

Zoning Board of Appeals MINUTES Wednesday, July 10, 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, July 10, 2024, at the time indicated:

Call to Order

Acting Chair Herb Bodensiek calls the meeting to order at 7:04 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	
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

May 8, 2024 – Aaron Webb moves to approve. Paul Pinard seconds.

Vote:

Aye: Herb Bodensiek, Paul Pinard, Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb

Nay: None

May 22, 2024 – Paul Pinard moves to approve. Aaron Webb seconds.

Vote:

Aye: Herb Bodensiek, Paul Pinard, Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb

Nay: None

Old Business

7:00 PM

Appeal No. 2024-016

James

Jay and Betsy James have applied for a Special Permit pursuant to Section 240-91 H. (3) Nonconforming lot. The Applicant proposes to demolish the existing single family dwelling, raise the foundation elevation, and construct a new single family dwelling. The new dwelling will be detached from the garage, leaving the existing nonconforming garage in place. No construction will occur within the setbacks. The subject property is located at 642 South Main Street, Centerville, MA as shown on Assessor’s Map 186 as Parcel 041. It is located in the Residence D-1 (RD-1) Zoning District. Continued from May 22, 2024.

The Chairman assigns himself, Mark Hansen, Larry Hurwitz, Paul Pinard, and Aaron Webb.

Rob Warren, co-owner of Sand Dollar Customs is representing the applicants. His company was hired to remodel but during the process, they found water and insect damage, which made remodeling impossible. They are proposing new construction instead of remodeling, but they are using the same plans as for the remodel so overall it will be the same. The garage is staying in place but the

breezeway connecting it to the house is being removed, so the garage will be standalone. They are not pouring a new foundation. The group discusses the setbacks.

Joe Servant is an abutter and addresses the Board. He is in support of the new build, but also feels that the garage (which is 3 feet from the lot line) is in bad condition and should be demolished. The Board says this needs to wait until public comment is opened.

Herb Bodensiek opens public comment. Joe Servant repeats his request that the applicants also rebuild the garage. He has no other problems with the project. Herb Bodensiek moves to close public comment. Aaron Webb seconds.

Vote:

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

Nay: None

Herb Bodensiek asks Mr. Warren if there are plans to paint the garage. He says yes, the plan eventually is to rehab the garage but it's a monetary issue right now.

Herb Bodensiek moves to close the public hearing. Aaron Webb seconds.

Vote:

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

Nay: None

Paul Pinard 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.
4. The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building or otherwise must comply with required setbacks. The existing dwelling has a front setback of 50.3 feet (South), 30.4 feet (East), rear setback of -0.1 feet (North) and 3.6 feet, and rear setback (West) of 6.8 feet. The existing lot coverage is 18.6% or 1,835 square feet. The existing gross floor area is 1,414 square feet.

The proposed dwelling has a front setback of 45.2 feet (South), 30.4 feet (East), rear setback of -0.1 feet (North) and 3.6 feet, and rear setback (West) of 6.8 feet. The proposed lot coverage is 19.5% or 1,920 square feet. The proposed gross floor area is 2,118 square feet. The required setbacks are 30 feet front, 10 feet side and rear.

5. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The existing lot coverage is 18.6% and proposed lot coverage is 19.5%.
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 18.6% and the proposed FAR is 21.5%.
7. The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 ½ stories. The proposed height is 22 feet to the top of the plate and 2 stories.
8. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

Herb Bodensiek seconds.

Vote:

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

Nay: None

Paul Pinard makes a motion to grant Special Permit No. 2024-016 with Conditions 1-6 from the Staff Report dated May 9, 2024 and revised May 29, 2024. Mark Hansen seconds.

Vote:

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

Nay: None

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. Continued from June 12, 2024. Members assigned: Dewey, Bodensiek, Pinard, Hansen, and Hurwitz.

Attorney Tardif is representing the applicants. He feels that the letter from Town Attorney Kate Connolly cleared up the Board's prior issues. Herb Bodensiek asks if that letter is part of the public record. Anna Brigham explains that it is the opinion of counsel to the Board, not part of the public record. Manny Alves addresses that only 4 assigned members are present, as Jake Dewey is absent. Attorney Tardif explains his reasoning for Finding No. 1: the southerly lot has a unique shape, and the northerly lot's uniqueness lies in the structure.

Herb Bodensiek reopens public comment. There is none. Herb Bodensiek moves to close public comment. Aaron Webb seconds.

Vote:

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

Nay: None

Herb Bodensiek moves to close the public hearing. Aaron Webb seconds.

Vote:

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

Nay: None

The Board deliberates. They discuss whether the letter from counsel resolved their concerns about Finding No. 1. Attorney Tardif further explains that his argument is that the uniqueness of 37 is created by the curve of the road. As for 57, the uniqueness is related to the structure: it's a lot that has a structure on it that cannot be changed and isn't legally owned by the person who bought it, which was unbeknownst to them.

Herb Bodensiek clarifies that they are deliberating over both Appeals No. 2024-018 and -019 and reads 2024-019 into the record:

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. Continued from June 12, 2024. Members assigned: Dewey, Bodensiek, Pinard, Hansen, and Hurwitz.

The Board discusses whether the lots are unique. They discuss whether a special permit is the best way to correct this issue. Attorney Tardif requests to strike from the conditions, "site development shall be in substantial conformance with existing plan," because there is no plan for site development.

Paul Pinard makes findings for Appeal No. 2024-018:

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 lot is an unusual shape for the neighborhood
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 hardship is that the lots cannot be used as they are.
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.

Larry Hurwitz seconds.

Vote:

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

Nay: None

Paul Pinard moves to grant Variance No. 2024-018 subject to conditions 1-3 from Staff Report dated May 23, 2024, with the word “constructed” removed from Condition No. 2. Aaron Webb seconds

Vote:

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

Nay: None

Variance No. 2024-018 is granted with conditions.

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. Continued from June 12, 2024. Members assigned: Dewey, Bodensiek, Pinard, Hansen, and Hurwitz.

Paul Pinard makes findings for Appeal No. 2024-019:

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 they are reestablishing the former lot lines to restore the appropriate size of the lot.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. He finds the hardship is that the owner can’t build on their property as is.
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.

Larry Hurwitz seconds.

Vote:

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

Nay: None

Paul Pinard moves to grant Variance No. 2024-019 subject to conditions 1-3 from Staff Report dated May 23, 2024, with the word “constructed” removed from Condition No. 2. Mark Hansen seconds.

Vote:

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

Nay: None

Variance No. 2024-019 is granted with conditions.

New Business

7:03 PM

Appeal No. 2024-026

MacKinnon

Donald J. MacKinnon, Trustee of MCCM Realty Trust has petitioned for a modification of Variance No. 2023-012. The Applicant received approval for Variance No. 2023-012 to construct a detached accessory structure. The Petitioner proposes to decrease the size of the structure and seeks to amend Variance No. 2023-012 to reference revised plans. The subject property is located at 910 Main Street, Cotuit, MA as shown on Assessor’s Map 035 as Parcel 090. It is located in the Residence F (RF) Zoning District and the Resource Protection Overlay District (RPOD).

Acting Chair Bodensiek assigns himself, Paul Pinard, Mark Hansen, Aaron Webb, and Manny Alves.

Attorney Liza Cox is representing the applicant and is joined by the owner, Donald MacKinnon. She explains that this is a very minor change, and is probably not even a “substantial” change, but they applied out of an abundance of caution. As a point of interest

related to a prior decision that allowed an advanced septic system, Mr. MacKinnon shares a report (document entitled “MacKinnon nitrogen report”) with the Board that documents his updated septic’s nitrogen removal.

Attorney Cox explains that this property has been through multiple prior decisions and in an earlier decision there was a standard condition disallowing an accessory structure without Board approval. The Board later approved an accessory structure. They are asking now to decrease the size of the approved structure. The garage space has been eliminated. Regarding the conditions in the staff report, she explains that condition no. 2 references “both septic systems,” but there’s only one septic system. She suggests instead, “The septic system shall be maintained in perpetuity until such time that the property is connected to municipal sewer.” The group discusses the timeline.

Herb Bodensiek opens public comment. There is none. Herb Bodensiek moves to close public comment. Paul Pinard seconds.

Vote:

Aye: Herb Bodensiek, Paul Pinard, Mark Hansen, Manny Alves, Aaron Webb

Nay: None

Herb Bodensiek moves to close the public hearing. Paul Pinard seconds.

Vote:

Aye: Herb Bodensiek, Paul Pinard, Mark Hansen, Manny Alves, Aaron Webb

Nay: None

Aaron Webb makes findings:

1. Variance No. 2024-026 is seeking to modify Variance No. 2023-012 to construct a detached accessory structure. The Petitioner proposes to decrease the size of the structure and seeks to amend Variance No. 2023-012 to reference revised plans. All other conditions are in effect.

Manny Alves seconds.

Vote:

Aye: Herb Bodensiek, Paul Pinard, Mark Hansen, Manny Alves, Aaron Webb

Nay: None

Aaron Webb makes a motion to grant Variance No. 2024-026 with the following conditions:

1. Variance No. 2024-026, a modification of Variance No. 2023-012, is granted to Matthew J. MacKinnon, Trustee of 33 Oyster Place Realty Trust, and Donald J. MacKinnon, Trustee of MCCM Realty Trust to construct a decreased detached accessory structure and to amend Variance No. 2023-012 to reference revised plans.
2. The septic system shall be maintained in perpetuity.
3. The site development shall be in substantial conformance with the plan entitled “Site Plan of #910 Main Street & #33 Oyster Place Road Cotuit, MA” prepared by Down Cape Engineering Inc., dated April 29, 2021 with the last revision date of May 21, 2024.
4. There shall be no further expansion of the structures or construction of accessory structures without approval from the Zoning Board of Appeals.
5. The Petitioner 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.

Paul Pinard seconds.

Vote:

Aye: Herb Bodensiek, Paul Pinard, Mark Hansen, Manny Alves, Aaron Webb

Nay: None

Variance No. 2024-026 MacKinnon is granted with conditions.

Correspondence

None

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

July 24, 2024, August 14, 2024, August 28, 2024

Adjournment

Mark Hansen moves to adjourn. Paul Pinard seconds.

Vote:

Aye: Herb Bodensiek, Paul Pinard, Mark Hansen, Manny Alves, Aaron Webb, Larry Hurwitz

Nay: None

Documents Used at this Meeting

- May 8, 2024 minutes
- May 22, 2024 minutes
- Appeal No. 2024-016 James application packet
- Staff Report dated May 9, 2024 and revised May 29, 2024 for Appeal No. 2024-016
- Appeal No. 2024-018 Constantino application packet
- Appeal No. 2024-019 Murphy & Senoski application packet
- Staff Report dated May 23, 2024 for Appeal No. 2024-018
- Staff Report dated May 23, 2024 for Appeal No. 2024-019
- Appeal No. 2024-026 MacKinnon application packet
- Document entitled "MacKinnon nitrogen report"
- Staff Report dated July 1, 2024 for Appeal No. 2024-026

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>