 2022

Motion made by Mark Hansen to continue to April 27, 2022, seconded by Aaron Webb,

Roll Call Vote

David Hirsch - aye

Herb Bodensiek - aye

Mark Hansen - aye

Aaron Webb - aye

Denise Johnson - aye

Jake Dewey – aye

New Business

7:02 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.

Sri Tella in attendance. Refers to March 11, 2022, letter. They have applied for variance. Single family home. Lot 2. It was a demo rebuild. Not involved with design or construction of original. The lot had been developed with a future pool in mind. Site plan, as on file with Bldg. Dept. Didn't question the lot coverage percent as listed. Differences explained. Would like to put in the same dimension pool as/that was submitted to Bldg. Dept. would involve a hardship with the original intentions when they purchased the property. They have letters of support from some neighbors as well.

Mark Hansen clarifies/describes what the discrepancy will be.

Herb Bodensiek, do calculations include the patio around the deck?

Sri Tella, only the front porch, does not include the patio.

Chair Jake Dewey, is it substantially smaller size pool? Sri Tella, yes.

Chair Jake Dewey opens for public comment. None.

Chair Jake Dewey – correspondence received.

Letter from Ross Jones, 36 Hidden Lane – in support.

March 11th letter from John Avery, 18 Hidden Lane – in support.

Chair Jake Dewey entertains a motion to close public comment, moved by Herb Bodensiek, seconded by Mark Hansen,

Roll Call Vote:

David Hirsch - aye
Herb Bodensiek - aye
Mark Hansen - aye
Aaron Webb - aye
Jake Dewey – aye

Mark Hansen, this is not a failure of the Town. It's assumed, clearly shows 19.6 as proposed lot coverage, does indicate a larger pool. Petitioners had no knowledge that this may be an inaccurate plan. Does believe hardship. Should be reflected that should approve understood that this came out of a technical abnormality on the plans, not just wanting to get a pool over the lot coverage. Specific circumstance.

David Hirsch agrees as well. Some errors here.

Chair Jake Dewey shape and topography of the land, these are standard shape lots. Doesn't think detriment, but lot coverage is a concern of how built out becoming.

Mark Hansen, the proposed lot is in fact not what it is and was misrepresented from Engineers. That is the hardship, the shape of the lot.

Herb Bodensiek, questions the 2014 plan. Former owner possibly and real estate broker may be to blame.

Sri Tella slopes a bit from front to back.

Chair Jake Dewey explains that it's a full lot. Not a lot of room here.

Aaron Webb, agrees with lot coverage being a concern. Pool size. Can always withdraw.

Anna Brigham, Petitioners could seek a continuance so can come back with more information.

Discussion regarding possible continuance.

Motion made by Chair Jake Dewey to continue to April 13, 2022, seconded by Mark Hansen,
Roll Call Vote:

David Hirsch - aye
Herb Bodenseik - aye
Mark Hansen - aye
Aaron Webb - aye
Jake Dewey – aye

7:03 PM

Appeal No. 2022-008

MacKinnon

Donald J. MacKinnon, Trustee of MCCM Trust and Matthew J. MacKinnon, Trustee of 33 Oyster Place Realty Trust, have petitioned for a Variance from Section 240-125(B)(1)(c). The Petitioners are seeking to modify Variance No. 2021-029 to amend the plan referenced in Condition 3 which states, "The site development shall be in substantial conformance with the plan entitled "Plan of Land #910 Main Street & #33 Oyster Place Road, Cotuit MA by Down Cape Engineering Inc., dated April 29, 2021." The Petitioners are proposing certain changes to the proposed expansions of the homes and to the approved site plan and are seeking to modify the Decision to allow for proposed modification and to reference the revised site plan. No further relief is being sought. The subject properties are located at 910 Main Street, Cotuit, MA on Assessor's Map 035 Parcel 090 and 33 Oyster Place Road, Cotuit, MA on Assessor's Map 035 Parcel 101. They are located in the Residence F (RF) Zoning District and the Resource Protection Overlay District (RPOD).

Attorney Eliza Cox in attendance. DJ McKinnon, 910 property Trust. Dan O'Jala in attendance.

Explains this is to modify one of the conditions granted on the variance from July of 2021 – 2021-029. Land swap. A house on each lot. Screen Share: Parcel A to be deeded to Oyster Place Rd. Plan shown. ANR plan was done as well. Conservation Order of Conditions received as well. 910 Main is historic and needed review. BHC determined that no demolition required work went forward. Installation for wastewater/systems for both properties. Condition No. 3 to amend, site development shall be in substantial. Plan dated April 29th to update with a newer plan.

Shows the original plan – 33 Oyster Place cottage demolished. Proposed changes: 33 Oyster Place Rd.

Second floor plan already approved/existing house and shows the proposed addition. The modification is the existing stairway in the house, very narrow/access to the second floor. Proposed stairway could also serve second floor of the main house. Taking roof deck/existing and enclosing a portion of the roof deck to make a finished space. Stairway would serve both the addition and the existing home. 74 sq. ft. adjustment, no change to the foot print. Non conforming lot – floor area ratio is well below what is acceptable. Previous presentation was 0.17 with 74 sq. ft. – now increases to 0.18, within the ratio for undersize lots.

Proposed site plan – shifting location of the rinse station. Shown.

910 Main Street – Garage meets the setback. Parking area shape, shells, not impervious, have reoriented it. Minor changes to the walkways. Locations of Kayek racks are shifted closer to the water, very minor changes. Asking ZBA to modify to reference the new site plan.

Denise Johnson, do any changes affect any abutters? Attorney Eliza Cox, no.

Chair Jake Dewey asks if need full variance findings?

Attorney Eliza Cox, don't think need. Just change reference to the site plan. Doesn't change the granted variance.

Aaron Webb leaves the meeting – bad internet connection.

Chair Jake Dewey opens public comment. None.

Chair Jake Dewey entertains a motion to close public comment, moved b Mark Hansen, seconded by Denise Johnson,

Roll Call Vote:

David Hirsch - aye

Herb Bodenseik - aye

Mark Hansen - aye

Denise Johnson - aye

Jake Dewey – aye

Motion made by Denise Johnson to accept the modification to variance 2021-029 to amend condition no. 3 to update the plan dated Feb. 15, 2022, seconded by Mark Hansen,

Roll Call Vote:

David Hirsch - aye

Herb Bodenseik - aye

Mark Hansen - aye

Denise Johnson - aye

Jake Dewey – aye

7:04 PM

Appeal No. 2022- 009

Bank of America

Bank of America, as Leasee, has petitioned for a Variance from Section 240-35. F.(3) Groundwater Protection Overlay Lot Coverage, Section 240-35.F.(4) Groundwater Protection Overlay Site Clearing, Section 240-75. A. Directional or Safety Signs not to exceed 1 sq. ft. in area or 3 ft. in height, Section 240-75.(B) No more than 4 signs per site, Section 240-103.

E.(3) Site Development Standard for Adequate Illumination, Section 240-53.B.(1) Landscape Requirements for Parking Lots – setbacks with landscape buffer, and Section 240-53. C. Interior landscaping within the parking lot area. The Petitioner is exceeding the minimum impervious coverage and minimum area to retain in its natural state requirements from the Groundwater Protection Overlay District. The Petitioner is exceeding number, height, and area requirements for directional signs. They are exceeding maximum property line and right-of-way illumination requirements. The Petitioner is not meeting the minimum number of trees in islands requirement and the surface parking area is located within the 10ft landscape buffer. The subject property is located at 1090 Iyannough Road, Hyannis, MA as shown on Assessor's Map 294 Parcel 001 H02. It is located in the Highway Business (HB) Zoning District.

Chair Jake Dewe is an abutter, and has been noticed.

Jake Modestow in attendance, of Stonefield Engineering, representing the Applicant. For a new bank. Bank of America proposal shown/screen share. 1.34 parcel. Commercial development directly behind. Subject to Groundwater Protection Overlay District. Review of the site. Functions as a thru lot, unique scenario. Demolish all on site and propose a new 5000 sq. ft. building. Two drive through ATM's walk up area, night deposit. Right in right out. Went through site plan process. LED light poles, 13. 6 wall lights and 4 canopy lights. Section 240 35f3 in regards to lot coverage. No natural currently, will give back 9.4 percent. Bring in some of the parking spaces close to the building. Will increase the buffer. Signage, proposing the minimum. Five directional signs, are slightly larger, requesting a variance for this. Canopy signs over the drive through. ATM at the front conflicts with the property line, reason for lighting here. Variance for trees, re illumination area, security risk and to meet safety. All of the requested variances are for safety for customers.

Mark Hansen, the allowed signage vs. the proposed?

Jake Modestow replies, only for directional signage and one on the building, 1 sq. ft. permitted they are asking for traffic through signage as well.

Mark Hansen confirms the landscape island on the plan.

Chair Jake Dewey asks for any public comment. None.

Motion made by Mark Hansen to close public comment, seconded by Denise Johnson,

Roll Call Vote:

David Hirsch - aye

Herb Bodenseik - aye

Mark Hansen - aye

Denise Johnson - aye

Jake Dewey - aye

Denise Johnson confirms, where will it be accessible, will it have a back exit or blocked?

Jake Modestow, it will still have access as now.

Chair Jake Dewey confirms only one will be right in and right out. DPW confirms.

Jake Modestow replies, at this time DPW did think the current access in and out was acceptable. Also, talking about a speed bump.

1. **Motion by Mark Hansen, Variance 2022-009,**
2. **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;**

3. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
4. 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, including any lighting spill over, seconded by Herb Bodenseik,

Roll Call Vote:

David Hirsch - aye
Herb Bodenseik - aye
Mark Hansen - aye
Denise Johnson - aye
Jake Dewey - aye

Motion by Mark Hansen on the Conditions/Staff Report dated 3/11/2022: 1 through 5 – have been reviewed and are acceptable, seconded by Herb Bodenseik,

Roll Call Vote:

David Hirsch - aye
Herb Bodenseik - aye
Mark Hansen - aye
Denise Johnson - aye
Jake Dewey - aye

Variance approved with conditions.

7:05 PM

Appeal No. 2022-010

Bank of America

Bank of America, as Leasee, has applied for a Special Permit pursuant to Section 240-25 C.(10) Conditional Use, Drive-through for banks. The Applicant proposes to redevelop the site and have proposed a drive-through for the bank. The subject property is located at 1090 Iyannough Road, Hyannis, MA as shown on Assessor's Map 294 Parcel 001-H02. It is located in the Highway Business (HB) Zoning District.

Chair Jake Dewey is an abutter/owns property in the area.

Jake Modestow in attendance. Gives a review of the project. Bank is a permitted use here. Doesn't change the highway business intent.

Herb Bodenseik thanks the Applicant for not keeping the property abandoned.

Chair Jake Dewey opens up for public comment. None.

Chair Jake Dewey entertains a motion to close public hearing, moved by Mark Hansen, seconded by Denise Johnson,

Roll Call Vote:

Herb Bodenseik – aye
Mark Hansen – aye
David Hirsch – aye
Denise Johnson - aye
Jake Dewey - aye

Motion by Denise Johnson on the Findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of 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 17, 2022).
4. Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.
5. The Building and site design are consistent with Section 240-25.E, District-wide design and performance standards applicable within the Highway Business District, seconded by Mark Hansen,

Roll Call Vote:

David Hirsch - aye
Herb Bodensiek - aye
David Hansen - aye
Denise Johnson - aye
Jake Dewey – aye

Denise Johnson moves to grant Special Permit subject to following conditions:

1. Special Permit No. 2022-010 is granted to Bank of America, as Lessee to allow for the proposed drive-through, as a conditional use in the HB District, at 1090 Iyannough Road, Route 132, Hyannis, MA.
2. The site development shall be constructed in substantial conformance with the plan set entitled “Bank of America Proposed Bank with Drive-thru ATMs” dated November 23, 2021 and revised February 4, 2022 and March 15, 2022, Sheets C1- C16, by Stonefield Engineering & Design.
3. All Site Plan Review conditions of approval are hereby incorporated into this Decision.
4. The above-described redevelopment shall represent full build-out of the lot. No further additions or accessory structures or additional uses shall be permitted without approval from the Board.

This 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 of a building permit. The rights authorized by this Special Permit must be exercised within two years, unless extended.

Roll Call Vote:

David Hirsch - aye
Herb Bodenseik - aye
Mark Hansen - aye
Denise Johnson - aye
Jake Dewey - aye

Correspondence

None

Mattes Not Reasonably Anticipated by the Chair

Upcoming Hearings

April 13, 2022, and April 27, 2022, May 11, 2022

Adjournment

Chair Jake Dewey entertains a motion to adjourn, moved by David Hirsch, seconded by Mark Hansen,

Roll Call Vote

David Hirsch - aye
Herb Bodenseik - aye
Mark Hansen - aye

Denise Johnson - aye

Jake Dewey - aye

The meeting ended at 8:54 p.m.

Respectfully Submitted

Karen Herrand, Principal Assistant