

**Zoning Board of Appeals**  
**MINUTES**  
**Wednesday, August 10, 2022**  
**7:00 PM**

**Chair Jacob Dewey** opens the meeting at 7:04 PM:

| <b>Member</b>              | <b>Present</b> | <b>Absent</b> |
|----------------------------|----------------|---------------|
| Dewey, Jacob – Chair       | X              |               |
| Hirsch, David – Vice Chair |                | X             |
| Bodensiek, Herbert – Clerk | X              |               |
| Hansen, Mark               | X              |               |
| Pinard, Paul               |                | X             |
| Walantis, Todd             | X              |               |
| Johnson, Denise            | X              |               |
| Webb, Aaron                | X              |               |

Also in attendance: Anna Brigham – Principal Planner, Jim Kupfer – Senior Planner,  
and Genna Ziino – Administrative Assistant

**Notice of Recording**

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

*No response.*

**Approval of Minutes**

None.

**Old Business**

None.

**New Business**

**Chair Jacob Dewey reads into the record:**

**7:06 PM**

**Appeal No. 2022-037**

**MWV Associates LLC**

MWV Associates LLC has petitioned for a Variance from Section 240- 24.1.8 C. Dimensional, bulk and other requirements in the HG Hyannis Gateway Zoning District. The Petitioner seeks a variance from the minimum bulk regulations to clarify parcel records and Assessing division lines pursuant to the plan prepared by Down Cape Engineering. The subject property is located at 195 Ridgewood Avenue, Hyannis, MA as shown on Assessor’s Map 328 as Parcel 073. It is located in the Hyannis Gateway (HG) Zoning District.

The board received a letter from Attorney Schultz requesting to continue to August 24, 2022.

Todd Walantis makes a motion to continue to August 24, 2022 at 7:00 PM. Mark Hansen seconds.

**Vote:**

**Aye: Herbert Bodensiek, Mark Hansen, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis**

**Nay: None**

7:10 PM

Appeal No. 2022-038

MacGregor, Warehouse Corp.

Molly MacGregor, Trustee of Warehouse Corporation Hyannis Realty Trust has petitioned to amend Use Variance No. 2019-021 which granted relief from 240-32. A. Industrial Limited Zoning District to allow a multi-family residential apartment building. The Petitioner seeks to amend Use Variance No. 2019-021 to convert interior office use into an additional dwelling unit. The subject property is located at 206 Breeds Hill Road, Barnstable, MA as shown on Assessor's Map 314 as Parcel 025. It is located in the Industrial Limited (IND LTD) Zoning District.

*Sitting in on this will be regular members Jacob Dewey, Mark Hansen, Herbert Bodensiek, Todd Walantis, and two alternates: Aaron Webb and Denise Johnson.*

Attorney Cox is joined by Joe Keller (manager of LLC) and Jessica Silver (who works for the Keller's company). Attorney Cox explains that the parcel is approximately 2.26 acres, with frontage on Breeds Hill Road and also Independence Drive. The property is presently developed with a 3-story apartment building. It was before the board in 2019 under 2 zoning decisions, 2019-21 (which is the one they're now seeking to modify), and 2019-22 (variance that authorized dimensional relief—not modifying).

For background, Attorney Cox explains that there is a tremendous demand for housing on cape, particularly rental. That's what is on this site now. Keller Co. receives calls every day from people looking to rent, and they have a waitlist of more than 30 people. In response to demand, the client converted some interior space that was designed as an office into a studio apartment. In response, the building department sent a communication indicating it would be necessary to come back to this board to modify the existing use variance. In reviewing the prior use variance decision, Attorney Cox thinks it's a gray area whether the modification is needed, but they didn't appeal the building commissioner's decision and instead are seeking to amend the existing use variance to authorize one additional unit. In looking at their use variance, the findings do not indicate or limit a certain number of units; rather it says "multi-unit." There was no floor plan included in 2019, and the conditions do not limit approval or condition the approval to a certain number of units.

Attorney Cox is asking the board to amend the decision to clarify that 30 units of multi-family housing may be permitted on the site. There is no detriment or derogation, and there are no changes to the exterior of the building. They are also proposing to add two parking spaces to the site so that the required number of spaces for 30 units will be maintained on the site. The client is fully prepared to work with the Building Department to deal with any interior code issues that may need modification. Adding the additional unit will help with demand, and the price of the studio is less than other units in the building. The client is fine with all conditions on the staff report. The prior decision already authorizes multi-family housing on this site, so what the board must do if so inclined is simply find that providing one additional studio unit within the existing building doesn't change the relief that was previously provided and doesn't result in any substantial detriment or derogation.

**Chair Jacob Dewey opens the board to questions.**

Chair Jacob Dewey says if this had come on their original request, making it 30 units, it would have gone to the Cape Cod Commission. How are we bypassing them on this? Attorney Cox answers that there is no definition for what is and isn't segmentation in the Commission's regulations, so the question becomes was there intentional segmentation to avoid the commission back in 2019? She suggests no and that Keller can provide information on the evolution of why this unit was changed. There was originally no reason or need to specify on their plans.

Joseph Keller provides background information: With the other structure they inherited a giant empty room. They contemplated trying to turn it into a unit but ultimately decided to make it storage. The space is on the ground floor and has its own door to access outside so it's useful as storage. When this new building was built, it was supposed to be a duplicate but because of the site condition, instead of having entrances on both sides, it is a center entrance. So in this case the big empty room was on the second floor, which doesn't work for storage.

They tried to use it as an office, then a function room but because of COVID no one is using it. Then, someone at Keller's church asked if he had a unit for their daughter and her baby. He said he didn't have a unit but that they had this empty room that has a bathroom and a kitchen. That was the evolution of it. He thinks involving the Cape Cod Commission would take years and would make it extremely difficult.

Chair Jacob Dewey still expresses concern about overstepping the Commission, and asserts that the building was originally designed and built specifically to be at 29 units to avoid the commission. Attorney Cox specifies that the new building was simply a copy of a preexisting building that had worked for the client. It was not created specifically in order to avoid the Commission. Additionally, the Commission could have taken or stopped this appeal at any point, but they haven't. When this project was started it was not segmented intentionally to avoid the commission. As the client explained, it was originally used for something else and then as a result of COVID the function no longer worked for which it was originally constructed for.

Aaron Webb asks if there are any other vacant spaces in the building and the total square footage of the room in question. Keller answers that there are no other vacant spaces, and guesses that the room is about 400 square feet. Attorney Cox has a mockup they had an architect make of the space that they'll submit for the record.

Mark Hansen asks if the space is presently occupied. Attorney Cox answers that it is. Mark Hansen asks if the plan is for the space to stay a studio. Attorney Cox answers yes, it is going to stay a studio.

**Chair Jacob Dewey opens for public comment.**

*None.*

Senior Planner Jim Kupfer offers that if the board is considering this, his recommendation for a condition that wasn't in the staff report is specifying how many units are allowed. As is, Attorney Cox is correct that there's a gray area of how many units are allowed. His recommended language is, "Total dwelling units shall increase from 29 to 30 units. No additional units shall be added without further relief from this board or an amendment to this decision."

Chair Jacob Dewey asks Senior Planner Kupfer if he has any comments on the Cape Cod Commission? Jim Kupfer offers that the building commissioner looked at this and did not provide them with a referral to the Commission.

**Chair Jacob Dewey makes a motion to close public comment. Mark Hansen seconds.**

**Vote:**

**Aye: Herbert Bodensiek, Mark Hansen, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis**

**Nay: None**

Chair Jacob Dewey opens back up to board for discussion.

Mark Hansen mentions that it would be pertinent, in the decision, to add a "2c" that references the floor plans as existing, in order to have something on record and to call out the number of units.

**Chair Jacob Dewey recognizes Mark Hansen to read the findings** and also mentions that, in regards to findings, Attorney Cox felt that the board didn't need to find full variance conditions findings so it can instead be a minor modification to the existing variance that was granted.

Mark Hansen reads the following findings:

With regard to variance 2022-038 MacGregor Warehouse Corp. modification of use of variance 2019-021, which granted relief from section 240-32 to convert approximately 576 sq. ft. of interior office use to an additional dwelling unit. Molly MacGregor, Trustee of Warehouse Corporation Hyannis Realty Trust has petitioned to amend Use Variance No. 2019-021, which granted relief from 240-32. A. Industrial Limited Zoning District to allow a multi-family residential apartment building. The Petitioner seeks to amend Use Variance No. 2019-021 to

convert interior office use into an additional dwelling unit. The subject property is located at 206 Breeds Hill Road, Barnstable, MA.

The board is seeing this is a minor variance change. It has been demonstrated that this is of no detriment to the zoning or initial intent of the initial decision. The board finds that again this would be a benefit to public housing and in addition would not substantially derogate from the initial use or intent of the zoning.

Herb Bodensiek seconds.

**Vote:**

**Aye: Herbert Bodensiek, Mark Hansen, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis**

**Nay: None**

**Mark Hansen reads conditions:** Referencing the staff report dated July 29, 2022, he has suggested variance conditions numbers 1, 2, and 3, also with the addition of a 2c to the variance that references the floor plans and shows a full draw of the proposed unit. And a number 4: suggested conditions from a senior town planner.

**Vote:**

**Aye: Herbert Bodensiek, Mark Hansen, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis**

**Nay: None**

**7:40 PM**

**Appeal No. 2022-039**

**157 Thornton Drive LLC**

157 Thornton Drive LLC has applied for a Special Permit pursuant to Section 240-93 B. Expansion of a preexisting nonconforming structure and to Section 240-57 Reduction in Parking. The Applicant seeks to construct an approximately 2,002 square foot storage addition to the southern end of the existing building. The existing structure is nonconforming to numerous dimensional, parking, and screening requirements and the proposed expansion will also be nonconforming to dimensional, parking, and screening requirements. The subject property is located at 157 Thornton Drive, Hyannis, MA as shown on Assessor's Map 267 as Parcel 019. It is located in the Industrial (IND) Zoning District.

Chair Jacob Dewey announces that this is to be readvertised for September 14<sup>th</sup>.

**7:41 PM**

**Appeal No. 2022-040**

**157 Thornton Drive LLC**

157 Thornton Drive LLC has petitioned for a Variance from Section 240-33 E. Rear yard setback, Lot coverage, and Section 240-33 F. Special Screening, Section 240-56 Parking Schedule, and Section 240-57 Reduction of parking. The Applicant seeks to construct an approximately 2,002 square foot storage addition to the southern end of the existing building which will intensify existing nonconforming setback, lot coverage, screening and parking demand. The subject property is located at 157 Thornton Drive, Hyannis, MA as shown on Assessor's Map 267 as Parcel 019. It is located in the Industrial (IND) Zoning District.

Chair Jacob Dewey announces that this also is to be readvertised for September 14<sup>th</sup>.

**Correspondence**

Planning Board Meeting Notification & Transmittal of a Regulatory Agreement Application, Regulatory Agreement No. 2022-001 S&C Realty Investment Co., LLC, 442 Main Street, Hyannis, August 18, 2022, 7:00 P.M.

**Matters Not Reasonably Anticipated by the Chair**

None.

**Upcoming Hearings**

August 24, 2022 (Zoom), September 14, 2022 (in person), September 28, 2022 (Zoom)

## **Adjournment**

Mark Hansen makes a motion to adjourn. Denise Johnson seconds.

### **Vote:**

**Aye: Herbert Bodensiek, Mark Hansen, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis**

**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>