

**Zoning Board of Appeals
MINUTES
Wednesday, August 24, 2022
7:00 PM**

Chair Jacob Dewey opens the meeting at 7:02 PM and reads the following:

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 by 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://townofbarnstable-us.zoom.us/j/85100330650	888 475 4499 US Toll-free
Meeting ID: 851 0033 0650	Meeting ID: 851 0033 0650

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.

Chair Jacob Dewey takes roll call:

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

Also in attendance: Anna Brigham – Principal 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

August 10, 2022 - Motion to approve as submitted is made by Paul Pinard and seconded by David Hirsch.

Vote:

Aye: David Hirsch, Herbert Bodensiek, Paul Pinard, Denise Johnson, Jake Dewey

Nay: None

Old Business

Chair Jacob Dewey reads into the record:

7:05 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. The appeal was continued from June 8, 2022, and July 13, 2022.

The Board received a request from Attorney Tardif to continue this to October 12, 2022.

Herbert Bodensiek makes a motion to continue to October 12, 2022. Paul Pinard seconds.

Vote:

Aye: David Hirsch, Herbert Bodensiek, Paul Pinard, Denise Johnson, Jake Dewey

Nay: None

7:08 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 appeal was continued from August 10, 2022.

The Board received a request from Attorney Schulz to continue to September 14, 2022.

Paul Pinard makes a motion to continue to September 14, 2022. Herbert Bodensiek seconds.

Vote:

Aye: David Hirsch, Herbert Bodensiek, Paul Pinard, Denise Johnson, Jake Dewey

Nay: None

New Business

Chair Jacob Dewey reads two appeals into the record, as they are tied to the same project and the applicant would like to present both together:

7:10 PM

Appeal No. 2022-041

Mayflower Cape Cod/Chick-Fil-A

Mayflower Cape Cod LLC has petitioned for a Variance from Section 240-39 G. (e) Bulk and Dimensional Regulations in the Shopping Center Redevelopment Overlay District. The Petitioner seeks a variance from the minimum bulk regulations to install face-to-face canopy at the Chick-Fil-A drive-thru which encroaches into the 30 foot minimum front yard setback at the perimeter of the redevelopment by 9 feet 2 inches. Subject property is located at 155 Enterprise Road, Hyannis, MA as shown on Assessor's Map 294 as Parcel 019. It is located in the Highway Business (HB) Zoning District and Shopping Center Redevelopment Overlay District (SCROD).

7:10 PM

Appeal No. 2022-042

Mayflower Cape Cod/Chick-Fil-A

Mayflower Cape Cod LLC has applied for a modification of Special Permit No. 2015-057, Condition No. 2, as it relates to the site plan, pursuant to Section 240-39 G. (e) Bulk and Dimensional Regulations in the Shopping Center Redevelopment Overlay District. The Applicant is seeking to install two steel framed canopies over the existing Chick-Fil-A restaurant's drive-thru lane. The subject property is located at 155 Enterprise Road, Hyannis, MA as shown on Assessor's Map 294 as Parcel 019. It is located in the Highway Business (HB) Zoning District and Shopping Center Redevelopment Overlay District (SCROD).

Sitting on this will be all members present: David Hirsch, Herb Bodensiek, Paul Pinard, Jacob Dewey, and Denise Johnson.

Frank Gaudun of esencia Architecture is the team leader on canopy rollouts for Chick-Fil-A across the US and is representing them today. He informs the Board that this is roughly the 850th store that esencia has done with Chick-Fil-A for this project. For background, in 2017 Chick-Fil-A started hearing about traffic issues at some of their sites due to an overload of cars in line for the drive-thru, sometimes blocking entire streets. (There are currently no traffic issues at the Hyannis site, but it's still on their radar.) To solve this traffic issue, Chick-Fil-A revamped their ordering system to use smart tablet technology with the ability to process credit cards. This allowed them to situate staff outside at the drive-thru during peak hours of operation to process more cars. This did alleviate traffic issues, but because there's no protection for staff from weather, it didn't work in this part of the country. As a solution, they came up with the canopy program, which they've instituted across the country. The canopies span over both drive-thru lanes and provide weather protection and shade for the Chick-Fil-A staff assigned to the drive-thru. They've found at similar sites that after canopies were installed, they could run roughly 45 cars out every 15 minutes. It's been tremendously successful.

In regards to the design, the goal is to make the canopies look as if they were part of the original buildout. They plan to use low-level, inconspicuous lighting. The canopies are structurally designed to take snow loads, water from rainstorms, etc. Any water from weather will travel down through a gutter system and be expelled onto pavement already underneath and will be mitigated by the existing onsite drainage system.

At this particular site they are asking for leniency for the face-to-face canopy, which is roughly 7'2" beyond the existing setback line. Along Enterprise Road they are about 9'2" beyond the setback line. Because the drive-thru was a special use condition, they are also applying for an amendment to the special use to allow the canopies.

Chair Jacob Dewey asks the Board if there are any questions for the applicant. He notes that Mark Hansen has joined the meeting.

David Hirsch asks for the timeframe for beginning the construction and how long they anticipate construction taking. Mr. Gawdun responds that they will start construction when they get the building permit. They will start on the weekend and work through the nights. He says it usually takes 3 to 4 weeks at the most. At this particular site, some of the digging will need to be done in the daytime on Sundays; they will limit the noise at night.

Mr. Gawdun wants to clarify, in regards to any concern over soil and storm water, that when construction starts they will have a dump truck come at the same time they do work. The dirt will be taken offsite the same day it's dug, so there is no concern about it piling up at the site.

Herb Bodensiek asks if this creates a new height restriction that didn't exist before. Mr. Gawdun responds that yes, technically the canopies are 9'6" high. He notes that currently a fire truck would not fit through the drive-thru, and if the fire department requires fire sprinklers, they'll be happy to oblige. Herb Bodensiek notes that he was thinking more about restricting higher trucks or vehicles, to which Mr. Gawdun replies that near the entry point of the current drive-thru they have existing height limitation bars set at 9'6", and the canopy will have a decal that calls out the height limits.

Chair Jacob Dewey asks about the drainage calculations—he wants to confirm that with the additional roof structure they're still falling within the same drainage load. Mr. Gawdun confirms that it won't create any water backup, and they are following the same flow patterns that are already established. The Chairman asks for clarification that the flow is going to go across the pavement to a storm drain and not into the ground, and wants to confirm that an engineer has looked at it, as it seems like the flow would be different for water coming down gutters vs. rain falling on pavement. Mr. Gawdun confirms that an engineer has looked at it, and can provide a letter for it if required.

Chair Jacob Dewey wants to confirm that there will be no loss of parking and no additional signage, aside from the height warning decal on the canopy. Mr. Gawdun confirms that there will be no parking changes, no additional signage other than the height decal, and no other changes to the existing property or landscaping.

Chair Jacob Dewey opens for public comment. None.

Chair Jacob Dewey makes a motion to close public comment. David Hirsch seconds.

Vote:

Aye: David Hirsch, Herbert Bodensiek, Paul Pinard, Denise Johnson, Jake Dewey

Nay: None

Chair Jacob Dewey opens it back up to the Board for discussion or findings.

Chair Jacob Dewey expresses some concern that the elevations of the canopy does make the structure look bigger. He agrees that it fits with the character of where it is and the commercial nature of that area, but feels it is more than just a drive-thru cover—it's a substantial structure. Despite this, he feels they can pass both appeals. Paul Pinard says it's in a special corner that's isolated, so thinks construction won't interfere with anything on the main roads. There are no neighbors, so he is in support.

Chair Jacob Dewey makes findings for 2022-041:

In appeal no. 2022-041 Mayflower Cape Cod LLC has petitioned for a Variance from Section 240-39 G. (e) Bulk and Dimensional Regulations in the Shopping Center Redevelopment Overlay District. The Petitioner seeks a variance from the minimum bulk regulations to install face-to-face canopy at the Chick-Fil-A drive-thru which

encroaches into the 30 foot minimum front yard setback at the perimeter of the redevelopment by 9 feet 2 inches. The subject property is located at 155 Enterprise Road, Hyannis, MA as shown on Assessor's Map 294 as Parcel 019. It is located in the Highway Business (HB) Zoning District and Shopping Center Redevelopment Overlay District (SCROD).

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; this does affect the structure in place and the land there
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
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.

David Hirsch seconds the findings.

Vote:

Aye: David Hirsch, Herbert Bodensiek, Paul Pinard, Denise Johnson, Jake Dewey

Nay: None

The Chairman reads that the appeal is subject to conditions 1-5 on the staff report dated August 11, 2022. Mr. Gawdun is agreeable to them.

Vote:

Aye: David Hirsch, Herbert Bodensiek, Paul Pinard, Denise Johnson, Jake Dewey

Nay: None

Chair Jacob Dewey makes findings for 2022-042:

In appeal no. 2022-042 Mayflower Cape Cod LLC has applied for a modification of Special Permit No. 2015-057, Condition No. 2, as it relates to the site plan, pursuant to Section 240-39 G. (e) Bulk and Dimensional Regulations in the Shopping Center Redevelopment Overlay District. The Applicant is seeking to install two steel framed canopies over the existing Chick-Fil-A restaurant's drive-thru lane. The subject property is located at 155 Enterprise Road, Hyannis, MA as shown on Assessor's Map 294 as Parcel 019. It is located in the Highway Business (HB) Zoning District and Shopping Center Redevelopment Overlay District (SCROD).

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 March 24, 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.
6. The proposed repairs, alterations and/or expansion are not substantially more detrimental to the surrounding neighborhood.

Before the vote, Chair Jacob Dewey asks for confirmation that the project is not sheet metal and that it is in compliance with design and performance standards for that district, which restrict sheet metal. Mr. Gawdun confirms.

Motion to approve special permit modification seconded by Paul Pinard.

Vote:

Aye: David Hirsch, Herbert Bodensiek, Paul Pinard, Denise Johnson, Jake Dewey

Nay: None

Chair Jacob Dewey reads that the appeal is subject to special conditions 1-6 on the staff report dated August 11, 2022.

Vote:

Aye: David Hirsch, Herbert Bodensiek, Paul Pinard, Denise Johnson, Jake Dewey

Nay: None

7:36 PM

Appeal No. 2022-043

Munsell

David P. Munsell Jr. and Diane M. Munsell have applied for a Special Permit pursuant to Section 240-93 B. Nonconforming buildings or Structures not used as single- or two-family dwellings, Alterations by Special Permit. The Applicant is seeking a Special Permit to reconstruct/enlarge existing structure, a 450 square foot carriage house/barn and 80 square foot shed where 10 feet is proposed and 15 feet is required and to convert the same to a 2,723 square foot single family dwelling and 80 square foot shed. The subject property is located at 3075 and 3077 Main Street, Barnstable, MA as shown on Assessor's Map 279 as Parcels 040 and 041. It is located in the Residence F-2 (RF-2) Zoning District.

The Board received a request to continue this to September 14, 2022.

Paul Pinard makes a motion to continue this to September 14, 2022 at 7 PM. Mark Hansen seconds.

Vote:

Aye: David Hirsch, Herbert Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson, Jake Dewey

Nay: None

7:38 PM

Appeal No. 2022-044

Munsell

David P. Munsell Jr. and Diane M. Munsell have petitioned for a Variance from Section 240-11 E. Bulk Regulations in the RF-2 Zoning District. The Petitioners seek a variance from the minimum bulk regulations to allow for the reconstruction/enlargement of the 450 square foot carriage house/barn and 80 square foot shed where 10 feet is proposed and 15 feet is required so they can be redeveloped into a 2,723 square foot Single Family Dwelling and 80 square foot shed. The subject property is located at 3075 and 3077 Main Street, Barnstable, MA as shown on Assessor's Map 279 as Parcels 040 and 041. It is located in the Residence F-2 (RF-2) Zoning District.

The Board received a request to continue this to September 14, 2022.

Denise Johnson makes a motion to continue this to September 14, 2022 at 7:01 PM. Mark Hansen seconds.

Vote:

Aye: David Hirsch, Herbert Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson, Jake Dewey

Nay: None

Correspondence

Cape Cod Commission Public Hearing for Centerville Gardens Wireless Communications Tower to be held on September 13, 2022 at 5:00 PM via Zoom.

Matters Not Reasonably Anticipated by the Chair

None.

Upcoming Hearings

September 14, 2022 (in person), September 28, 2022 (via Zoom), October 12, 2022 (in person)

Paul Pinard mentions that on September 14 is an event that he, David Hirsch, and Mark Hansen will be attending, so they will miss the ZBA meeting. In order to have a quorum, all other members of the Board will need to attend the September 14 meeting. Chair Jacob Dewey suggests that Anna Brigham check in with the Board on the Monday before the meeting to make sure there will be a quorum or else cancel the meeting.

Adjournment

Mark Hansen makes a motion to adjourn. David Hirsch seconds.

Vote:

Aye: David Hirsch, Herbert Bodensiek, Paul Pinard, Mark Hansen, 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>