

**Zoning Board of Appeals
MINUTES
Wednesday, June 12, 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, June 12, 2024, at the time indicated:

Call to Order

Chair Jacob Dewey calls the meeting to order at 7:03 p.m. 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.

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

April 24, 2024 – Chair Dewey moves to approve the minutes. Mark Hansen seconds.

Vote:

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

Nay: None

Old Business

None

New Business

7:00 PM

Appeal No. 2024-017

518-556 Yarmouth Road LLC

518-556 Yarmouth Road LLC has petitioned for a Variance pursuant to Section 240-61 (C) Prohibited Signs. Recent building construction includes a functioning lighting provision serving to outline portions of the building, which was deemed a violation by the Building Commissioner. The Petitioner seeks to allow the previously installed lighting to remain. The subject property is located at 556 Yarmouth Road, Hyannis, MA as shown on Assessor’s Map 344 as Parcel 076-001. It is located in the Business (B) Zoning District.

Chair Dewey assigns himself, Herb Bodensiek, Paul Pinard, Mark Hansen, and Larry Hurwitz.

Attorney Mike Ford is representing and is joined by the applicant, Joe Laham, who is the manager of the LLC and the owner of the property. Attorney Ford explains that the lighting at issue was built into the building and was part of original building permit. The plans were approved by the Building Department and subsequently installed. Once it was built, there was a complaint and the Building Commissioner issued an enforcement order finding that some of the lighting was “tube lighting” and was a sign, because it draws attention to the building. His client made an effort to work with the Commissioner (he disconnected one of the tubes of lights and also installed a dimmer to reduce that by an additional 50%) but the Commissioner did not change his decision. His client then

appealed the Commissioner’s decision to this Board, who chose to uphold the Building Commissioner’s decision and suggested bringing this back as a variance.

Attorney Ford walks through his reasoning related to the 3-prong test for the Board’s consideration:

1. Unique conditions can apply to structures. The structure in this case was approved through the building permit process. This issue is unique to this building. It was arrived at through a process that was not the fault of the applicant (nor the town)—nobody thought this was a sign.
2. He suggests that the sign/lighting can’t be used if the Board denies this. They are built into the building itself and are part of the façade. That would be a financial hardship.
3. He suggests the Board could find that this would not be a substantial detriment if they include his proposed condition (document entitled “Applicants Proposed Variance Condition – 556 (002)”) that the sign could never be used at more than 50% illumination capacity of what’s currently installed. He shows the Board images (entitled “Jeep Night Lights” and “Photos for Presentation”) to illustrate the difference in brightness. This would allow the Board to make the finding that this won’t substantially derogate because it doesn’t have the brightness that caused the enforcement order.

Chair Dewey opens for public comment. He says two letters were received from Gil Wood: the first letter was in opposition and then the second letter rescinded that opposition. Chair Dewey moves to close public comment. Paul Pinard seconds.

Vote:

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

Nay: None

Back to the Board for discussion. The Board discusses having trouble with reasoning for the first prong. There is discussion about how to enforce the brightness issue and concerns with that aspect. They discuss that the ordinance prohibits this type of lighting.

Attorney Ford responds. He says when they were last before the Board, 4 out of 5 members suggested coming back as a variance. For prong 1, topography has nothing to do with it—this is about the structure. The lights are unique in shape and the process by which they got there is unique. With regards to the bylaw, he suggests it only prohibits a light when it’s declared a sign. This is not being used to advertise or inform, only to attract the attention of public. So if the Board took away that level of attraction by reducing the light by 75%, then it would no longer be considered a sign and therefore would not be subject to the part of the bylaw that prohibits that specific type of lighting. The group discusses whether they agree with that or can find a path for this.

Paul Pinard moves to close the public hearing. Mark Hansen seconds.

Vote:

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

Nay: None

The Board deliberates. They discuss that it’s prohibited in the bylaw. They discuss whether this proposal substantially derogates from the intent of the bylaw. Town Council through this provision prohibited lights on buildings: “lights which outline any portion of a building.” The Board discusses whether there is a hardship.

Attorney Ford speaks to his client privately and then asks to withdraw the appeal without prejudice. Chair Dewey moves to withdraw Appeal No. 2024-017 without prejudice. Paul Pinard seconds.

Vote:

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

Nay: None

Appeal No. 2024-017 518-556 Yarmouth Road LLC is withdrawn without prejudice.

7:01 PM

Appeal No. 2024-018

Constantino

Stephen J. Constantino, Trustee of the Clifton-Constantino Living Trust, has petitioned for a Lot Area Variance pursuant to Section 240-11 RB, RD-1 and RF-2 Residential Districts and Section 240-125 Zoning Board of Appeals. The proposed subdivision will reestablish the same lot lines as prior to the 1985 merger and will be legitimized with an Approval Not Required (ANR) plan if

approved by this Board. The subject property is located at 37 Goodview Way, Barnstable, MA as shown on Assessor's Map 319 as Parcel 080. It is located in the Residence B (RB) Zoning District.

Chair Dewey reads Appeal No. 2024-019 into the record as well, so both can be presented for concurrently.

7:02 PM

Appeal No. 2024-019

Murphy & Senoski

Susan E. Murphy & Richard Senoski have petitioned for a Lot Area Variance pursuant to Section 240-11 RB, RD-1 and RF-2 Residential Districts and Section 240-125 Zoning Board of Appeals. The proposed subdivision will reestablish the same lot lines as prior to the 1985 merger and will be legitimized with an Approval Not Required (ANR) plan if approved by this Board. The subject property is located at 57 Goodview Way, Barnstable, MA as shown on Assessor's Map 319 as Parcel 081. It is located in the Residence B (RB) Zoning District.

The Chairman assigns himself, Herb Bodensiek, Paul Pinard, Mark Hansen, and Larry Hurwitz to both appeals.

Attorney Paul Tardif is representing the applicants. He provides background: the two parcels involved abut each other. Lot 37 is a bare lot, 8,300 sq. ft., with 164 feet of frontage on Goodview Way. Lot 57 has 14,000 sq. ft., with 140 feet of frontage on Goodview Way, and is improved with a single-family dwelling built in 1935. The issue at hand originated because the owner of 37 also owns another abutting property, 38 George St., and wanted to determine whether 37 is a buildable lot.

Attorney Tardif walks through a timeline of historical zoning changes. His research found that the properties were merged in 1985 when minimum lot area requirements were increased while the lots were held in common ownership. When the properties came into ownership of the current owners, the sellers instead of going through subdivision control, just deeded the properties separately. So the lots are still legally and in the eyes of the bylaw merged, but this was unbeknownst to both sets of buyers. The current owners now want to legitimize the properties and revert to the 1984 setup so that each homeowner can control their own lot. They have prepared an ANR plan but before they can ask the Planning Board for permission, they need a variance for each of the lots because they do not meet the minimum lot requirements for zoning. He believes they meet the variance requirements:

1. The triangle lot, 37, has a shape issue as the road bends there and shortens that lot considerably. For 57, the circumstances uniquely affect the structure.
2. For hardship, Mr. Constantino paid less than \$200,000 and is being taxed on property assessed at \$780,900. Mrs. Murphy and Mr. Senoski paid under \$700,000 and are being taxed on property assessed at \$1.2 million. Both owners are handcuffed because they can't do anything with their own properties.
3. The bylaw would typically allow these lots to exist. His clients purchased these thinking everything was in order, but it's not. Neither of the applicants caused this problem.

Back to the Board for questions. Mark Hansen asks for clarification on the first prong for lot 57. Attorney Tardif answers that it's circumstances related to the structure: it's an 89-year-old structure nobody can do anything with in a neighborhood where houses are being knocked down and rebuilt frequently. It's an illegal lot. Mr. Constantino is using his lot as a backyard, but he's being taxed an inordinate amount. He wants to put an ADU there but he can't because it's an illegal lot. These owners are innocent parties.

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

Vote:

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

Nay: None

The Board discusses the history of the lots and the hardship related to both lots.

Chair Dewey moves to close the public hearing. Mark Hansen seconds.

Vote:

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

Nay: None

The Board deliberates. They discuss the hardship for 57. It would be hard to sell or even update the house as it exists today because of this issue. They discuss the hardship for 37. The Board discusses whether this is the right path to accomplish this and whether this may be more than a zoning issue—potentially a title or legal issue. Attorney Tardif says Attorney John Kenney, who is in the audience, advised him that in the past the Board would state that they find no 40A Section 10 conditions but that they would still

grant the relief requested and then add a condition about an 81X. Anna Brigham advises the Board that they have the option of seeking legal counsel from the Town Attorney. The Board is in favor of that idea.

Chair Dewey moves to continue Appeals No. 2024-018 and 2024-019 to July 10, 2024. Mark Hansen seconds.

Vote:

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

Nay: None

The Chairman notes that the public hearing has been closed and so will need to be reopened on July 10.

Appeals No. 2024-018 Constantino & 2024-019 Murphy & Senoski are continued to July 10, 2024.

7:03 PM

Appeal No. 2024-021

525 South Street Community LLC

Susan Battista has petitioned for a Variance pursuant to Section 240-85A Permit Required, Section 240-85B Illegal Signs, Section 240-71 Signs in DMS, Section 240-65A Number of Signs Per Business, Section 240-65C Total Square Footage of All Signs, and Section 240-42 Hyannis Main Street Waterfront Historic District Commission B)(2) Approval Required. The Petitioner seeks relief from square footage and total number of signs. The Petitioner seeks to have 3 signs where 2 are allowed and seeks to have 87 sq. ft. of signage where 50 sq. ft. is allowed. The subject property is located at 525 South Street, Hyannis, MA as shown on Assessor's Map 308 as Parcel 162. It is located in the Downtown Main Street (DMS) Zoning District.

The Chairman assigns himself, Herb Bodensiek, Paul Pinard, Mark Hansen, and Larry Hurwitz.

Susan Battista is joined by Fritz Klaetke, her husband who also designed the signs, and several residents of 525 South Street. She explains that 525 South Street is a community of young adults with special needs. They have yoga classes, dance classes, performances, etc. It is a prominent, visible lot with a front façade that is all glass. The building is broken up by windows. When they installed signage, they wanted to create a scrim to screen the inside because of the activities and to protect the privacy of their residents. They want the windows to let the light in but also provide some privacy. The windows are broken into 3 parts so the sign is spread across them. The freestanding sign has only been repainted to match their branding. She believes they have reduced the signage compared to the previous tenant. Several residents (Sofia Teixeira, Van Nichols, Ava Klaetke, and Rowan Judge) speak in support of the community and the importance of the signage.

Fritz Klaetke shares an image (entitled "Photo for 525 South Street Hyphen Submitted After Hearing Began") with the Board.

1. The topography is such that South Street is raised up so if you're standing on the street you're looking straight in the windows. The front window acts as screen to provide privacy.
2. Taking the scrim off would prohibit them from using this space for their community activities.
3. He feels that having this community here is a public good. They provide free space to many organizations. Removing the scrim would make the site less useable and would be a detriment to the public good.

Back to the Board for questions. Chair Dewey walks through the requested signage with the applicant. He asks if the applicant is opposed to going before Hyannis Historic Committee, because it was part of the relief they requested in their application but he is not comfortable granting that. Ms. Battista says they are fine with going.

Chair Dewey opens for public comment. He says the Board received letters in support from Wurfbain, Stephens, Perez and Besso, Kuehn, Judge, and Brenneman. The Board received a letter in opposition from Dery and Mason. Ms. Battista shows images (document entitled "Applicant Response to Dery & Mason Opposition") to illustrate existing signage at Ms. Dery's property.

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

Vote:

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

Nay: None

The Board discusses the signage specifications. They discuss whether it should be considered signage or art. They discuss options to remove parts of signage to meet requirements.

Chair Dewey moves to close the public hearing. Mark Hansen seconds.

Vote:

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

Nay: None

The Board deliberates. They discuss that they are giving relief for number of signs and total square footage. They discuss how strictly to condition. Paul Pinard prefers to allow 2 signs rather than 3. Ms. Battista says that would be a financial hardship—the sign can't be removed easily. The Board suggests the applicant could turn one sign into a directional sign by adding an arrow. The Board discusses whether they can condition one sign to be directional and only allow the square footage.

Paul Pinard makes a motion to approve based on these findings:

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. He finds that the topography is such that passersby can look into the windows and see inside, so the windows require some screening for privacy.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. He finds that the elimination of the privacy screens would force the discontinuance of a number of activities that take place at this location and the ramifications would be a hardship.
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. He finds no derogation. The signs are artistic and professional and serve a specific purpose. Nothing draws your attention to them more than a normal window sign.

Mark Hansen seconds.

Vote:

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

Nay: None

Paul Pinard makes a motion to approve with Conditions No. 1-3 from the Staff Report dated May 23, 2024 with slight changes:

1. Variance No. 2024-021 is granted to 525 South Street Community LLC for a Variance pursuant to Section 240-85B Illegal Signs, Section 240-71 Signs in DMS, Section 240-65A Number of Signs Per Business, Section 240-65C Total Square Footage of All Signs for relief from square footage and total number of signs, specifically to allow 2 signs and a directional sign where 2 signs are allowed and to have approximately 57.5 sq. ft. of signage as it exists, subtracting the Newton Street sign, where 50 sq. ft. is allowed at 525 South Street, Hyannis, MA.
2. The proposed signage shall be constructed in substantial conformance with plans included in the Petition called "South Street View, and Newton Street View" with the addition of an arrow onto the Newton Street sign to convert it to a directional sign.
3. 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 Sign Permit. The rights authorized by this Variance must be exercised within one year, unless extended.

The Board adds a Condition No. 4:

4. The freestanding sign shall remain at its current size and no alterations are to be made without prior approval from this Board.

Vote:

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

Nay: None

Variance No. 2024-021 525 South Street Community LLC is granted with conditions.

7:04 PM

Appeal No. 2024-025

Luongo Real Estate LLC

Luongo Real Estate LLC has applied for a Special Permit pursuant to Section 240-91H.(3) Developed Lot Protection; Demolition and Rebuilding on Nonconforming Lots. The Applicant proposes to demolish the existing single family dwelling and construct a new single-family dwelling with detached garage. The existing dwelling has nonconforming front yard setbacks on Fifth Avenue (16.6 ft.) and Birch Drive (11 ft.) where 20 feet is required. The proposed front yard setback on Fifth Ave is 20.5 ft., which complies with zoning requirements, and the proposed front yard setback on Birch Drive is 18.1, which does not comply with zoning requirements

but is less nonconforming. The subject property is located at 222 Fifth Ave, Hyannis, MA as shown on Assessor's Map 245 as Parcel 133. It is located in the Residence B (RB) Zoning District.

Chair Dewey assigns himself, Herb Bodensiek, Paul Pinard, Mark Hansen, and Larry Hurwitz. Attorney Patrick Nickerson is representing the applicant and is joined by Attorney John Kenney; John O'Dea, engineer; and Mike Tartamella and Michael Cahn from the firm Patrick Ahearn. Attorney Nickerson provides a procedural history: his clients bought the property in 2020 and have been dealing with rodent and insect issues due to cracks in the foundation. They received demolition permission prior to purchase but their plans were put on hold due to COVID-19. Back in March, they renewed the demo permit from Barnstable Historic. John O'Dea walks through some details of the project: it's a demo/rebuild that will improve the setbacks in every respect and will reduce the square footage. They have gotten approval from Conservation. The garage and pool are being rebuilt within their footprints. The project falls below the existing lot coverage and floor areas.

Back to the Board for questions. Mark Hansen asks if Birch Drive is a paper road and what year the home was built. Attorney Nickerson confirms that it is a paper road and that the home was built in 1940. They'll be reducing the degree of nonconformity but it still won't meet the setback from Birch Drive.

Chair Dewey opens for public comment. He says the Board received public comment from Attorney Kenney in support. Mark Hansen moves to close public comment. Larry Hurwitz seconds.

Vote:

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

Nay: None

Mark Hansen moves to close the public hearing. Chair Dewey seconds.

Vote:

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

Nay: None

Mark Hansen makes findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240- 91 H. (3) allows for the complete demolition and rebuilding of a residence on a nonconforming lot.
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. He finds that the setbacks will be improved and Birch Drive is only a paper road so there is no detriment there.
4. The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building. The proposed front yard setback and side yard setbacks are greater than the existing.
5. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The existing lot coverage is 22% and proposed lot coverage is 21%, a reduction.
6. The floor area ratio shall not exceed 0.30 or 30% the existing floor area ratio of the structure being demolished, whichever is greater. The existing FAR is 21.6% and the proposed FAR is 29.97%.
7. The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 stories. The proposed height is 19.6 feet to the top of the plate as shown in elevations presented by the applicant.
8. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling. He finds it in keeping with the neighborhood.

Herb Bodensiek seconds.

Vote:

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

Nay: None

Mark Hansen makes a motion to grant based on Conditions 1-6 from Staff Report dated May 23, 2024.

Vote:

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

Nay: None

Special Permit No. 2024-025 Luongo Real Estate LLC is granted with conditions.

Correspondence

Housing Assistance Corp Affordable Unit Monitoring Report dated May 30, 2024

Cape Cod Commission Upper Cape YMCA Meeting Notice for June 12, 2024

Park City Wind LLC Notice of Filing, Request for Comments, and Public Comment Hearing for June 18, 2024

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

June 26, 2024, July 10, 2024, July 24, 2024

Adjournment

Chair Dewey moves to adjourn. Mark Hansen seconds.

Vote:

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

Nay: None

Documents Used at this Meeting

- April 24, 2024 minutes
- Appeal No. 2024-017 518-556 Yarmouth Road LLC application packet
- Document entitled "Applicants Proposed Variance Condition – 556 (002)
- Images entitled "Photos for Presentation" and "Jeep Night Lights"
- 2 public comment submissions from Gil Wood
- Appeals No. 2024-018 and -019 application packet
- Appeal No. 2024-021 525 South Street Community LLC application packet
- Image entitled "Photo for 525 South Street Hyphen Submitted After Hearing Began"
- Public comment from Wurfbain, Stephens, Perez and Besso, Kuehn, Judge, and Brenneman in support, and public comment in opposition from Dery and Mason
- Images entitled "Applicant Response to Dery & Mason Opposition"
- Staff Report dated May 23, 2024 for Appeal No. 2024-021
- Appeal No. 2024-025 Luongo Real Estate LLC application packet
- Public comment from Attorney Kenney in support
- Staff Report dated May 23, 2024 for Appeal No. 2024-025
- Housing Assistance Corp Affordable Unit Monitoring Report dated May 30, 2024
- Cape Cod Commission Upper Cape YMCA Meeting Notice for June 12, 2024
- Park City Wind LLC Notice of Filing, Request for Comments, and Public Comment Hearing for June 18, 2024

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>