

**Zoning Board of Appeals
MINUTES
Wednesday, February 28, 2024
7:00 PM**

To all persons interested in or affected by the actions of the Zoning Board of Appeals, you are hereby notified, pursuant to Section 11 of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, and all amendments thereto, that a public hearing on the following appeals will be held on Wednesday, February 28, 2024, at the time indicated:

Call to Order

Acting Chair Herb Bodensiek calls the meeting to order at 7:03 PM with an introduction of Board Members:

Member	Present	Absent
Dewey, Jacob – Chair		X
Bodensiek, Herbert – Vice Chair	X	
Pinard, Paul – Clerk		X
Alves, Manny		X
Hansen, Mark	X	
Hurwitz, Larry		X
Johnson, Denise	X	
Webb, Aaron	X	

Also present is Anna Brigham, Principal Planner and Genna Ziino, Administrative Assistant.

Aaron Webb informs the Chairman that he will not be present for the March 13 meeting.

Notice of Recording

This meeting of the Zoning Board of Appeals is being recorded and broadcast on the Town of Barnstable’s Government Access Channel. In accordance with MGL Chapter 30A §20, I must inquire whether anyone is recording this meeting and if so, to please make their presence known.

Minutes

December 6, 2023 – Aaron Webb moves to approve the minutes. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Aaron Webb, Denise Johnson, Mark Hansen

Nay: None

January 10, 2024 – Aaron Webb moves to approve the minutes. Denise Johnson seconds.

Vote:

Aye: Herb Bodensiek, Aaron Webb, Denise Johnson, Mark Hansen

Nay: None

Old Business

7:00 PM

Appeal No. 2023-014

Ernest J. Jaxtimer

Ernest J. Jaxtimer has filed an Appeal of an Administrative Official’s Decision in accordance with Barnstable Zoning Ordinance Section 240-125 B.(1)(a) and M.G.L. Chapter 40A Section 8 and Section 15. The Petitioner seeks to overturn the Notice of Zoning Ordinance Violation and Order to Cease, Desist, and Abate Immediately from the Building Commissioner, dated May 26, 2023. Summary of violations determined by the Building Commissioner include Barnstable Zoning Ordinances Article II General Provisions Sections 240-7 A, 240-10 A; Article III District Regulations Sections 240-14 A (1); Article IX Site Plan Review Sections 240-100 A, 240-101 B, 240-103 B, 240-103 C, 240-103 K, and 240-105 G. The subject properties are located at 1450 Osterville West Barnstable Road as shown on Assessor’s Map 127 as Parcel 007 001, and 1450 Osterville West Barnstable Road #A as shown on Assessor’s Map 127 as Parcel 036.

Both properties are located in the Residence F (RF) Zoning District. Continued from July 26, 2023, September 13, 2023, November 8, 2023 and January 24, 2024.

Attorney Mike Ford is representing the applicant and requests to withdraw without prejudice. Herb Bodensiek moves to accept that request. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Aaron Webb, Denise Johnson, Mark Hansen

Nay: None

Appeal No. 2023-014 Jaxtimer is withdrawn without prejudice.

An abutter is present and requests to make public comment. He is denied because the appeal has been withdrawn, and he is instructed to speak to Anna Brigham about his concerns with the property and process.

7:01 PM

Appeal No. 2023-039

Baird

Daniel and Karen Baird have filed an Appeal of an Administrative Official's Decision in accordance with 240-125 B. (1)(A) and M.G.L. Chapter 40A Section 8. The Petitioners seek to overturn the Notice of Violation and Order to Cease, Desist, and Abate from the Building Commissioner, dated September 11, 2023. Summary of violations determined by the Building Commissioner include Barnstable Zoning Ordinance Chapter 240 Section 14 A.(1) RF Residential District and Chapter 240 Section 10C Prohibited Uses. Specifically, the use of a trailer/camper as a substitute dwelling unit or for temporary sleeping purposes on a property without a permitted principal dwelling. The subject property is located at 27 Falcon Road, West Barnstable, MA as on Assessor's Map 196 as Parcel 032. It is located in the Residence F (RF) Zoning District. Continued from December 6, 2023 and January 24, 2024.

The Board received a request to continue to May 8, 2024. The Building Commissioner approves of that request. Herb Bodensiek moves to continue this to May 8, 2024. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Aaron Webb, Denise Johnson, Mark Hansen

Nay: None

Appeal No. 2023-039 Baird is continued to May 8, 2024.

7:02 PM

Appeal No. 2023-042

Baker & Moir, as Appellants

Patricia Baker and David D. Moir, as Appellants, are appealing the issuance of Building Permit BLDR-23-780 issued on November 1, 2023 to EJ Jaxtimer for the construction of a 3,100 sq. ft., 3-bedroom home for Janet Holian, Trustee of Holian Family Realty Tr. The subject property is located at 240 Windswept Way, Osterville, MA and 250 Windswept Way, Osterville, MA as shown on Assessor's Map 051 as Parcel 012-001 and 012-000, respectively. It is located in the Residence F-1 (RF-1) and the Resource Protection Overlay District (RPOD). Continued from January 24, 2024.

The Board received a request to continue to March 27, 2024. Attorney Mike Ford is representing the property owner, Janet Holian and addresses the Board to explain that the appellants filed new information last Friday, and he is asking for additional time to respond to that. The petitioner's attorney has no objection. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Aaron Webb, Denise Johnson, Mark Hansen

Nay: None

Appeal No. 2023-042 Baker & Moir is continued to March 27, 2024.

7:03 PM

Appeal No. 2023-044

Alliegro

George and Debra Alliegro have petitioned for a Variance pursuant to Section 240-13 E. RF-1 Bulk Regulations – Minimum Side Yard Setback. The Petitioners seek a variance to construct an unconditioned, screened porch over an existing patio 12.6 feet from the lot line where 15 feet is required. The subject property is located at 202 Sea View Avenue, Osterville, MA as shown on Assessor's Map 138 as Parcel 014. It is located in the RF-1 Zoning District. Continued from January 10, 2024, January 24, 2024 and February 7, 2024.

The Chairman reads both Appeal No. 2023-044 and 2023-045 into the record.

7:04 PM

Appeal No. 2023-045

Alliegro

George and Debra Alliegro have applied to modify Special Permit No. 2016-018 Modification No. 3 to allow for the construction of a screened porch over an existing patio, which would increase the lot coverage from 16.2% to 18.3%. The subject property is located at 202 Sea View Avenue, Osterville, MA as shown on Assessor's Map 138 as Parcel 014. It is located in the RF-1 Zoning District. Continued from January 10, 2024, January 24, 2024 and February 7, 2024.

The Board received a request to continue both appeals to March 13, 2024. Herb Bodensiek moves to continue Appeal No. 2023-044 and 2023-045 to March 13, 2024. Aaron Webb seconds.

Vote:

Aye: Herb Bodensiek, Aaron Webb, Denise Johnson, Mark Hansen

Nay: None

Appeal No. 2023-044 and Appeal No. 2023-045 are continued to March 13, 2024.

New Business

7:05 PM

Appeal No. 2024-001

Harris

James and Carol Harris have applied for a Special Permit in accordance with Section 240-47.1 Family Apartments. The Applicants are proposing to construct a detached two-car garage with a 785 square foot one-bedroom family apartment above. The proposed garage will comply with all required setbacks. The property is located at 214 Tern Lane, Centerville, MA as shown on Assessor's Map 192 as Parcel 029. The property is located in the Residence D-1 (RD-1) Zoning District.

Chris Ellis, the contractor is representing the applicant. He explains to the Board that he was called into this project after the permits had already been pulled and the frame has been built. The applicants did not feel comfortable with their initial contractor, so they fired the contractor and took the permits out in their own name. Because the structure had already been framed when he was brought into the process, he did not review the building permit or plans. So the structure is fully built now, with a kitchenette. Jeff Lauzon, Building Inspector, advised them that it would fail inspection and they need to file a special permit for a family apartment. Mr. Ellis explains that they meet all the requirements for a family apartment except that the structure is detached. The idea is that the owner's mother will likely move in as her health declines. The owner's daughter is moving in for the foreseeable future.

Herb Bodensiek opens for public comment. There is none. Aaron Webb moves to close public comment. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Aaron Webb, Denise Johnson, Mark Hansen

Nay: None

Herb Bodensiek moves to close the public hearing. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Aaron Webb, Denise Johnson, Mark Hansen

Nay: None

Aaron Webb makes findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-47.1 B.(4) allows a Special Permit for a Family Apartment in a detached structure.
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 proposed family apartment would not be substantially more detrimental to the neighborhood than the existing dwelling.
5. The single-family nature of the property and of the accessory nature of the detached structure are preserved.

Denise Johnson seconds.

Vote:

Aye: Herb Bodensiek, Aaron Webb, Denise Johnson, Mark Hansen

Nay: None

Aaron Webb says the appeal is subject to conditions 1-6 from Staff Report dated February 15, 2024. Denise Johnson moves to approve the appeal. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Aaron Webb, Denise Johnson, Mark Hansen

Nay: None

Special Permit No. 2024-001 Harris is granted with conditions.

Correspondence

None.

Matters Not Reasonably Anticipated by the Chair

Denise Johnson asks where the updates to the Rules & Regulations stands. Anna Brigham says Chair Dewey has asked to add that to the March 27 agenda.

Upcoming Hearings

March 13, 2024, March 27, 2024, April 10, 2024

Adjournment

Mark Hansen moves to adjourn. Aaron Webb seconds.

Vote:

Aye: Herb Bodensiek, Aaron Webb, Denise Johnson, Mark Hansen

Nay: None

Documents Used at this Meeting

- December 6, 2023 & January 10, 2024 minutes
- Request from Attorney Wall to continue Appeal No. 2023-039 Baird to May 8, 2024
- Request from Attorney Schulz to continue Appeal No. 2023-044 and Appeal No. 2023-045 to March 13, 2024
- Appeal No. 2024-001 Harris application packet
- Staff Report dated February 15, 2024 for Appeal No. 2024-001