

**Zoning Board of Appeals  
MINUTES  
Wednesday, January 24, 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, January 24, 2024, at the time indicated:

**Call to Order**

Chair Jacob Dewey calls the meeting to order at 7:01 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; Jim Kupfer, Assistant Director, Planning & Development; 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**

November 8, 2023 – Aaron Webb moves to approve the minutes. Mark Hansen seconds.

**Vote:**

**Aye:** Herb Bodensiek, Manny Alves, Mark Hansen, Larry Hurwitz, Denise Johnson, Aaron Webb

**Nay:** None

**Abstain:** Jake Dewey (was not present at November 8 meeting)

**Old Business**

**7:00 PM**

**Appeal No. 2023-014**

**Ernest J. Jaxtimer**

Ernest J. Jaxtimer has filed an Appeal of an Administrative Official’s Decision in accordance with Barnstable Zoning Ordinance Section 240-125 B.(1)(a) and M.G.L. Chapter 40A Section 8 and Section 15. The Petitioner seeks to overturn the Notice of Zoning Ordinance Violation and Order to Cease, Desist, and Abate Immediately from the Building Commissioner, dated May 26, 2023. Summary of violations determined by the Building Commissioner include Barnstable Zoning Ordinances Article II General Provisions Sections 240-7 A, 240-10 A; Article III District Regulations Sections 240-14 A (1); Article IX Site Plan Review Sections 240-100 A, 240-101 B, 240-103 B, 240-103 C, 240-103 K, and 240-105 G. The subject properties are located at 1450 Osterville West Barnstable Road as shown on Assessor’s Map 127 as Parcel 007 001, and 1450 Osterville West Barnstable Road #A as shown on Assessor’s Map 127 as Parcel 036. Both properties are located in the Residence F (RF) Zoning District. Continued from July 26, 2023, September 13, 2023 and November 8, 2023.

Attorney Mike Ford is representing the applicant. He explains that his client has been working with the Building Commissioner to resolve the issues on the site and they are very near that point. They are working on a site plan that was requested by the Building Commissioner, but it is not yet completed. The Commissioner has approved the request for an additional month to get that site plan to him, at which point this appeal would be withdrawn. Attorney Ford also relays that he was contacted today by counsel representing abutters, and he told them he would be making this request. He confirms that all activities that were found in violation

have ceased, and they are gradually bringing the site into compliance. He requests a continuance to February 28, 2024. Aaron Webb moves to continue this to February 28, 2024. Mark Hansen seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Manny Alves, Mark Hansen, Larry Hurwitz, Denise Johnson, Aaron Webb**

**Nay: None**

**Appeal No. 2023-014 Ernest J. Jaxtimer is continued to February 28, 2024.**

**7:01 PM**

**Appeal No. 2023-039**

**Baird**

Daniel and Karen Baird have filed an Appeal of an Administrative Official's Decision in accordance with 240-125 B. (1)(A) and M.G.L. Chapter 40A Section 8. The Petitioners seek to overturn the Notice of Violation and Order to Cease, Desist, and Abate from the Building Commissioner, dated September 11, 2023. Summary of violations determined by the Building Commissioner include Barnstable Zoning Ordinance Chapter 240 Section 14 A.(1) RF Residential District and Chapter 240 Section 10C Prohibited Uses. Specifically, the use of a trailer/camper as a substitute dwelling unit or for temporary sleeping purposes on a property without a permitted principal dwelling. The subject property is located at 27 Falcon Road, West Barnstable, MA as on Assessor's Map 196 as Parcel 032. It is located in the Residence F (RF) Zoning District. Continued from December 6, 2023.

Attorney Brian Wall is representing the applicant. He requests a month's continuance to attempt to work out a solution with the Building Commissioner. The trailer is not being used because the applicants are in Florida. He requests to continue to February 28. Chair Dewey makes a motion to continue this to February 28, 2024. Denise Johnson seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Manny Alves, Mark Hansen, Larry Hurwitz, Denise Johnson, Aaron Webb**

**Nay: None**

**Appeal No. 2023-039 Baird is continued to February 28, 2024.**

**7:02 PM**

**Appeal No. 2023-010**

**Arista Hyannis LLC**

Arista Hyannis LLC has applied for a Special Permit in accordance with Section 240-25(B)(22) and 240-25(C)(10) Drive-Through for a proposed restaurant. The Applicant proposes to remodel the former bank building and change the use to a food service establishment with a drive-through. The subject property is located at 715 West Main Street, Hyannis, MA as shown on Assessor's Map 249 as Parcel 155. It is located in the Highway Business (HB) District. Continued from May 10, 2023 and July 26, 2023 and September 13, 2023, and November 8, 2023 and January 10, 2024. Members assigned: Jacob Dewey, Paul Pinard, Mark Hansen, Aaron Webb, and Herb Bodensiek.

Aaron Webb recuses himself from this matter and leaves the Hearing Room. Manny Alves will Mullin in for Aaron Webb. Paul Pinard is an assigned member but is not present. Denise Johnson was present at the original hearing and will replace Paul Pinard. The members assigned are now Jake Dewey, Herb Bodensiek, Mark Hansen, Denise Johnson, and Manny Alves.

Attorney Eliza Cox is representing the applicant. She is joined by Greg Botsivales, principal of Fashion Foods LLC, who would be the tenant and operator of the Wendy's; Usamah El Sehrawey and Terry Smiley of Fashion Foods LLC; and Randy Hart, Traffic Engineer, VHB. She walks the Board through the project overview. The use of the site as a Wendy's is allowed by right. The site improvements (pavement reduction, new stormwater infrastructure, new plantings, safety improvements, etc.) are all allowed by right.

They are proposing to reconfigure the existing drive-through, and that is the only matter within the Board's purview. The standard they need to meet is whether the use of a drive-through substantially adversely affects the public health, safety, welfare, or convenience of the community. She reminds the Board that at the first hearing, the Board had concerns about traffic congestion, safety, and queuing, and so they voted for a peer review, which has now occurred.

Randy Hart walks through access to the site: the existing site has 3 access driveways (2 full access and 1 egress only). The proposed plan has access consolidation: 1 full access driveway and 2 out-only driveways. West Main is proposed to be consolidated from full access to right-turn only. There is a single drive-through window proposed. Mr. Hart walks through key points of the peer review done by Environmental Partners (EP). There has been back and forth communication and a meeting prior to EP issuing the final letter on the project. That letter (document entitled "Barnstable - 715 West Main Street RTC Response\_FINAL") says, "VHB has provided additional information and adequately addressed most of EP's comments from the original peer review." At that time

there were two outstanding minor site plan modifications that have since been addressed. He reads one key finding EP made: "Based on the updated information provided in the RTC and if the matter in front of the ZBA is specific to the inclusion of the drive-through window and not the redevelopment itself, EP agrees that there is no substantial difference in traffic operations between the Wendy's with a drive-through window and without a drive-through window." He suggests this confirms that there isn't a substantial difference between the two and as a result, they meet the standard of not substantially adversely affecting the public health, safety, welfare, comfort, or convenience of the community. He reads another line from the letter from EP stating, "there would be very little difference in traffic operations between the proposed use and the former bank use based on (ITE)."

Attorney Cox adds that because of the safety concerns regarding this traffic intersection, their team met with the Director of DPW and the Town Engineer since the last hearing. She shares the Town of Barnstable FY 2024 Capital Budget and FY 2024-FY 2028 Capital Improvement Plan to show that the signalization of West Main Street/Pine Street/Barnstable High School is a priority project that the town has reserved funding to redesign. Design work is planned to start in the next few months. The plan sets forth details about proposed signalization including traffic and pedestrian signals, pedestrian curb ramps, sidewalks, crosswalks, traffic signs, and pavement markings. She shows the Board a rough design concept they got from DPW (entitled "DPW Intersection Design Concept"). She suggests the Board may include an additional condition: the drive-through window may not be used for customer transactions unless and until the intersection of West Main St./Pine St./BHS is signalized.

Attorney Cox responds to public comment letters. Regarding opposition to a Wendy's or fast-food restaurant going in at this location, that is not within this Board's purview—it is by right. Regarding concerns with traffic safety/congestion/queuing, she says the traffic impacts were peer reviewed and showed no substantial increase. This Board's purview is only the impacts associated with a drive-through, not with a restaurant.

Attorney Cox explains the project benefits: it maintains Cape Cod architecture and aesthetics; investment of capital resulting in building renovations and improvements; landscaping improvements; parking lot improvements; improved on-site drainage, access management improvements; limited hours; convenience of a drive-through for elderly, disabled, and parents with young children.

**Chair Dewey brings it back to the Board for questions.** Manny Alves expresses concern that busy times at the high school would coincide with the busy times at a Wendy's. He asks for an explanation of how traffic changes will be minimal going from a bank to a Wendy's with a drive-through. Randy Hart explains that there was a comparison table for operations of the intersection adjacent with a Wendy's with a drive-through, a Wendy's without a drive-through, and a bank with two drive-throughs. The changes are very minor: a 1- or 2-second delay. Where there was increased volume, it was at most one additional car a minute. Chair Dewey asks Attorney Cox to walk through the changes that were made to the site plan. Randy Hart says there were 3 or 4 changes to signs and lines. The number of seats and number of parking spaces have not changed and comply with zoning. Chair Dewey asks about deliveries. Greg Botsivales says they had discussed early morning deliveries, and they would be directly in front of the store. There would be an added door on the West Main St. corner of the building. The turning radius was approved by the fire department, and there is no point where trucks will have to reverse. Chair Dewey points out that the traffic study did not take into account the proposed signal intersection that DPW is planning. Attorney Cox confirms. Mark Hansen expresses a concern that this location does not have any sort of "bypass" lane separate from the lane that's used to enter/exit the parking lot, to allow cars to go around other cars waiting to enter the parking lot, the way the Mashpee and Hyannis rotary locations do. He believes this might create an issue if traffic did start to back up, and may be exacerbated by a traffic light there. Randy Hart answers that they don't anticipate a lot of egress to Pine Street and don't expect any spillback onto the roadway, but the potential effect of a traffic light there has not been studied. Mr. Hart also says the site lines are adequate and there are no visibility or safety issues. He adds again that there has been no analysis of the proposed plan with the new proposed traffic signal, but he and Mr. Botsivales believe the odds of a signalized intersection being worse than unsignalized is low. Mark Hansen asks if Wendy's serves breakfast. Greg Botsivales answers that they're open for breakfast, but from 6:30-10:30 a.m. they only do about 6% of their overall volume. Herb Bodensiek thinks it was a quiet bank in the past and is struggling to believe there is no major difference between a drive-through and a sit-down restaurant, and a bank. He is concerned about the difference a new traffic light will make on the current data. Randy Hart says the data shows an insignificant difference between a bank and their proposal. Mr. Botsivales says because of internal circulation and adequate stacking, a drive-through would not adversely affect the traffic, safety, welfare, or convenience as the standard requires.

Jim Kupfer, Assistant Director, Planning & Development, addresses the Board to explain that there are nuances to the process and the data. The applicant provided a traffic analysis, which was peer reviewed. The peer review confirmed that industry standards have been met in terms of the overall analysis. But the industry standard is not directly reviewing the local conditions. What the peer reviewer was looking at is national averages of fast-food restaurants with a drive-through. The difference is that at this specific location, there is a problematic intersection directly next to it and a large public high school directly across the street. He believes the Board is within their purview to analyze those nuances as they affect the public health, safety, welfare, or convenience of the

community. He further explains that the zoning was changed to allow for fast-food specifically, with the effort that a drive-through is not allowed by right. This Board's purview, then, is to look at local condition and decide if it would be more detrimental to have an auto-oriented drive-through at this location.

**Chair Dewey opens for public comment.**

Chuck Tuttle, Centerville resident speaks in opposition with concerns of increased traffic, public safety and welfare especially as it relates to the high school students across the street, and visual degradation.

Elizabeth Dawes, Stanley Way in Centerville speaks in opposition with concerns of increased traffic, public safety and welfare especially as it relates to the high school students across the street and the neighborhood children, and degradation of the neighborhood. She explains her belief that the peer review left out an important standard of traffic safety called departure sight triangles and approach sight triangles. This site is at a higher elevation than the roadway, so the sight triangles are diminished, and a line of queued vehicles would further diminish those.

Charlene Mosely who lives at Pine Street and Strawberry Hill Road speaks in opposition with concerns of traffic, degradation of the neighborhood, and public health and safety especially as it relates to young children and cars idling in the drive-through. She asks the Board to check in which month the traffic study was done and whether it included right turns on Pine St. and Strawberry Hill Rd.

Chuck Roland, engineer and resident speaks in opposition with concerns of traffic, the original conclusion of the traffic study by the peer reviewer, emergency access, deliveries causing delays, safety, public health, and degradation of the neighborhood especially in terms of litter.

Susan Fish of 65 Oak Hill Road and 45 and 55 Pine Street speaks in opposition with concerns of traffic and parking, noise including delivery trucks in the early morning, safety, and degradation of the neighborhood and public health and welfare especially as it relates to litter, rodents, and cars idling in the drive-through.

Anne Rowland of Centerville speaks in opposition with concerns of safety especially as it relates to high schoolers and young neighborhood children, and traffic.

Joel Padova of Pine Street speaks in opposition with concerns of traffic, safety, and litter.

Jimmy Bowes of Bayside Building Company speaks in opposition with concerns of traffic, safety, and degradation of the neighborhood.

Sandy Slozic lives on the corner of Oak Hill and Pine Street and speaks in opposition with concerns of traffic, deliveries, safety and public health especially as it relates to litter and trash pickup.

Chair Dewey says before this meeting but after the first hearing where more public comment was read, the Board received 57 letters of public comment opposing the project and 1 letter in support. The Chairman reads through part of the list in opposition: Donna Mayo of 51 Holly Lane dated Oct. 11, 2023; Jackie Allen of 251 Main St. dated May 11, 2023; Cathy Berkey of Osterville dated May 19, 2023; Diane Brooke dated May 11, 2023; Michael Brooke of Centerville dated May 10, 2023; C.J. Brown dated May 14, 2023; Nancy Brown or 34 Horatio Lane dated May 11, 2023; Chris Murphy of 220 West Main St. dated July 24, 2023; Jonathan Chapman dated May 11, 2023; Melissa Cobb of Seaboard Lane dated May 11, 2023; Tom Cobb of 71 Pond View Dr. dated May 10, 2023; Marla Colarusso of 154 Katherine Rd. dated May 11, 2023; Dennis Collins dated May 13, 2023; Alison Counsell dated May 11, 2023; Virginia Mayo of 51 Holly Lane dated October 11, 2023; Karin Dauphinee of 22 Collins Ave. dated May 21, 2023; James and Jan Davis dated May 19, 2023; John DeYoung dated May 12, 2023; Diane Diccico, of Pine St. dated May 11, 2023; Rick Fagan of 301 Mayfair Rd. Yarmouthport dated May 11, 2023; Susan Fish of Oak Hill Rd. dated September 13, 2023; Gloria Hanson of Long Pond Circle dated October 6, 2023; Peter Healey of 68 Katherine Rd. dated May 11, 2023; 2 letters from G.H. Hollands dated October 6, 2023 and May 27, 2023; Raul Huerta dated October 19, 2023; Jennie Bond of 67 Carla Rd. dated July 26, 2023; Jennifer Dow dated October 11, 2023; Kim Murphy dated May 10, 2023; Sarah Lapsley of 927 Route 6A Yarmouthport dated May 17, 2023; James and Mary Dow of Elliott Rd. dated October 9, 2023; Barbara MacBride dated May 23, 2023; Gretchen Mayer of 39 Lillian Dr. dated May 12, 2023; Eamon McNarmara dated May 11, 2023; Cynthia Miselis dated May 12, 2023; Tracey Mitchell dated July 23, 2023; Virginia Murphy dated May 10, 2023.

Mark Hansen continues the list of public comment received in opposition: Michael and Marla Bilodeau of 110 Oak Hill Rd. dated July 26, 2023; Richard Nichols of 300 Riverview Land dated May 9, 2023; Mary Noddin dated May 10, 2023; 2 letters from Victoria

Panella dated October 23, 2023 and October 16, 2023; Candy Ruffeth of Park Ave dated May 11, 2023; Sean Murphy of 24 Pine Valley Rd. dated July 23, 2023; Beverly Slater of Hyannis dated May 15, 2023; Jane Spillane of 67 Tobey Way dated May 12, 2023; Chuck Tuttle of Centerville dated October 10, 2023 and January 22, 2024; Walter and Sarah Mayo of 92 Phinneys Lane dated May 10, 2023; Fred and Mattie While dated August 20, 2023; Ron Winner of Carla Road dated May 11, 2023; Eric Zimberg dated May 12, 2023; Charlene Moseley of 503 Strawberry Hill Rd. dated January 21, 2024; Bob Schulte dated January 22, 2024; Tom Cambareri dated January 22, 2024; Deborah Cambareri of 62 Joan Rd. dated January 23, 2024; Kelly White dated January 23, 2024; Cathleen Carlisle of Pine St. dated January 24, 2024; Greg Williams dated January 24, 2024; and Jennifer Murphy dated January 24, 2024.

Mark Hansen says one letter of support was received from Joe Frazer dated May 11, 2023.

The Chairman leaves public comment open.

Attorney Cox responds to public comment. She reiterates that what's before the Board is only the drive-through. She believes the main questions are, are there additional traffic volumes that will be generated by the drive-through and is there sufficient queuing. They believe they've demonstrated with empirical data and adjustments made from the peer review that there will be no substantial change in traffic volume and there is sufficient queuing. She says concerns of littering, deliveries, etc. are not related specifically to the drive-through. Greg Botsivales says he believes many public comments were related only to fast food and not the drive-through specifically. He contends that the proposed drive-through will not substantially adversely affect public health and welfare and believes the traffic signal will be a benefit.

**The Board deliberates.** Denise Johnson does not believe a fast-food restaurant across from a high school wouldn't generate more traffic than a bank, especially because much of the banking process has become electronic. She believes the Board can consider whether the drive-through will represent a substantial detriment to the public good and the neighborhood affected. Attorney Cox says what's before the Board is not a comparison to a bank—it is limited to the impact of a drive-through on this restaurant. Mark Hansen feels that "comfort and convenience" includes the perception of the public, and the proposal of a traffic light is new information that the Board and the public haven't had a chance to consider the impacts of. Mark Hansen asks the peer reviewers how the local conditions may or may not impact the traffic study. Jane Davis and Steve Shakari of Environmental Partners respond that part of the standard is relying on data from ITE trip generation. They supplemented that by empirical data from other local sites. Every location has its own situation but this is a standard methodology. Mr. Shakari says empirical data can be collected in general but he doesn't know of a specific way of collecting it in this instance. Jim Kupfer says the challenge is that the structure is vacant so there is nothing that exists there today to compare against. That's why the traffic study looks at averages, and that's why this Board needs to carefully consider the local condition. Herb Bodensiek believes there's a huge amount of variability in traffic studies but it's being presented as hard and fast numbers. Randy Hart says they measured the afternoon peak hour when school lets out—that's not a period when Wendy's peaks so they created an artificial peak hour to be cautious in their analysis. They applied their artificial peak to the school release peak to try to imitate the local level. Manny Alves asks if ITE data considered that bank operations have changed in recent years. Jane Davis answers that ITE data covers a range of years and is updated frequently. Chair Dewey says they're relying on data, but that data doesn't take into account the school and it was brought to light tonight that there will be a traffic light there. They have no idea how that will affect this. The additional hectic movement in and out of this parcel is a substantial adverse effect—it won't be about how many trips are generated, it will be people already traveling there. Manny Alves agrees and is also concerned about the intra-lot traffic that will be generated and complicated by a drive-thru, as compared to the bank. A drive-through adds significant risk, and this is a unique lot with a large high school across the street—added risk is a substantial negative impact, especially if you consider how much foot traffic there is.

Greg Botsivales says they have designed the site to appropriate standards with adequate queuing. He reviews the findings from staff to discuss issues: he believes the request for 13 queue spots is without evidence, the number of public comment submissions is irrelevant, and that finding no. 4 is also without evidence. He asks the Board to make the right decision in this case legally. Attorney Cox says this project went through Site Plan Review, which looked at interior site circulation and changes were made to signs according to DPW's suggestions. Manny Alves responds that his concern was that the complications within the site are worsened when there's a drive-through. Jim Kupfer says this did go through Site Plan Review, where DPW and Planning & Development raised concerns of internal circulation and queueing, and those concerns still stand. Mr. Botsivales says those concerns are not reflected in the peer review and he believes the concerns are baseless and not factual.

Charlene Moseley, resident, asks if pedestrian traffic was taken into consideration in the traffic study, because there are 2,000 students at BHS and 400 students at Sturgis a mile away without a cafeteria. She believes the public comment from nearby residents is part of the evidence that a drive-through will be a substantial detriment to the neighborhood.

Aimee Garthee, Centerville resident speaks in opposition with concerns that more employees are needed for a drive-through than a sit-down restaurant with limited seats. That affects parking and in turn, increases drive-through use.

The Board discusses how the new traffic signal affects the traffic study. Randy Hart believes it will only be beneficial. They discuss the proposed traffic signal changes. Greg Botsivales adds that after a discussion with DPW, he feels it would be a straightforward full signalization. Mark Hansen thinks it's hard to consider this traffic situation working because the intersection can back up in so many ways and could possibly be made worse with a light. Randy Hart says they reviewed the two closest Wendy's and the maximum number of cars in the queue was 8, adjusted for summer would be 10, and those roads were twice as busy as West Main Street. Mark Hansen believes this location is different because there is no legal way for a driver to go around a stoppage at this location. The other locations are multi-lane in areas built for traffic.

Jimmy Bowes speaks again as a member of the public to voice his concern that the Board is being told they can't consider public opinion in making their decision, but he believes the Board can consider whether the drive-through will be a detriment to the neighborhood.

Greg Botsivales says in de novo review of agency proceedings, the appellate court's review consists of considering whether the agency erred in law or whether its decision is wholly unsupported by the evidence or clearly arbitrary or capricious. He believes that's the standard by which the Board has to make a decision. Denise Johnson says the Board's charter in part is to ensure projects aren't a detriment to the neighborhood, and that includes public comment. Jim Kupfer recommends to the Board that when challenged with legal action, they consider closing the hearing.

Elizabeth Dawes speaks again as a member of the public to say when the business was active you had to be careful rounding Pine Street in case there was a car turning in. That property is on an incline, so cars must go in slowly to not bottom out. Whether it's signalized or not, all parties have to come to complete stops when someone is turning.

Manny Alves moves to close public comment. Mark Hansen seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Denise Johnson, Manny Alves**

**Nay: None**

Mark Hansen moves to close the public hearing. Herb Bodensiek seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Denise Johnson, Manny Alves**

**Nay: None**

**The Board deliberates.** Manny Alves thinks the two nearby Wendy's they compared against are very different than this lot—there is nothing comparable to the high school. He also disagrees with the applicant's suggestion that public comment should be discounted just because it's not data. He feels the drive-through adds risk and he is opposed because it's a substantial detriment to the public good and would adversely affect the public health, safety, and welfare of the community. Herb Bodensiek agrees. Mark Hansen's concerns are around the workings of the site and not having legal egress to circumvent the site should there be a blockage or issue with queueing for the drive-through. Chair Dewey's concern is that the drive-through will be a nuisance on this specific lot and the surrounding neighborhood in terms of changing traffic flow and behavior of drivers, even if it does not increase volume as the data suggests. It may not increase volume on the road, but it will change the behavior of drivers and the Board can't rely on the light fixing it, because it doesn't exist yet. Denise Johnson agrees that there will be a substantial negative affect, and adds that there is not a lot of competition where this location is. It is in the best interest of the community not to have this drive-through.

**Mark Hansen makes findings:**

Arista Hyannis LLC has applied for a Special Permit in accordance with Section 240-25(B)(22) and 240-25(C)(10) Drive-Through for a proposed restaurant. The Applicant proposes to remodel the former bank building and change the use to a food service establishment with a drive-through. The subject property is located at 715 West Main Street, Hyannis, MA as shown on Assessor's Map 249 as Parcel 155. It is located in the Highway Business (HB) District.

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-25(B)(22) and 240-25(C)(10) Drive-Through for a proposed restaurant allows for a Special Permit.

2. A site plan has been reviewed and found approvable in accordance with Article **IX** herein subject only to the issuance of a special permit (see letter dated April 11, 2023).
3. The Board is in receipt of 91 correspondence in opposition, 1 in support of the project.
4. After an evaluation of all the evidence presented, the proposal is in conflict with the spirit and intent of the Zoning Ordinance and would represent a substantial detriment to the public good or the neighborhood affected due to the introduction of an auto dominated “fast food” use into an existing high volume roadway network and intersection that the subject property utilizes for access and egress further impairing the known concern. In addition, the discretionary use proposed creates concerns due to its proximity to the unsafe and overburden intersection adjacent to the property creating added unsafe turning movements. Lastly this site is in a unique location and proximity to the High School and after hearing testimony from the Public School administration, the Board maintains their concerns for traffic volume, turning movements, parking impacts, site hazard, and how it interacts with the neighborhood.

Manny Alves suggests adding an additional condition addressing Section 240-25(C). The Board adds a condition no. 5:

5. This proposal substantially adversely impacts the public health, safety, welfare, comfort, or convenience of the community. Herb Bodensiek seconds the findings.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Denise Johnson, Manny Alves**

**Nay: None**

Mark Hansen makes a motion to deny Special Permit No. 2023-010. Jake Dewey seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Denise Johnson, Manny Alves**

**Nay: None**

**Special Permit No. 2023-010 Arista Hyannis LLC is denied.**

**New Business**

**7:03 PM**

**Appeal No. 2023-042**

**Baker & Moir, as Appellants**

Patricia Baker and David D. Moir, as Appellants, are appealing the issuance of Building Permit BLDR-23-780 issued on November 1, 2023 to EJ Jaxtimer for the construction of a 3,100 sq. ft., 3-bedroom home for Janet Holian, Trustee of Holian Family Realty Tr. The subject property is located at 240 Windswept Way, Osterville, MA and 250 Windswept Way, Osterville, MA as shown on Assessor’s Map 051 as Parcel 012-001 and 012-000, respectively. It is located in the Residence F-1 (RF-1) and the Resource Protection Overlay District (RPOD).

The Board received a request to continue to February 28, 2024. Chair Dewey moves to continue this to February 28, 2024. Mark Hansen seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Denise Johnson, Manny Alves, Larry Hurwitz**

**Nay: None**

**Appeal No. 2023-042 Baker & Moir is continued to February 28, 2024.**

**7:04 PM**

**Appeal No. 2023-044**

**Alliegro**

George and Debra Alliegro have petitioned for a Variance pursuant to Section 240-13 E. RF-1 Bulk Regulations – Minimum Side Yard Setback. The Petitioners seek a variance to construct an unconditioned, screened porch over an existing patio 12.6 feet from the lot line where 15 feet is required. The subject property is located at 202 Sea View Avenue, Osterville, MA as shown on Assessor’s Map 138 as Parcel 014. It is located in the RF-1 Zoning District.

Aaron Webb returns to the Hearing Room at this point. The Board received a request to continue to February 7, 2024. Chair Dewey moves to continue this to February 7, 2024 at 7:02 PM. Mark Hansen seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Denise Johnson, Manny Alves, Larry Hurwitz, Aaron Webb**

**Nay: None**

Appeal No. 2023-044 Alliegro is continued to February 7, 2024 at 7:02 PM.

7:05 PM

Appeal No. 2023-045

Alliegro

George and Debra Alliegro have applied to modify Special Permit No. 2016-018 Modification No. 3 to allow for the construction of a screened porch over an existing patio, which would increase the lot coverage from 16.2% to 18.3%. The subject property is located at 202 Sea View Avenue, Osterville, MA as shown on Assessor's Map 138 as Parcel 014. It is located in the RF-1 Zoning District.

The Board received a request to continue to February 7, 2024. Chair Dewey moves to continue this to February 7, 2024 at 7:05 PM. Denise Johnson seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Denise Johnson, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Appeal No. 2023-045 Alliegro is continued to February 7, 2024 at 7:05 PM.

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

February 7, 2024, February 28, 2024, March 13, 2024

Adjournment

Chair Dewey moves to adjourn. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Manny Alves, Mark Hansen, Larry Hurwitz, Denise Johnson, Aaron Webb

Nay: None

Documents Used at this Meeting

- Appeal No. 2023-010 Arista Hyannis LLC application packet
- Document entitled "Barnstable - 715 West Main Street RTC Response\_FINAL"
- Town of Barnstable FY 2024 Capital Budget and FY 2024-FY 2028 Capital Improvement Plan
- Document entitled "DPW Intersection Design Concept"
- Request from Attorney Tymann to continue Appeal No. 2023-042 Baker & Moir to February 28, 2024
- Request from Attorney Schulz to continue Appeals No. 2023-044 and 2023-045 to February 7, 2024