



Zoning Board of Appeals



Board Members:

Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek - Clerk
Jacob Dewey – Regular Member Paul Pinard – Regular Member
Todd Walantis – Associate Member Mark Hansen – Associate Member Emanuel Alves – Associate Member
David Bogan – Town Council Liaison

Staff Support

Elizabeth Jenkins –Director - elizabeth.jenkins@town.barnstable.ma.us
Anna Brigham – Principal Planner – anna.brigham@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Draft Minutes

Wednesday, December 9, 2020

As a quorum has been met, Alex Rodolakis opens the hearing at 7:01 PM and reads the following into the record:

The Zoning Board of Appeals Public Hearing will be held by remote participation methods as a result of the COVID-19 state of emergency in the Commonwealth of Massachusetts.

Alternative 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/95975035988	888 475 4499 US Toll-free
Meeting ID: 959 7503 5988	Meeting ID: 959 7503 5988

3. Applicants, their representatives and individuals required or entitled to appear before the Zoning Board of Appeals may appear remotely and are not permitted to be physically present at the meeting, 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

ZONING BOARD OF APPEALS - Wednesday, December 9, 2020 MINUTES

Roll Call Attendance:

Member	Attending via ZOOM	Attending via Conference All
Alex Rodolakis	x	
David Hirsch	x	
Jake Dewey	x	
Herb Bodensiek		x
Paul Pinard	x	
Todd Walantis	x	
Mark Hansen	Absent	Absent
Manny Alves	x	
Anna Brigham – Principal Planner	x	
Carol Puckett – Administrative Assistant		x
David Bogan – Town Council Liaison	x	

Alex reads the following into the record with no response:

Notice of Recording

Please note that this meeting is 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.

Minutes

Alex reads the following into the record:

Old Business

7:00 PM

Appeal No. 2019-050

1000 Main, LLC.

1000 Main LLC., has applied for a Special Permit pursuant to Section 240-20.B – West Barnstable Village Business District. The Applicant is seeking relief in order to store small traditional sailboats and to continue the pre-existing use of three residential units in the dwelling. The subject property is located at 1000 Main Street, West Barnstable, MA as shown on Assessor's [Map 179 as Parcel 002](#). It is located in the West Barnstable Village Business District (WBVBD) and the Residence F (RF) Zoning Districts.

Alex is having internet connectivity problems, switches to another location in his room.

Continued from September 25, 2019. Members assigned: Alex Rodolakis, Herbert Bodensiek, Paul Pinard, Todd Walantis and Bob Twiss.

Time Extension Signed and Time Stamped – Decision due January 3, 2020. Continued from December 11, 2019. Time Extension signed – Decision Due: 04-27-20

Continued from April 8, 2020 – Time Extension Continued to June 24, 2020 – Members assigned: Alex Rodolakis, Herb Bodensiek, Paul Pinard, Bob Twiss, Mark Hansen. Continued to August 12, 2020 – Members assigned: Herb Bodensiek, Jake Dewey, Todd Walantis, Mark Hansen, Robert Twiss. Continued to September 9, 2020. Members assigned 09-09-20: Alex Rodolakis, David Hirsch, Jake Dewey, Herb Bodensiek, Mark Hansen. Continued from October 28, 2020. Continued from December 9, 2020.

Members assigned tonight: Alex Rodolakis, David Hirsch, Jake Dewey, Paul Pinard,

Chair Rodolakis introduced Attorney Sabatt. Attorney Sabatt explains that one of the personal reasons that this matter has been continued on a number of occasions is back in summertime in June hisy client had the property under agreement. Some conditions that unfortunately was not able to obtain financing so the contract was not concluded. When they were before the board the potential offering was before the board at that time and it was continued to see if that would occur because that would see it render as mute once it was sold because the new owner intended to use it in conformity with the zoning. We were then given an opportunity again to continue marketing the property which we did. The last time we were here in October there was a potential buyer who was undertaking due diligence then the board very graciously allowed my client to obtain a continuance to the hearing. Tonight Attorney Sabatt is happy to report that the property is under a signed contract (he had seen it). There is a closing date of Dec. 18th. There is a fairly significant deposit on the property. He has no reason to believe that it will not close and he doesn't know if the buyer will be seeking any relief from the board but this particular petition once it closes his client wouldn't have any standing at that point. What he would like to do (and I know this board has been very patient and indulgent) would like to request one last final

ZONING BOARD OF APPEALS - Wednesday, December 9, 2020 MINUTES

continuance. He thinks this would finally close and their withdrawing the matter completely. If it doesn't close, then he can represent to either go forward to complete the hearing or withdraw without prejudice. He wouldn't ask for any further extensions.

Chair Rodolakis asked if there were any questions of the board. **Mr. Pinard:** Understanding this, if it doesn't go forward you'll withdraw this? You will not withdraw it now? **Attorney Sabatt:** If it doesn't close, he would either go forward with the zoning hearing petition we have before you now or withdraw the prejudice. He would not ask for any other extension. **Mr. Alves:** Your representation of the buyer would not be seeking a continuance. **Attorney Sabatt:** I don't know that for a fact but based on what I've seen in the contract, I don't see anything to lead me to think that. I have not been involved in the transaction. As far as he knows, they would be using property in conformity with zoning. I don't think they would be using the uses that are there now. Or they may have some other use that they would come before the board for. **Chair Rodolakis:** my next hearing will be January 13, 2021. That should be more than enough time to have this closed. His concern is that this is so old right now; if we are going to have a hearing we are going to have to almost start anew. Chair Rodaklis moved **subject to a time extension to continue to January 13, 2021 at 7:01 pm. Motion seconded by Herb Bodensiek.**

Roll Call Vote for motion put forth:

MEMBER	AYE	NAY	ABSTAINED
Alex Rodolakis	x		
David Hirsch	x		
Jake Dewey	x		
Herb Bodensiek	x		
Paul Pinard	x		
Todd Walantis	x		
Mark Hansen			
Manny Alves	x		

OLD BUSINESS - continued

Alex reads the following into the record:

7:01 PM

Appeal No. 2020-038

Vilsaint

Corrie L. and Kevin Y. Vilsaint, as prospective buyers, have applied for a Modification of Special Permit 1998-77, Condition No. 2 in order to allow for year-round use of the cottage (barn structure) by Applicant's family members and house guests; and elimination of Condition No. 3 which provides that the Special Permit will expire upon the Owner's voluntary or involuntary transfer of the property. The subject property is located at 358 Flint Street, Marstons Mills, MA as shown on Assessor's Map 101 as Parcel 121. It is located in the Residence F (RF) Zoning District.

Continued from November 18, 2020. Members assigned: Alex Rodolakis, Jake Dewey, Herb Bodensiek, Paul Pinard, Manny Alves

Members assigned tonight: Alex Rodolakis, Jake Dewey, Herb Bodensiek, Paul Pinard, Manny Alves

Chair Rodolakis has closed all public comment. Going back on applicant. Summary from Attorney Schultz: **Attorney Schulz goes over what transpired at the last hearing regarding the seasonal use and that the members would probably not approve the seasonal use but were okay with Condition #3. He explains that the Applicant and current owner still want to go forward Attorney Schulz explains that the applicants would not be eligible for a family apartment as-of-right. if the board is amenable to extending Condition #3 then they would be happy with that. Alex clarifies that the only thing in Condition #3 the language. Attorney says the language would be that it run with the applicant...**

Attorney Schulz: The board made its position quite clear at the last meeting with regard to Condition #2. Seasonal. Made it clear that would probably not be approved.

Board suggested it might be amenable to extending condition #3 through the purchaser's ownership. The Appletons' still want to purchase the property, the sellers want to sell. We looked at the family apartment section. We can't get a family

ZONING BOARD OF APPEALS - Wednesday, December 9, 2020 MINUTES

apartment as-of-right and we would probably need 3 waivers. I've talked to my clients if the board were still amenable to extending Condition #3 during their ownership then they would be happy with that.

Chair Rodolakis: would entertain *questions from the board: Mr. Pinard clarifies that there is a full kitchen in the barn. Attorney Schulz says yes. Chair Rodolakis explains what the board is looking for. Mr. Alves clarifies that they wanted to do year round but only with the new owners?*

Chair Rodolakis reclarifies. *Attorney Schulz says they would go for the seasonal use for the new owners. The board discusses.*

Condition No. 3 of the permit is (what are you thinking of in language on that one)? Attorney Shultz: Something similar to that it would run with the applicants if they purchase only until it would expire upon the same language, we are happy with that. The transfer - voluntary or involuntary; so a sale or death.

Chair Rodolakis: asked if anyone from board had any questions. **Mr. Pinard:** one question...has original papers in front of him but in this barn structure there is a full kitchen. Attorney Shultz responded in the affirmative. That was put in in 1998, special permit. **Mr. Pinard:** looking at year round use. The year round use was not permitted in the 1998 special permit, correct? Attorney Shultz responded that that was correct. It was only seasonal from May until November.

Mr. Pinard: What the current applicant wants is to use that year round by the family members but only for as long as they own it. Attorney Shultz: "No, well, they would have liked that but the board at least I thought made it pretty clear that they were not amenable to that. **Mr. Pinard:** so Condition #3 while you quote Condition #4. Condition #3 is no longer valid. You want to withdraw it. Is that correct? Attorney Shultz, No I believe the board said that it would be amenable to extending Condition #3 to the ownership of the applicants if they purchase the property. Attorney Shultz: was willing to keep the seasonal use; and just extend the 3rd condition under the decision which would be extending the use as it is now through the ownership lives of the new owners. **Mr. Alves:** for absolute clarity all we are doing is substituting the names of the current owners to the new owners. Attorney Shultz responded in the affirmative.

Chair Rodolakis noted that public comment is closed and subject is open for deliberation by board. **Mr. Bodensiek:** the seasonal use is really outdated on the Cape. Seasonal is not definite with clarity anymore. I would myself would be all in favor and take it as written and the current conditions but I seemed to be one of the few but I still think it is worth consideration. Current conditions will not be changing noted **Chair Rodolakis.** **Mr. Pinard:** the way he is looking at the Con staff report Condition # 3 allows it to be a year round use. **Chair Rodolakis** We are proposing that the applicant take the deletion of that. **Mr. Pinard:** #3 from the staff is not relevant. **Chair Rodolakis:** that is correct. **Mr. Bodensiek:** who has a problem with it being year round and who would remain seasonal as was in the 1998 condition? For myself, I just don't see seasonal anymore. I polled this last time noted **Chair Rodolakis** and the consensus was I recall myself and **Mr. Dewey** to be disinclined to expand the use to year round and maybe **Mr. Pinard** was also that way. I don't want to commit **Mr. Pinard** with that. **Mr. Bodensiek.** I thought we were going to think about it and discuss it again. It doesn't look like much has changed. **Chair Rodolakis** will make a suggestion to move us forward. I think I can make some findings on this and I'll make the conditions. First we'll do findings then go to conditions.

Chair Rodolakis makes findings bases on prior hearing and evidence presented:

Proposed Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

1. **The application falls within a category specifically excepted in the ordinance for a grant of a special permit.** Section 240-92 (B) Nonconforming buildings or structures used as a single- and two- family residences allows for alterations. Section 240-94 (B) allows for expansion of a nonconforming use.
2. **Site Plan Review is not required for single family residential dwellings.**
3. **After an evaluation of all the evidence presented, the proposal **year round**..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. **Pursuant to Section 240-92 (B), the proposed alteration or expansion will not be substantially more detrimental to the neighborhood than the existing building or structure.**

Seconded by Herb Bodensiek

ZONING BOARD OF APPEALS - Wednesday, December 9, 2020 MINUTES

MEMBER	AYE	NAY	ABSTAINED
Alex Rodolakis	x		
David Hirsch			
Jake Dewey	x		
Herb Bodensiek	x		
Paul Pinard	x		
Todd Walantis			
Mark Hansen			
Manny Alves	x		

Suggested Conditions

Should the Board find to grant the Special Permit No. 2020-039, it may wish to consider the following conditions:

1. Special Permit No. 2020-038, a request to modify Special Permit 1998-77, Condition No. 2 and elimination of Condition No. 3 is granted to Corrie L. and Kevin Y. Vilsaint, as prospective buyers, at 358 Flint Street, Marstons Mills, MA.
2. The proposed redevelopment shall represent full build-out of the lot. Further alteration or expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
- ~~3. Condition No. 2 of Special Permit 1998-77 shall be modified to allow year round use of the cottage (barn structure) by Applicant's family members and house guests on occasional basis~~ **until such tie as voluntary transfer to a third party**
4. Condition No. 3 of Special Permit No. 1998-77 shall be eliminated.
5. All remaining Conditions of Special Permit No. 1998-77 shall remain in full force and effect.
6. All mechanical equipment associated with the dwellings (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
7. The 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 building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Manny suggests another condition should the purchase and sales not transpire. Alex says it would revert to what currently exists.

Attorney Schulz is okay with the language as proposed by Alex.

Motion is seconded by Manny Alves.

ZONING BOARD OF APPEALS - Wednesday, December 9, 2020 MINUTES

Roll Call Vote:

MEMBER	AYE	NAY	ABSTAINED
Alex Rodolakis	x		
David Hirsch			
Jake Dewey	x		
Herb Bodensiek	x		
Paul Pinard	x		
Todd Walantis			
Mark Hansen			
Manny Alves	x		

Pettinger & MacKinnon: *Chair Rodolakis notes that the Pettinger and MacKinnon matters will be renoticed and rescheduled for the January 13, 2021 hearing due to an error in the newspaper publication.*

New Business

7:02 PM Appeal No. 2020-041 Pittenger, as Appellant

Natalie Pittenger, as Appellant, is appealing the issuance of Building Permit #20-2626 issued on October 6, 2020 to Windmill Square, LLC., for the construction of new commercial building and supporting outdoor features for a Tractor Supply Company store. The subject property is located at 1174 Pitcher’s Way, Hyannis, MA as shown on Assessor’s Map 273 as Parcel 123. It is located in the Business (B) Zoning District, and Groundwater Protection (GP) Overlay Zoning District.

TO BE RENOTICED FOR JANUARY 13, 2021

7:03 PM Appeal No. 2020-042 MacKinnon

Matthew J. MacKinnon, Trustee of 33 Oyster Place Realty Trust, is applying for a Special Permit in accordance with Section 240-93(B) – Nonconforming Buildings or structures not used as Single or Two-Family Dwellings. The Applicant is proposing to alter the pre-existing, nonconforming pier by removing approximately 3,000 square feet of the solid fill pier and constructing an elevated wooden pier with associated ramps and floats for shared use with the Cotuit Fire District and the Barnstable Clean Water Coalition. The subject property is located at 33 Oyster Place Road, Cotuit, MA as shown on Assessor’s Map 035 as Parcel 101. It is located in the Residence F (RF) and Dock and Pier Overlay Zoning Districts.

TO BE RENOTICED FOR JANUARY 13, 2021

Chair Rodolakis makes motion to renotify both the Pettinger and MacKinnon matters to January 13, 2021

Roll Call Vote:

MEMBER	AYE	NAY	ABSTAINED
Alex Rodolakis	x		
David Hirsch	x		
Jake Dewey	x		
Herb Bodensiek	x		
Paul Pinard	x		
Todd Walantis	x		
Mark Hansen			
Manny Alves	x		

Correspondence

None

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

January 13, 2021, and January 27, 2021

ZONING BOARD OF APPEALS - Wednesday, December 9, 2020 MINUTES

Adjournment

Motion to adjourn is made by Alex Rodolakis and seconded by Paul Pinard

Roll Call Vote:

MEMBER	AYE	NAY	ABSTAINED
Alex Rodolakis	x		
David Hirsch	x		
Jake Dewey	x		
Herb Bodensiek	x		
Paul Pinard	x		
Todd Walantis	x		
Mark Hansen			
Manny Alves	x		