

Zoning Board of Appeals MINUTES

Wednesday, July 13, 2022 - 7:00 PM

The Zoning Board of Appeals Public Hearing will be held by remote participation methods.

Public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be viewed via the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/>
2. Real-time access to the Zoning Board of Appeals meeting is available utilizing the Zoom link or telephone number and Meeting ID provided below. Public comment can be addressed to the Zoning Board of Appeals by utilizing the Zoom link or telephone number and Meeting ID provided below:

Join Zoom Meeting Option	Telephone Number Option
https://townofbarnstable-us.zoom.us/j/84208608343	888 475 4499 US Toll-free
Meeting ID: 842 0860 8343	Meeting ID: 842 0860 8343

3. Applicants, their representatives and individuals required or entitled to appear before the Zoning Board of Appeals may appear remotely, and may participate through accessing the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to anna.brigham@town.barnstable.ma.us so that they may be displayed for remote public access viewing.

Copies of the applications are available for review by calling (508) 862-4682 or emailing anna.brigham@town.barnstable.ma.us.

Call to Order

Chair Jacob Dewey calls the meeting to order and takes roll call:

Member	Present	Absent
Dewey, Jacob – Chair	X	
Hirsch, David	X	
Bodensiek, Herbert	X	
Hansen, Mark	X	
Pinard, Paul		X
Walantis, Todd	X	
Johnson, Denise	X (late)	
Webb, Aaron		X

Notice of Recording

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. No response.

Minutes

None.

Executive Session

This item was taken out of order and was presented after Appeal No. 2022-031.

The Zoning Board of Appeals may vote to enter into an Executive Session under G.L. c. 30A section 21(a)(3), to discuss litigation strategy with respect to threatened litigation by the property owners/applicants O'Neill and Dunbar at 689 and 697 Scudder Avenue, if the Chair declares that an open meeting may have a detrimental effect on the litigating position of the Town.

Chair Dewey makes a declaration that an open meeting discussion may have a detrimental effect on the litigating position of the Zoning Board of Appeals in the appeals and that the Board will return to open session at the conclusion of the Executive Session. Todd Walantis seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey, Denise Johnson

Nay:

The Board returns to open session and Chair Dewey explains that due to technical difficulty, the Board was not able to hold Executive Session and may attempt again later in the meeting. David Hirsch lost connection and dropped off the meeting.

After New Business, the Board enters Executive Session again. Chair Dewey again makes a declaration that an open meeting discussion may have a detrimental effect on the litigating position of the Zoning Board of Appeals in the appeals and that the Board will return to open session at the conclusion of the Executive Session. Todd Walantis seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey, Denise Johnson

Nay:

Old Business

7:00 PM

Appeal No. 2022-029

Leveroni

Maureen Leveroni has applied for a Special Permit pursuant to Section 240.91 (H)(3) Nonconforming Lot and requests a finding under M.G.L. Chapter 40A Section 6 regarding compliance with floor area ratio. The Applicant proposes to demolish two existing single story structures and replace the structures with one, two story structure on the same or smaller footprint. The subject property is located at 14 Beale Way, Barnstable, MA as shown on Assessor's Map 279 Parcel 014. It is located in Residence F-1 (RF-1) Zoning District.

This item was taken out of order and was presented before the first Executive Session. The Board received a request to continue this to August 24, 2022. Mark Hansen makes a motion to continue 2022-029 to August 24, 2022 at 7 PM. David Hirsch seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey

Nay:

Appeal No. 2022-029 Leveroni is continued to August 24, 2022 at 7 PM.

7:01 PM

Appeal No. 2021-057

O'Neill and Dunbar Point LLC

J. Brian O'Neill, Miriam O'Neill, and Dunbar Point LLC have applied for a Special Permit pursuant to Section 240-91 F Merged Lots. The Applicant seeks to relocate the property line between 689 and 697 Scudder Avenue which would result in the cottage to be part of 689 Scudder Avenue. The subject properties are 689 Scudder Ave and 697 Scudder Ave, Hyannis, MA on Assessors Map 287, Parcels 061 and 062. It is located in the Residence F-1 (RF-1) Zoning District.

This item was taken out of order and was presented after the second Executive Session. Attorney Paul Revere, who is representing the applicant, requests to continue this item. Jake Dewey makes a motion to continue Appeal No. 2021-057 to July 27, 2022. Todd Walantis seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey, Denise Johnson

Nay:

Appeal No. 2021-057 O'Neill and Dunbar Point LLC is continued to July 27, 2022.

New Business

7:02 PM

Appeal No. 2022-031

auf der Springe/Carty

Amy auf der Springe and Sean Carty have petitioned for a Variance from Section 240-14 B. (2) which references 240-11 B. (2) (e) Accessory Uses in the RF District. The Petitioners are seeking a variance to install a horse paddock fence 2.4 feet from the front

yard setback along Christmas Way rather than the required 15 feet. The subject property is located at 56 Christmas Way, West Barnstable, MA as shown on Assessor's Map 127 as Parcel 022. It is located in the Residence F (RF) Zoning District.

This item was taken out of order and was presented after Appeal No. 2022-029. Sitting on this will be David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, and Jake Dewey. At this point, Denise Johnson joins the meeting.

The applicants address the Board to provide background. The applicants purchased the property in 2018 with the intention of having horses. The previous owners had created multiple small paddocks, and they would instead like to create one large paddock, as horses need frequent movement to stay healthy. They are requesting relief to encroach into their front yard setback. Their property is long and narrow, and the location of the existing structures does not leave suitable space for a large enough paddock. The front area would give the horses access to sun and grass. There is also a safety concern because snow collects on the arena roof, so when it falls off the horses need to be able to move out of the way, which would not be possible unless they have access to the front yard.

Chair Dewey opens public comment. There is none. The Chairman makes a motion to close public comment. Todd Walantis seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey

Nay:

The Board deliberates. Todd Walantis says he drove by the location and does not see any cause for concern with this request.

Mark Hansen makes findings for 2022-031:

Amy auf der Springe and Sean Carty have petitioned for a Variance from Section 240-14 B. (2) which references 240-11 B. (2) (e) Accessory Uses in the RF District. The Petitioners are seeking a variance to install a horse paddock fence 2.4 feet from the front yard setback along Christmas Way rather than the required 15 feet. The subject property is located at 56 Christmas Way, West Barnstable, MA as shown on Assessor's Map 127 as Parcel 022. It is located in the Residence F (RF) Zoning District.

The statutory requirement of MGL Chapter 40A, Section 10 for granting a Variance is a three-prong test. The Board is required to find that each of the following three requirements has been met in order to consider granting the variance:

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 shape of the lot and the placement of the structures make it difficult to meet the setback.

2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and

The petitioner has demonstrated that there is a potential safety concern and that they have a significant investment in the horses and increasing the area they can move will increase their health and wellness.

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.

There is no detriment. It is rural and a like-type property.

Todd Walantis seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey

Nay:

Mark Hansen reads that the appeal is subject to conditions 1-4 from Staff Report dated June 23, 2022. The applicants approve.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey

Nay:

Appeal No. 2022-031 is granted with conditions.

7:03 PM

Appeal No. 2022-032

Todd

Gary Todd has petitioned for a Variance from 240-13 E. Bulk Regulations in the RF-1 Zoning District. The Petitioner is seeking a variance from the minimum rear yard setback to allow the construction of a deck 8 feet 1 inch from the rear property line where 15 feet is required. The subject property is located at 7 Nob Hill Road, Barnstable, MA as shown on Assessor's Map 288 as Parcel 119. It is located in the Residence F-1 (RF-1) Zoning District.

This item was taken out of order and was presented after the first Executive Session. Sitting on this will be Denise Johnson, Todd Walantis, Mark Hansen, Herb Bodensiek, and Jake Dewey.

Attorney Mark Boudreau is representing the applicant. The property in question is a long, narrow property that fronts on Nob Hill Road and Marstons Avenue, which pushes the house back toward the rear of the property. The applicant would like to construct a deck which extends to the rear of the property, and it will actually be 7 feet 7 inches, not 8 feet 1 inch from the rear setback. The property sharply drops at the back at least 5 feet, so it's not practical to put anything there. There is substantial natural screening and the deck would not be visible to anyone but his rear neighbor, who already has a large fence and has indicated to Mr. Todd that he's fine with his proposal.

Chair Dewey brings it back to the Board for questions. Todd Walantis asks if there is a statement from the rear abutter to include on record. Attorney Boudreau answers that he had orally agreed to it, but did not respond to Mr. Todd's requests for a statement via email. Mark Hansen asks for clarification if the proposed deck would be looking over the neighbor's fence. Attorney Boudreau answers yes.

Chair Dewey opens public comment. There is none. He makes a motion to close public comment. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey, Denise Johnson

Nay:

At this point, David Hirsch rejoins the meeting. **Chair Dewey makes findings for Appeal No. 2022-032:**

Gary Todd has petitioned for a Variance from 240-13 E. Bulk Regulations in the RF-1 Zoning District. The Petitioner is seeking a variance from the minimum rear yard setback to allow the construction of a deck 8 feet 1 inch from the rear property line where 15 feet is required. The subject property is located at 7 Nob Hill Road, Barnstable, MA as shown on Assessor's Map 288 as Parcel 119. It is located in the Residence F-1 (RF-1) Zoning District.

The statutory requirement of MGL Chapter 40A, Section 10 for granting a Variance is a three-prong test. The Board is required to find that each of the following three requirements has been met in order to consider granting the variance:

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 shape and narrowness of the land and where the structure is situated on the land creates a unique condition.

2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and

The petitioner doesn't have another option on the property.

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.

There is a substantial buffer on the property and the most affected abutter approves of the plan.

Vote:

Aye: Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey, Denise Johnson

Nay:

Chair Dewey reads that the appeal is subject to conditions 1-4 from Staff Report dated June 3, 2022. Attorney Boudreau requests that the Board modify Condition No. 1 to update the dimensions to 7.7 feet. Chair Dewey confirms they will modify Condition No. 1 to correct the dimensions.

Vote:

Aye: Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey, Denise Johnson

Nay:

Appeal No. 2022-032 is granted with conditions.

7:04 PM

Appeal No. 2022-033

Couto's Realty Investment/Dunkin Donuts

Couto's Realty Investment Co., II LLC has petitioned for a Variance from 240-25 D. Bulk Regulations in the HB District. The Petitioner is seeking a variance from the side yard setback for a proposed drive-thru canopy. The proposed setback is 7.2 feet where 10 feet is required. The subject property is located at 751 West Main Street, Hyannis, MA as shown on Assessor's Map 249 as Parcel 163. It is located in the Highway Business (HB) Zoning District.

The Board received a request to continue this to July 27, 2022. Chair Dewey makes a motion to continue Appeal No. 2022-033 to July 27, 2022. David Hirsch seconds.

Vote:

Aye: Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey, Denise Johnson, David Hirsch

Nay:

Appeal No. 2022-033 Couto's Realty Investment/Dunkin Donuts is continued to July 27, 2022.

7:05 PM

Appeal No. 2022-034

Couto's Realty Investment/Dunkin Donuts

Couto's Realty Investment Co., II LLC has applied for a Special Permit pursuant to Section 240-25 C. Conditional Uses in the HB District. The Applicant is seeking to add a drive-thru to the existing Dunkin Donuts. The subject property is located at 751 West Main Street, Hyannis, MA as shown on Assessor's Map 249 as Parcel 163. It is located in the Highway Business (HB) Zoning District.

This item is to be readvertised for July 27, 2022. Chair Dewey makes a motion to continue this item to be readvertised for July 27, 2022. Todd Walantis seconds.

Vote:

Aye: Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey, Denise Johnson, David Hirsch

Nay:

Appeal No. 2022-034 Couto's Realty Investment/Dunkin Donuts is continued to July 27, 2022.

Correspondence

Cape Cod Commission continued hearing notice to July 14th at 3 PM for the Cape Cod Hospital Cancer & Cardiology Expansion.

Matters Not Reasonably Anticipated by the Chair

Chair Dewey announces that Board elections will be held at the next meeting.

Upcoming Hearings

July 27, 2022, August 10, 2022, August 24, 2022

Adjournment

Todd Walantis makes a motion to adjourn. Mark Hansen seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Jake Dewey, Denise Johnson

Nay:

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>