

Zoning Board of Appeals
MINUTES
Wednesday, July 22, 2026
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, July 22, 2026, at the time indicated:

Call to order

Chair Dewey calls the meeting to order at 7:05 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	
Dworkis, Debra	X	
Hurwitz, Larry	X	
Webb, Aaron	X	

Also present is Kyle Pedicini, Assistant Director – Planning & Development; Jan Kendrick, Assistant Town Attorney; Anna Brigham, Principal Planner; and Genna Ziino, Administrative Assistant.

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 S20, I must inquire whether anyone is recording this meeting and if so, to please make their presence known.

Chair's Statement for the public

I wish to remind everyone that no member of the public may speak without first being recognized by the Zoning Board of Appeals Chair.

The public will have an opportunity to speak for up to 3 minutes during any public hearing on an agenda item.

Out of respect for everyone's time, please refrain from repeating the same comments others have already made. Each member will get one chance to speak on a topic and there is no ceding time to others.

Comments must be directed to the Zoning Board of Appeals as a body, through the Board Chair. You should not make comments directly to any individual Member. You also should not be addressing your comments to anyone else in this room — not to Town staff and not to another member of the audience. Public comment is to be directed to the Zoning Board of Appeals.

We also ask that the members of the public refrain from making audible comments during the meeting unless they have been recognized to speak by the Board Chair. Please treat fellow members of the public speaking at the mic, and members of this board, with the respect you would wish to be treated with yourself.

I hope this evening we can have a thoughtful, respectful meeting.

Minutes

June 10, 2026 – Aaron Webb moves to approve. Herb Bodensiek seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Manny Alves, Debra Dworkis, Larry Hurwitz, Aaron Webb

Nay: None

Old Business

7:00 PM

Appeal No. 2026-010

Walsh/Asclepius Corporation

Maria R. Walsh, Trustee of Mias Family Trust, has appealed an Administrative Official's decision. The Appellant is appealing the Building Permit dated April 6, 2026 which permits an emergency overnight shelter as a nonconforming use pursuant to 40A, 3 at 460 West Main Street, Hyannis. The subject property is located at 460 West Main Street, Hyannis, MA as shown on Assessor's Map 269 as Parcel 030. It is located in the Residence B (RB) and the Highway Business (HB) Zoning Districts. This matter was continued from June 10, 2026.

Chair Dewey assigns himself, Herb Bodensiek, Paul Pinard, Aaron Webb, and Manny Alves.

The Chairman welcomes Assistant Town Attorney Jan Kendrick to provide background. Attorney Kendrick explains that a shelter is not a permitted use in the zoning district, however, the Building Commissioner, based on the submissions received, made a determination that the emergency overnight shelter use is an exempt use under 40A section 3, the Dover Amendment. That amendment restricts the ways a town can regulate certain uses—in this case, religious uses. Tonight, the sole issue before the Board is if the Building Commissioner's determination is correct. That is, if the emergency overnight shelter that Catholic Charities proposes to operate as lessee of Housing Assistance Corporation is a use for religious purposes on land leased by a religious sect.

Attorney Dan Creedon is representing the appellant Maria Walsh, a direct abutter to 460 West Main Street. He is appealing the Commissioner's determination that Catholic Charities' use of a portion of an office building as a shelter is exempt from zoning. He wants to address the merits of the case and standing. To determine what is a protected use, the Board needs to apply the framework that MA courts have applied in these cases. He requests to confine the analysis to MA law, not other states. For a religious sponsor to establish that its use is exempt from zoning, it must satisfy two required elements: that its use is religiously significant, and that its use is primarily and dominantly religious. The reported cases in MA have found two ways to satisfy the second requirement: the use can articulate religious doctrine, or can be accessory to a religious use on the property that articulates religious doctrine. He doesn't think Catholic Charities meets the second use, and believes the determination should be overturned.

Attorney Creedon would like to reference two existing cases: Needham Pastoral Counseling Center, Inc. vs. Board of Appeals of Needham and Becker vs. Somerville. Catholic Charities have asserted that their operation of an emergency overnight shelter is inspired by faith and consistent with their religious mission, and is a form of ministry consistent with scripture. That's not disputed. But it does not speak to the second required element that the use must be primarily and dominantly religious.

He provides an analysis of the Needham case, wherein the court found that the pastoral counseling was inspired by faith and was a form of ministry, but because it neither articulated religious doctrine itself, nor was it accessory to an existing use of the land that did as such. The court found that it was deemed secular and thus not exempt from zoning. This is also true in this case.

He provides an analysis of the Somerville case, wherein the operation of shelter in basement of existing church was deemed exempt from zoning because it was grounded in the landlord church's religious beliefs and was an integral part to the church's religious mission located in the same building. He asserts that location matters in these cases. There is no protected use co-located at 460 West Main. The use does not satisfy the second requirement.

Regarding standing, he says there is no longer a rebuttal of presumption, and requests to withdraw that memo. He says the appellants must demonstrate particularized aggrievement. A certified appraiser submitted an affidavit that due to the stigma of shelters, market participants suffer diminishing market values, and his client will suffer such injury if this use is established. Barnstable under 242 has a purpose clause that states value is defined as a protected use.

Attorney Eliza Cox is representing Catholic Charities of the Diocese of Fall River, Asclepius owner, and HAC which is the managing and operational representative of the property owner. She is joined by Attorney Valerie Moore who is co-counsel. She says they are not challenging the appellant's standing at this stage but reserve the right to do so should this end up in court.

Attorney Cox says many letters in opposition focus on concerns of location and perceived public safety associated with a shelter. Her clients have always prioritized safety, that of the community and of the shelter guests. However, shelter operations, proposed location, and use are not within the scope and are not relevant to tonight's hearing. The issue before the Board is narrow. They are

not being asked to determine if this is a desirable use for this location—they are being asked to determine whether the Building Commissioner correctly applied state law in his determination that the proposed use qualifies for protection under the Dover Amendment.

Attorney Cox says the appellant argues that the proposed shelter is not an accessory use. She agrees with that, because it is the primary use—the primary purpose for which the land and structure will be used. The only question before this Board is whether it's a religious use within the Dover Amendment. She applies the two-prong test: first, is the goal of the shelter religiously significant and second, is it the dominant or primary purpose for which the land will be used. She says housing is the only use, and aids a system of faith or worship.

Regarding the argument that the shelter does not espouse religious content to guests, that would violate the First Amendment and has been rejected by courts. The sole purpose of the operation of this shelter is to aid the church in its system of faith and worship by serving the most vulnerable members of the community by the gospel. The act of providing the emergency shelter to the homeless is the direct institutional expression of the Catholic Church and is itself a form of worship and so is clearly protected under the Dover Amendment.

Susan Mazarella, CEO of Catholic Charities and St. Joseph's Shelter addresses the Board. She tells the parable of the good Samaritan as a metaphor for the work they do. Catholic Charities is a nonprofit governed by a board of directors. Their purpose is to provide social services through the gospel. They would offer day programs and resources. She discusses their core beliefs. She explains that they need to relocate for safety, accessibility, and dignity. The current location has steep, dangerous stairs, and cramped sleeping areas. Chair Dewey calls for a point of order: he would like to keep testimony to what is under the Dover Amendment and what is before them and not the existing shelter or the moving of the shelter. Attorney Cox argues that they are describing Catholic Charities. This is a public hearing, and additional information can be presented. Ms. Mazarella continues describing their mission.

Father Thomas Washburn explains that from a Catholic perspective, the operation of a homeless shelter is unequivocally a religious use. It is at the core of their faith. He shares examples from scripture. Chair Dewey interrupts to say this is too much, and all the Board needs is the signed affidavit that was already submitted. Attorney Cox says this is a faith leader describing how this is a dominant use, because it's been questioned whether this is the dominant use. Chair Dewey doesn't think Father Washburn is speaking specific to this space. Attorney Cox disagrees. Chair Dewey wants to keep testimony focused on legal standards.

Attorney Moore says Attorney Creedon mentioned "inspiration" repeatedly. Neither of their religious leaders used the word "inspired"—they used "command" and "mandate" of their faith, and that is central to how this case is different from Needham Pastoral and is more aligned with the Somerville case. It is a mandate of their faith to shelter the unhoused. It is not optional, not inspired by. The Supreme Court case from 2025 is important because it addressed similar first amendment concerns. Dover enshrines the first amendment into MA law. Does it matter whether shelter guests are preached to—the Supreme Court said the government can't ask that question, because you would be creating a preference for faiths that require proselytizing. The question before the Board is what is the motivation behind the action. The motivation is religious service—the mandate to fulfil their faith.

Paul Pinard asks if there is guidance from the Attorney General on the legal test about the regulation. He reads language from the AG's website, and asks for an explanation of what a "Bonafide religiously significant goal" means. Attorney Moore says case law has been consistent that it is about looking at religious intent of the provider. A Bonafide religious objective is anything that aids a system of faith or worship. Attorney Kendrick says the opinion of the Town Attorney's office is that motivation is not the issue, but rather zoning. It is looking at a principle use on a property and an accessory use on a property, and both have to be present.

Attorney Cox says there is a memo dated March 11, 2026 from AG relating to this request: page 6 says "it seems obvious that the proposed shelter use qualifies as a religious purpose." Attorney Kendrick says the memo referenced is not one issued as an official opinion. What happened was a HAC legal officer contacted two assistant AGs asking they intervene. The letter was written in response to town counsel and is an advocacy piece.

Manny Alves says the Building Commissioner issued a permit for an emergency shelter. Attorney Cox says the Commissioner concluded that Catholic Charities' proposed use is exempt as a religious use. Mr. Alves asks what is the use. Attorney Cox says it is the expression of their faith that requires them to provide and care with the unsheltered, and they are doing this in accordance with

advancing their faith. The use is not inherently religious and so if it were not being done by a religious organization, it would not qualify under the Dover Amendment. Manny Alves asks for an explanation of the mention that the operation of the shelter is done pursuant to a contract with the Executive Office of Housing through the state. Attorney Moore says the court found in Somerville that Dover doesn't look at the means to how a religious organization accomplishes its goals—it looks at the motivation. Attorney Creedon agrees that it looks at the motivation to determine whether it's religiously significant, but it looks at the use and whether the use articulates religious doctrine or is accessory to a use collocated on the same property, which is the second requirement. He believes it needs to be both: religiously significant, and primarily and dominantly religious. He believes the arrangement in this case between tenant and landlord is a financial arrangement to rent space.

Commissioner Florence addresses the Board to say he found that Catholic Charities is a nonprofit and has in their purpose sheltering the homeless. The building's primary purpose is sheltering the homeless. The documentation he received states that, and that's how he came to that conclusion. Chair Dewey asks about the timeline. Commissioner Florence says town counsel gave an opinion. He doesn't have the luxury of opinion—he has to make a determination based on facts. He listened to the town attorney's opinion and all opinions and in his 7-page findings and determination, he came to the conclusion that it was a Dover Amendment qualified use.

He adds that it's been said tonight that a homeless shelter is not an allowed use. But a shelter is a residential use, and residential use is allowed in the HB district, including congregational housing. MGL 40A protects congregational living and building code protects congregational living. If the applicant had come to him with an as of right permit, he may have issued that as of right. The Board discusses concern that it was never discussed with the applicant that it could be done by right.

Chair Dewey opens public comment. He says what is before the Board is the Dover Amendment and asks the public to keep their comments focused on what is within the Board's purview.

Thomas Ryan speaks in support of the Commissioner.

Father Fred Edmond speaks in support of the Commissioner.

Rick Brigham of Hyannis speaks in opposition with concerns over public safety.

Mary Doolin of Osterville speaks in support of the Commissioner.

Sandy Jones speaks in opposition, with concerns about HAC describing the project in secular terms, without mention of religious use, for most applications other than Building.

Joseph Doolin of Osterville speaks in support.

Sharon Diggs Harrison of Osterville speaks in opposition with concerns over public safety.

Lori Crowley of Hyannis speaks in opposition with concerns over public safety.

Carol Melcher of Cotuit speaks in opposition. She used to work for HAC and doesn't think they do any worship or bible study.

June Bertucci of Hyannis speaks in support.

Christina Carrington speaks in opposition with concerns over public safety.

Cheryl Powell is a mental health practitioner and speaks with concerns over public safety.

Taryn Thomas of Marstons Mills speaks in opposition with concerns over the businesses being affected.

Stephanie Wroten, CEO of Duffy Health Center, speaks in support and addresses misinformation about homelessness.

Alex Bonfiglio of Sea Street in Hyannis speaks in support.

Mike Ferrill of Cotuit speaks in opposition with concerns over public safety.

Kelly Tatrault of Hyannis speaks in opposition with concerns over it not being religious, and public safety.

Katie Minehart of Marstons Mills speaks in support.

Maryann Barbosa speaks in support.

Sheila Lord speaks in support. She has been a resident of the shelter since 2021 and knows it is well run.

Roberta Mauch of Greenwood Ave speaks with concerns over the location.

Brooke Sargent of Marstons Mills speaks in support.

Meagan Ashley speaks in opposition with concerns over public safety.

Jessica Cisternelli of Leonard Road speaks in support.

Kathleen Defeo of Centerville wants to know where to discuss concerns over the location.

Elain Tung of Centerville speaks in support.

Nina Tupper of Hyannisport speaks in support.

Laura Russo of Centerville is a director at St. Joseph's and speaks in support.

Larry Morrin of Cotuit speaks in opposition with concerns over the location.

Jill Holland of Centerville speaks in opposition with concerns over the location.

Katia DaCunha speaks in opposition with concerns over the need for more community engagement.

Janice Godrow of Hyannis works at St. Joseph's and speaks in support.

Karen Kim McGuire of Hyannis speaks in opposition with concerns over the need for more community engagement.

Michael Edwards of Centerville speaks in opposition with concerns over the location.

Ocean McDonald of Marstons Mills speaks in support.

Mia Walsh of Hyannis speaks in opposition with concerns over it not being a religious use.

Chris Olsen of Centerville speaks with concerns over the location.

Deacon Dick Murphy of Centerville speaks in support.

Councilor Betty Ludtke speaks in opposition with concerns over the purpose of zoning.

Paul Phelan of Centerville speaks in opposition with concerns over public safety.

John Julius of Hyannis speaks in opposition with concerns over public safety.

Aaron Webb reads into the record the letters that were submitted to the Board: Public comment from Sandra Jones Fitzgerald to MassDev regarding HAC's legibility for UPP grant, from Amaral, President of Catholic Charities in support, from Bean in opposition, from Bent & School Committee with concerns, from Bolliger in opposition, from Brenowitz in opposition, from C. Murphy in opposition, from Carty in support, from Connolly in opposition, from Crawley with concerns, from DaCunha in opposition, from D. Smith in support, from Dumouchel, Executive Director of Attleboro Housing Authority in support, from Duran in opposition, from Duran de la Torre in support, from Edwards in opposition, from Fedele in opposition, from Figueiredo in opposition, from Fitzgerald Jones with concerns, from Brigham in opposition, 1 & 2 from Green in opposition, from Guenther in opposition, from Haynes in support, from Herschler in support, from Hills in opposition, from Julius in opposition, from Kanaris in opposition, from Kimball (+ attachment) in opposition, from Kuhn in opposition, from Livramento in support, from Loumiotis with concerns, from Ludtke in opposition, from Moran in opposition, from Mort in support, from Nicholson in opposition, from Nommensen in opposition, from Wroten, CEO of Duffy Health in support, from O'Connor in opposition, from Our Lady's Guild in support, from Preston in support, from Resident in support, from Ryan in support, from Sawyer in opposition, from Schulte in opposition, from Stephens in support, from Thomas in opposition, from Torres in support, from Vasys in support, from Victoria C. with concerns, 1 & 2 from Welden in support.

Chair Dewey thanks the public and reiterates that all that is before this Board is whether the use qualifies under the Dover Amendment. All other issues need to be directed to Town Council.

Chair Dewey moves to close public comment. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Manny Alves

Nay: None

The Board takes a break at 10:38 p.m. and the meeting resumes at 10:47 p.m.

Manny Alves requests to discuss the articulation of religious use that is required. The language from the Hume case talks about a goal: "If we consider whether the religiously significant goal is the primary or dominant purpose for which the land or structures have been used..." So if you accept that the goal of housing the unhoused is the goal, why isn't housing primary and dominant? Attorney Creedon says because there is no MA case that supports that position. Attorney Moore says once you've accepted that housing the unsheltered is a religious use, it just comes down to whether the use is primary. There is nothing else happening at this property—the entire use is religious. There is no requirement in MA for colocation. The requirement is that the use be religious and then that that religious purpose be the primary use. Manny Alves asks how an emergency shelter aids or assists in faith and worship. Attorney Moore says the Catholic faith mandates that they fulfil this duty.

Manny Alves says they are also under contract with the state for an emergency overnight shelter. Paul Pinard think it comes down to "religiously significant goal." Chair Dewey asks for the ownership and the funding sources to be laid out. Attorney Cox says the funding isn't relevant to Dover. The property is owned by Asclepius and the proposed space is being leased to Catholic Charities. HAC is involved but the operator is Catholic Charities. During the permitting process, Catholic Charities was identified.

The Board deliberates. Herb Bodensiek believes it falls under Dover. Chair Dewey asks if "emergency overnight shelter" is specifically religious. They discuss whether the use is dominant. Manny Alves says the way to comply with the second prong has been decided by courts, but neither predicates this. Attorney Moore says there is a clear religious articulation. The Supreme Court answered this last year unanimously and held that you can't require a religious activity to require proselytizing. The Board expresses concern that the use of "emergency overnight shelter" doesn't give enough room for religious activity, along with the fact that they are constrained by a state contract. Aaron Webb reads the HB zoning district purpose and is concerned that this doesn't meet the purpose. They discuss again whether it's the primary use.

Aaron Webb moves to close the public hearing. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Manny Alves, Aaron Webb

Nay: None

Manny Alves thinks it needs to be more than internal motivation—they need to show a base of observable religious practice that would otherwise be discriminated against without the Dover Amendment. They discuss whether it's a motivation or if there needs to be a more external, overt expression of religion.

Herb Bodensiek moves to vote to uphold the Building Commissioner's decision. He does not receive a second.

Aaron Webb moves to overturn the Building Commissioner. Manny Alves seconds.

Vote:

Aye: Paul Pinard, Aaron Webb, Manny Alves, Jake Dewey

Nay: Herb Bodensiek

In Appeal No. 2026-010 Walsh/Asclepius Corporation, the Building Commissioner's decision is overturned.

New Business

7:01 PM

Appeal No. 2026-014

Premier Capital Inc/210 North St LLC

Premier Capital, Inc. has appealed an Administrative Official's decision. The Appellant is appealing the Building Commissioner's Notice of Denial for Zoning Enforcement dated April 29, 2026 under Section 240-125 B. (l)(a). The subject property is located at 210 North Street, Hyannis, MA, as shown on Assessor's Map 309 as Parcel 259-001. It is located in the Downtown Village (DV) Zoning District.

Attorney Richard Reiling is representing the appellant, the owner of 200 North Street. He says there were misrepresentations in the defendant's application. His client requested enforcement because the building was not being built within the footprint as it was supposed to. The Building Commissioner denied the request for enforcement, and he is asking the Board to have the Commissioner enforce the zoning regulations at issue in this case.

Chair Dewey assigns himself, Herb Bodensiek, Paul Pinard, Aaron Webb, and Manny Alves.

Herb Bodensiek moves to continue. Commissioner Florence objects to a continuance. He says the matter is simple: it was not appealed in a timely manner and there has been no misrepresentations of zoning—the appellant's concerns are all building code, not zoning. He asks the Board to hear this case and uphold his decision. Herb Bodensiek withdraws his motion to continue.

Attorney Reiling says the appeal was asserted within 30 days of the Commissioner's failure to act. The denial letter was dated April 29, 2026 and the appeal was filed May 28, 2026, so within 30 days. They discuss the zoning issues. Attorney Reiling claims the building wasn't built within the footprint as it should have been. If they are not building on the existing footprint, it's not permitted.

Commissioner Florence says the appeal of the building permit was not timely—it came months after the building permit. When he denied that for lack of timeliness, the appellant decided to take a second bite of the apple with an enforcement demand. Attorney Kendrick says the applicant is trying to get around the denial of enforcement for the building permit. The Board discusses whether an abutter has the right to request enforcement if they see a building isn't being built to plan.

Aaron Webb moves to continue to September 9, 2026. Herb Bodensiek seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Manny Alves

Nay: None

Appeal No. 2026-014 Premier Capital Inc./210 North St. LLC is continued to September 9, 2026.

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

August 12, 2026 (in person), August 26, 2026 (online), September 9, 2026 (online)

Adjournment

Aaron Webb moves to adjourn. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Manny Alves, Debra Dworkis, Larry Hurwitz

Nay: None

Documents Used at this Meeting

- June 10, 2026 minutes
- Appeal No. 2026-010 Walsh/Asclepius Corporation application materials
- Appeal No. 2026-014 Premier Capital Inc/210 North St LLC application materials

Respectfully submitted,

Genna Ziino, Administrative Assistant

Further detail may be obtained by viewing the video via the Barnstable Government Access Channel on demand at town.barnstable.ma.us