

**Zoning Board of Appeals
MINUTES
Wednesday, August 9, 2023 at 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, August 9, 2023, at the time indicated:

Call to Order

Chair Jacob Dewey calls the meeting to order at 7:04 PM with an introduction of Board Members:

Member	Present	Absent
Dewey, Jacob	X	
Bodensiek, Herbert	X	
Pinard, Paul	X	
Hansen, Mark	X	
Hurwitz, Larry	X	
Johnson, Denise		X
Webb, Aaron	X	

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

Notice of Recording

The Chairman reads: 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

July 12, 2023 – Herb Bodensiek makes a motion to approve. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Larry Hurwitz, Aaron Webb

Nay: None

Old Business

None.

New Business

7:00 PM

Appeal No. 2023-015

Bartolomei

Jay Bartolomei d/b/a Chef J LLC has applied for a Special Permit in accordance with Section 240-94 B. Expansion of preexisting nonconforming use, Section 240-53 B. (1) Side Landscape Buffer Setback, and Section 240-53 C. 10% Interior Landscaped islands. The Applicant proposes to use an existing vacant gravel area on the parcel as an expansion of parking for the existing restaurant. The restaurant is located on Lot 2 and the gravel lot is located on Lot 1 of Plan Book 278 Page 18. The two lots have been in common ownership. The subject property is located at 4631 Falmouth Road, Cotuit, MA as shown on Assessor's Map 024 as Parcel 157. It is located in the Residence F (RF) Zoning District.

Sitting on this is Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, and Aaron Webb. Aaron Webb discloses that he worked for the previous owner of this restaurant before it was owned by the applicant, but does not feel the need to recuse.

Dan Ojala of Down Cape Engineering is representing and is joined by the applicant, Jay Bartolomei. Mr. Ojala explains that the subject gravel parking lot was originally put in without permits by a former owner and so has not been utilized. While the properties are assessed as one lot, it's important to distinguish that it is actually two lots. In the 1800's it was a restaurant, then was converted to an interior decorating shop in the 1970's, then reestablished as a restaurant. The restaurant is busy and it would be helpful to use that second lot for parking. The western abutter spoke in favor of this application.

Mr. Ojala explains that there has always been some parking overlap onto the gravel lot, which can be seen in historical images. Because of this, he believes the gravel lot only requires an expansion of use. His client would not like to merge the lots, because that would require refinancing and would be a hardship. He adds that there are generous buffers all the way around this property. He believes this would not be more substantially detrimental to the neighborhood.

Mark Hansen asks if the lots were purchased together and why they were not merged at the time of purchase. Mr. Ojala answers yes, they've been held in common ownership for a while. They weren't merged because the lots were large enough at the time to stand individually. At this time, the gravel lot can't be used because it is on a residentially zoned lot, which is why they are requesting the expansion of use. They are also asking for relief from the interior buffer setback and interior landscaping, which is only 3% where 10% is required. Paul Pinard asks the distance of the buffer from Route 28. It is 52 ft. where 10 ft. are required—it is also heavily vegetated and will remain so. There will be no changes to curb cuts.

Chair Dewey asks if the applicant is willing to abandon the residential use of the gravel lot. Mr. Ojala answers yes. The Board asks why they are not making the proposed parking lot larger at this time, as it would help meet the island area requirements. Mr. Ojala explains that his client is looking to put a leaching field on the lot, which limits the space they can expand. Regarding drainage, the lot pitches down so it won't affect any neighbors.

Chair Dewey opens for public comment. There is none. The Chairman moves to close public comment. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

Nay: None

The Board deliberates. They discuss whether it's a change of use or if it's an expansion of use. Mr. Ojala explains his reasoning that the lot has actually been in use as a parking lot because of the overlap from Lot 2. This proposal will also improve safety, because as it is now, people are parking in a lot across the street and having to cross Route 28 to go to the restaurant.

Paul Pinard makes findings:

Jay Bartolomei d/b/a Chef J LLC has applied for a Special Permit in accordance with Section 240-94 B. Expansion of preexisting nonconforming use, Section 240-53 B. (1) Side Landscape Buffer Setback, and Section 240-53 C. 10% Interior Landscaped islands. The Applicant proposes to use an existing vacant gravel area on the parcel as an expansion of parking for the existing restaurant. The restaurant is located on Lot 2 and the gravel lot is located on Lot 1 of Plan Book 278 Page 18. The two lots have been in common ownership. The subject property is located at 4631 Falmouth Road, Cotuit, MA as shown on Assessor's Map 024 as Parcel 157. It is located in the Residence F (RF) Zoning District.

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-94 B. allows for 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. Notes that the parking currently overlaps.
3. A Site Plan has been reviewed and found approvable with conditions. *Site Plan Review is not required.*
4. Any proposed expansion of the use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties.
5. The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming.
6. The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming.
7. At the discretion of the Zoning Board of Appeals, improvements may be required in order to reduce the impact on the neighborhood and surrounding properties including but not limited to the following:
 - a. Greater conformance of signage to the requirements of Article VII;
 - b. The addition of off-street parking and loading facilities;
 - c. Improved pedestrian safety, traffic circulation and reduction in the number and/or width of curb cuts;
 - d. Increase of open space or vegetated buffers and screening along adjoining lots and roadways. The applicant shall demonstrate maximum possible compliance with with § 240-53, Landscape Requirements for Parking Lots, Subsection F, if applicable.

Paul Pinard also notes that the buffer to Route 28 is substantially larger than required. Safety will also be improved by eliminating the stacking of cars on Route 28 and allowing people to avoid having to cross the busy street. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

Nay: None

Paul Pinard says this appeal is subject to conditions 1-4 from the Staff Report dated July 25, 2023.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

Nay: None

Special Permit No. 2023-015 Bartolomei is granted with conditions.

7:01 PM

Appeal No. 2023-016

Sawayanagi

Junichi Sawayanagi has applied for a Special Permit in accordance with Section 240-47.2 C. (4) Accessory Dwelling Units (ADUs). The Applicant proposes to change the use of the front accessory structure from commercial use (previously a framing business) to residential use as a 1,671 square foot 1-bedroom Accessory Dwelling Unit which exceeds the 900 square foot as-of-right limit. The subject property is located at 1085 Main Street, West Barnstable, MA as shown on Assessor's Map 178 as Parcel 004-002. It is located in the West Barnstable Village Business District (WBVBD) Zoning District.

The Board received a request to continue this to September 13, 2023. Chair Dewey makes a motion to continue Appeal No. 2023-016 to September 13, 2023. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Larry Hurwitz, Aaron Webb

Nay: None

Appeal No. 2023-016 Sawayanagi is continued to September 13, 2023.

Correspondence

None.

Matters Not Reasonably Anticipated by the Chair

Paul Pinard's draft changes to the ZBA Rules and Regulations is still with the legal department. Anna Brigham will follow up.

Upcoming Hearings

August 23, 2023, September 13, 2023, September 27, 2023

Adjournment

Chair Dewey makes a motion to adjourn. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Larry Hurwitz, Aaron Webb

Nay: None

Documents Used at This Meeting

- 2023-015 Bartolomei application packet
- Junichi Sawayanagi's request to continue 2023-016

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>