

ZONING BOARD OF APPEALS
MINUTES FOR JUNE 23, 2021

Chair Rodakalis called the live meeting to order. An introduction of members followed.

NAME	PRESENT/ABSENT
Emmanual (Manny) Alves	Present
Mark Hanson	Present
Herb Bodensiek	Present
David Hirsch	Present
Jake Dewey	Present
Paul Pinard	Present
Aaron Webb	Present
Alex Rodolakis	Present

Taping of Meeting:

Chair Rodakalis noted no one was taping meeting.

POINT OF INFORMATION: Chair Rodakalis noted that Board Elections will be moved to the end of the meeting.

MINUTES

None

OLD BUSINESS

Appeal No. 2021-022 MPG Corporation, 1617 Falmouth Road Series of PB&C LLC, have appealed a Cease and Desist Order issued for a violation of Section 240-61(B) Prohibited Signs. The Appellant received a Cease & Desist Order dated March 4, 2021 from the Sign Enforcement Officer which states the Appellants are in violation of the Sign Code because the displayed gas price signage was using intermittent LED lighting. The subject property is located at 1617 Falmouth Road, Centerville, MA as shown on Assessor's Map 209 as Parcel 085. It is located in the Highway Office (HO) and Residence C (RC) Zoning Districts. *Continued from June 9, 2021.* After reading this into the record Chair Rodolakis indicated that a letter was received from David Lawlor today the applicant hereby withdraws the appeal of the alleged violation and asks that it be docketed. That matter is withdrawn and Chair Rodolakis felt that need a vote on that since it was withdrawn.

Chair Rodolakis is recusing himself on the next item which is for MacKinnon. Vice Chair David Hirsch will be handling this appeal.

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Appeal No. 2021-029 MacKinnon / Matthew J. MacKinnon, Trustee of 33 Oyster Place Realty Trust, and Donald J. MacKinnon, Trustee of MCCM Realty Trust have petitioned for a variance in accordance with Section 240-14 (E) minimum lot area, minimum frontage, minimum front and side setbacks in the RF District, and Section 240-36 (D) minimum lot area in the RPOD. The Petitioners are proposing improvements and additions to the single family dwellings on the subject properties, including removing the cottage and additions to the principal dwelling at 33 Oyster Place, upgrading both septic systems, as well as proposing to adjust lot lines between two nonconforming lots. Since the proposed reconfigured lots will not meet the requirements of the Zoning Ordinance, a Variance is required. The subject properties are located at 33 Oyster Place Road and 910 Main Street, Cotuit, MA as shown on Assessor's Map 035 as Parcels 90 and 101. They are located in the Residence F (RF), Resource Protection Overlay (RPOD), and Dock and Pier Overlay Zoning Districts. *Continued from June 9, 2021.*

Attorney Eliza Cox representing the MacKinnon's was at the podium. Attorney Cox introduce Mr. Daniel MacKinnon representing one of the members of the Trust and representative of family; Dan Ojala, Cape Engineering. Documentation was sent to the board the prior week for review. This proposal before you does not propose any modifications to the wharf located on the 33 Oyster Place property. No relief is being requested from Zoning for the dock and pier overlay that overlays this property. *(In the video Attorney Cox presentation runs from 5:57 minutes to 12:31 minutes into the meeting).* Mr. Ojala's presentation ran from 12:32 minutes into the meeting to 2.10.04. Attorney Cox explained the reasons for seeking variance relief from 240-14E and 240-36. Also seeking relief for the stairs from 910 Main Street leading down to the water. This is existing non-conforming. *(see video from 2.10.05 to 1.57.59).* Attorney Cox completed her presentation.

Chair Hirsch brought discussion back to board. Attorney Cox noted that this proposal will require approval from the Conservation Commission. Upon finalization of ZBA's review, they will be filing with the Conservation Commission for approval. It was noted that both properties are maintained by two different people who are the MacKinnon brothers. Discussion occurred regarding placement of septic system and why it couldn't be put on the 910 Main Street property. Mr. Ojala addressed this environmental situation. *(1.45.30)*. A generator will be installed. Attorney Cox and Mr. Ojala addressed questions of board.

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Chair Hirsch opened up to the public. Mr. Zeno Crocker spoke to the support of the nitrification septic system that will be used on both properties. He is putting in 15 in a sub-division. Mr. Crocker has expertise in this type of system and answered questions of the board. Cynthia Gardner noted her concerns. Mr. Potter noted his support. Irene Wilson is there representing some who have asked her to represent them. Deborah Schilling asking about status of system at that time. 910 Main Street is a cesspool. She also noted her concerns about the septic system. Mr. Ojala addressed concerns of public. Public Comment has been closed.

Chair Hirsch opened back up to the board:.

FINDINGS READ BY MEMBER DEWEY

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. The Board found that both lots have significant topographical constraints and that there are wetlands and coastal bank concerns.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. The Board found that should the petitioner install the new system where the existing system is located, there would be additional cost and retaining walls required.
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. The Board found the location of the new system is not a detriment but actually an improvement to the environment.

NAME	Appeal 2021-022	NAY
Emmanual (Manny) Alves	In favor	
Mark Hanson		
Herb Bodensiek		Against
David Hirsch	In favor	
Jake Dewey	In favor	
Paul Pinard	In favor	
Aaron Webb		
Alex Rodolakis		

Member Bodensiek not in favor due to his belief that the septic improvements can be achieved without the property line changes.

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The Board voted to grant the requested Variance with conditions as follows:

1. Variance No. 2021-029 is granted to Matthew J. MacKinnon, Trustee of 33 Oyster Place Realty Trust, and Donald J. MacKinnon, Trustee of MCCM Realty Trust for improvements and additions to the single family dwellings on the subject properties, including removing the cottage and additions to the principal dwelling at 33 Oyster Place and 910 Main Street, upgrading both septic systems, as well as proposing to adjust lot lines between two nonconforming lots.
2. Both septic systems shall be maintained in perpetuity.
3. The site development shall be in substantial conformance with the plan entitled "Plan of Land #910 Main Street & #33 Oyster Place Road, Cotuit MA by Down Cape Engineering Inc., dated April 29, 2021.
4. There shall be no further expansion of the structures, construction of accessory structures, or impervious surface coverage on both lots without permission from the Board.
5. The Applicant shall comply with decisions and conditions issued by the Board of Health and Conservation Commission.
6. This 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. The rights authorized by this variance must be exercised within one year, unless extended.

NAME	Appeal 2021-022	NAY
Emmanual (Manny) Alves	In favor	
Mark Hanson		
Herb Bodensiek		Against
David Hirsch	In favor	
Jake Dewey	In favor	
Paul Pinard	In favor	
Aaron Webb		
Alex Rodolakis		

Against: Member Bodensiek believes that the septic improvements can be achieved without the property line changes.

Meeting was turned back to Chair Rodolakis.

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Appeal No. 2021-031 Group 1 Realty Inc. Group 1 Realty Inc a.k.a Hyannis Toyota has petitioned for a Variance from Section 240-65(C) – Signs in B, UB, HB, HO, S&D, SD-A and GM Districts to allow the Petitioner to have more than 10% of the area of the building façade or 100 square feet, whichever is lesser. The proposed sign is a 2 foot 10 7/16 inches by 1 foot 6 inches addition of “IRA” to be placed above “HYANNIS” on the building façade. The subject property is located at 1020 Lyannough Road, Hyannis, MA as shown on Assessor’s Map 294 as Parcel 003. It is located in the Industrial (HB) Zoning District. 7:03 PM Appeal No. 2021-032 Schultz John and Michelle Schultz have petitioned for a Variance from Section 240-14.E – Bulk Regulations. The Petitioners propose to construct a 14 foot by 22 foot 2-car garage 14 feet from the front setback (road) where 30 feet is required. The subject property is located at 12 Fulling Mill Lane, Marstons Mills, MA as shown on Assessor’s Map 078 as Parcel 006. It is located in the Residence F (RF) Zoning District. *This matter will be re-noticed for July 14, 2021.*

POINT OF INFORMATION- Member Hirsch is recusing himself so Members Messrs. Hanson or Webb can sit in on the voting process of this appeal.

Chair Rodolakis recognized next petitioner. John, President Ira Motor Group. Wants to add sign above Hyannis. It’s not a lighted sign. Just a small sign. **Chair Rodolakis** asked if petitioner would like a continuance and he said no that he was prepared.

Chair Rodolakis asked if there was anyone on the board that had questions. **Member Hirsch** felt it would be punitive not to allow the sign because it is set so far back. **Member Bodensiek** thought it was a small design for a sign.

Chair Rodolakis asked if there were any public comments. Hearing none. It went back to the board. After a brief discussion amongst members, **Member Dewey** read the findings into the record.

FINDINGS

At the hearing on June 23, 2021, the Board voted and made the following findings of fact in Variance No. 2021-031, a request to allow the Petitioner to have more than 10% of the area of the building façade or 100 square feet, whichever is lesser at 1020 Lyannough Road, Hyannis.

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. The Board found that the distance of the front setback necessities the additional signage.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. The Board found that the lack of signage would cause confusion and therefore a possible financial hardship.
- 3.

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4. 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. The Board found that brand signage is reasonable and would not negatively impact the public good or the neighborhood.

The Board voted to accept the findings as follows:

NAME	Appeal 2021-031	NAY
Emmanual (Manny) Alves		
Mark Hanson		
Herb Bodensiek	In favor	
David Hirsch		
Jake Dewey	In favor	
Paul Pinard	In favor	
Aaron Webb	In favor	
Alex Rodolakis	In favor	

The ayes have it.

CONDITIONS

The Board voted to grant the requested Variance to the sign regulations with conditions as follows:

1. Variance No. 2021-031 is granted to Hyannis Toyota at 1020 Iyannough Road, Hyannis for a 2 foot 10 7/16 inches by 1 foot 6 inches addition of "IRA" to be placed above "HYANNIS" on the building façade.
2. The signs shall be in substantial conformance with the sign specifications by Enseignes Pattison Sign Group dated July 28, 2008.
3. The proposed signage shall represent full signage build-out of the lot. Further increase of the signage is prohibited without prior approval from the Board.
4. The Applicant is required to obtain sign permits from the Building Division prior to installation.
5. This 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 of a building permit. The rights authorized by this variance must be exercised within one year, unless extended.

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NAME	Appeal 2021-031	NAY
Emmanual (Manny) Alves		
Mark Hanson		
Herb Bodensiek	In favor	
David Hirsch		
Jake Dewey	In favor	
Paul Pinard	In favor	
Aaron Webb	In favor	
Alex Rodolakis	In favor	

In favor votes carried.

Appeal No. 2021-032 Schultz John and Michelle Schultz have petitioned for a Variance from Section 240-14.E – Bulk Regulations. The Petitioners propose to construct a 14 foot by 22 foot 2-car garage 14 feet from the front setback (road) where 30 feet is required. The subject property is located at 12 Fulling Mill Lane, Marstons Mills, MA as shown on Assessor’s Map 078 as Parcel 006. It is located in the Residence F (RF) Zoning District. This matter will be re-noticed for July 14, 2021.

Member Hirsch raised question as to why this has to be renoticed. Ms. Brigham noted that there was a legal error in the ad where it was listed as a one car garage instead of a 2 car garage.

Appeal No. 2021-033 Frank Stone has petitioned for a Variance from Section 240-14.E – Bulk Regulations in the Residence F Zoning District. The Petitioner is seeking continued use of a hoop tent used for storage of vehicles located 7.57 feet and 14.31 feet from the side setback where 15 feet is required. The subject property is located at 23 Hamblin’s Hayway, Marstons Mills, MA as shown on Assessor’s Map 030 as Parcel 032. It is located in the Residence F (RF) Zoning District.

Chair Rodolakis recognized Attorney Alva representing Frank Stone. Attorney Alva explained that Mr. & Mrs. Stone are incapacitated to the point that they can’t move the Hoop tent. Mr. Stone is 67 years old. It would cost thousands of dollars to move it and they are living on their pension checks. They do not have the funds to pay for this. Their current neighbors have no issues with the hoop tent where it is. The board discussed what type of structure this is and it is a temporary structure but it has been up for 17 years. Other people on the street have one as well. Attorney Alves said this was the curse they chose to take when he spoke to the Town of Barnstable Building Dept.

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Chair Rodolakis opened Public Comments. Mark Grenier identified himself as a neighbor who lives across the street from Mr. Stone. He read his notes because he stated it was a convoluted issue. He is against the Hoop House. Mr. Grenier entered into the record Mr. John Dexter’s letter, another neighbor of Mr. Stone. Mrs. Grenier identified herself and she testified about what she sees at the Stone home. Public comment was closed.

POINT OF INFORMATION Member Hanson noted that he is unsure what the board is voting on. Is it a setback, removal of a temporary structure, there is no letter from the Building Department with direction. Very confusing.

Chair Rodolakis brought discussion back to the board. It was determined that there may have been a verbal agreement with the Building Dept but there is no written documents indicating what the ZBA is supposed to do. It was determined that Mr. Stone come before the board in 30 days which would be the July 28th meeting. **Member Dewey** moved to continue Appeal No. 2021-033 to July 28th at 7:00 PM. Motion was seconded.

NAME	Appeal 2021-033	NAY
Emmanual (Manny) Alves		
Mark Hanson		
Herb Bodensiek	In favor	
David Hirsch	In favor	
Jake Dewey	In favor	
Paul Pinard	In favor	
Aaron Webb		
Alex Rodolakis	In favor	

All in favor – meeting will be via Zoom.

Correspondence

Chair Rodolakis read into the record: Vineyard Wind 1 LLC (“Vineyard Wind 1”), submitted a copy of the Department of Public Utilities’ Final Order issued on May 28, 2021 in D.P.U. 21-08 approving a petition by Vineyard Wind 1 for individual and comprehensive zoning exemptions for a 2.2-acre expansion to the footprint of Vineyard Wind’s proposed onshore substation. The Energy Facilities Siting Board previously approved Vineyard Wind’s original substation site and design on May 10, 2019 as part of the Vineyard Wind Connector 1 project. Vineyard Wind LLC, EFSB 17-05/D.P.U. 18-18/18-19 (2019). The Siting Board approved the 2.2-acre expansion on November 3, 2020.

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Chair Rodolakis read into the record : Notice of Public Hearing for July 1, 2021 7:00 PM, Town Council No. 2021-174 to amend Article XIV Chapter 240 Section 128 to add a definition for Accessory Dwelling Unit (ADU) and Dwelling Units and revise definition of Dwelling, Single Family and add Article V Chapter 240 Section 47.2 Accessory Dwelling Units to the Zoning Ordinance.

Chair Rodolakis read into the record: Notice of Public Hearing for July 1, 2021 7:00 PM, Town Council No. 2021-175 to amend Article XIV Chapter 240 Section 128 of the Ordinance to revise the definition of Accessory Dwelling Unit and amend Article V Chapter 240 Section 47.2 (C) (4) to allow ADU's with greater than 900 Square Feet by Special Permit from the Zoning Board of Appeals.

Upcoming Hearings

July 14th, July 28th, August 11th.

Chair Rodolakis is submitting his resignation this evening (one year early) He has been on board for 14 . He announced they would entertain nominations. They will need a new chair for next meeting on July 14th. Member Bodensiek moved to appoint Member Dewey as Chairman. Member Hirsch seconded the motion.

NAME	Nomination Vote
Emmanuel (Manny) Alves	In favor
Mark Hanson	In favor
Herb Bodensiek	In favor
David Hirsch	In favor
Jake Dewey	In favor
Paul Pinard	In favor
Aaron Webb	In favor
Alex Rodolakis	In favor

Roll call unanimous for Member Dewey to be Chairman.

Chair Dewey as his first task sought nominations for Vice Chair. Member Pinard motioned to nominate David Hirsch and motion was seconded.

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MINUTES FOR JUNE 23, 2021 - CONTINUED

NAME	Nomination Vote
Emmanual (Manny) Alves	In favor
Mark Hanson	In favor
Herb Bodensiek	In favor
David Hirsch	In favor
Jake Dewey	In favor
Paul Pinard	In favor
Aaron Webb	In favor

Roll call unanimous for Member Hirsch to be Vice -Chairman.

Chair Dewey south nominations for Clerk. Member Pinard nominated Herb Bodensiek as Clerk with Member Hirsch seconding motion.

NAME	Nomination Vote
Emmanual (Manny) Alves	In favor
Mark Hanson	In favor
Herb Bodensiek	In favor
David Hirsch	In favor
Jake Dewey	In favor
Paul Pinard	In favor
Aaron Webb	In favor

Roll call unanimous for Member Bodensiek to be Clerk.

Member Rodolakis suggested that we as a board encourage the town council to move an alternate member of ZBA up to full member status. It is just a suggestion.

Member Webb noted that it was mentioned to him that if he would be interested in the full member status to note this but if anyone else is interested he stated, he would recuse himself. Member Pinard queried as to whether there was an annual requirement to go through ethics thing. It was noted that the new folks have to do this. **Chair Dewey** suggested to Ms. Brigham to check this and Ms. Brigham said she would look into it.

Chair Dewey entertained a motion to adjourn made by Member Pinard and seconded. All members voted "in favor" to adjourn.

Respectfully Submitted – Elizabeth B. Silva Temporary Scribe