

ZONING BOARD OF APPEALS

MINUTES

Wednesday, January 12, 2022

Chair Jacob Dewey opened the meeting at 7:01 PM with following narrative:

Alternative 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://zoom.us/j/95287264540	888-475-4499 U.S. Toll Free
Meeting ID: 952 8726 4540	Meeting I.D. 952 8726 4540

3. Applicants, their representatives and individuals required or entitled to appear before the Zoning Board of appeals may appear remotely and are not permitted to be physically present at the meeting, 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.

Chair Jacob Dewey took roll call of members present:

Member	Present via Zoom	Absent
Alves E.		Absent
Bodensiek H.	Present	
Dewey J.	Present	
Hansen M.	Present	
Hirsch D.		Absent
Johnson	Present	
Pinard P.		Absent
Walantis T.	Present	
Webb, Aaron	Present	

Also in attendance, David Bogan – Town Councilor, Anna Brigham - Principle Planner and Rachael Toolas– Administrative Assistant.

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.

Response:

No response

Approval of Minutes

Amended June 23, 2021 Mark Hansen motioned to accept the amended minutes, Todd Walantis seconded.

Vote:

Aye: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Johnson

Nay: None

December 8, 2021 Mark Hansen motioned to accept the December 8th minutes, Todd Walantis seconded.

Vote:

Aye: Jacob Dewey, Herbert, Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Johnson

Nay: None

December 14, 2021 Mark Hansen motioned to accept the December 14th minutes, Todd Walantis seconded.

Vote:

Aye: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Johnson

Nay: None

OLD BUSINESS

Chair Dewey reads for the record.

7:00 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.

Attorney Jeffery Johnson submitted a letter requesting a continuance to February 23, 2022.

Herb Bodensiek motioned to accept the continuance, Mark Hansen seconded.

Vote:

Aye: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Johnson

Nay: None

Chair Dewey reads for the record. Assigned Members: Herb Bodensiek, Jacob Dewey, Denise Johnson, Todd Walantis, Mark Hansen

7:08 PM

Appeal No. 2021-052

Mallegni/Bornbam Assoc. LLC

Marcello M. Mallegni, Manager of Bornbam Associates, LLC has applied for a Special Permit pursuant to 240-57(C) Circumstances warranting reduction of requirements for off-street parking for characteristics of use invalidating normal methods of calculating parking demand. The Applicant requests relief from the parking requirements, which would require 84 parking spaces for the existing warehouse space, because the use of the property as a warehouse for stone slabs has a minimal number of employees and customers at any one time, and therefore does not require 84

parking spaces. The Applicant is also seeking an additional use of the property as a cafe, primarily for the use of customers of the warehouse. The subject property is located at 80 Airport Road, Hyannis, MA as shown on Assessor's Map 294 Parcel 068. It is located in the Highway Business (HB) and Industrial (IND) Zoning Districts.

This hearing was continued from December 14, 2021. Attorney John Kenney is now representing Mr. Mallegni. When the warehouse was built back in 1975, there were no dimensional requirements in the business zone at that time. The 84 parking spaces that would be required under the current zoning are not applicable because this is a nonconforming structure and today's ordinance doesn't apply. The applicant would like to provide food service to his customers in an already existing café space in the warehouse. The café would be open to serve the public as well. The two uses are allowed under the zoning ordinance and are not what is being sought for approval. The café is required to have 17 designated parking spaces which it currently has available. The warehouse is seeking relief from the 84 parking space calculation. The warehouse usually doesn't have more than 2 to 4 employees working at one time. It is not a retail business, but a wholesale business. Visits from customers are by appointment only. On a busy day maybe ten people will come into the warehouse to look at the stone slabs. Therefore, the applicant is requesting to reduce the number of spaces needed that would be associated with the warehouse business. The main purpose of the café is to serve clientele that are travelling and it's convenient for them to be able to offer food on site. In addition, seminars are being held once a week with 30-40 people in the café space and again would like to be able to serve them food. There are one to two truck deliveries per day. There is no conflict with the day time hours of the warehouse operation conflicting with after 5PM seminar event parking hours. The applicant is seeking relief from Section 240.57 with more than enough spaces available and the café offers another food option in the area.

Board Questions: Member Hansen asks where did the number of 41 parking spaces come from as compared to the required 84 spaces. Attorney Kenney stated there are currently 41 spaces. The number 84 came from a calculation based on the size of the square footage of the warehouse if it were built today. There are 41 parking spaces for this property and the applicant would like those spaces to be allocated as follows 17 for the Café and 20 for the Warehouse and 4 extra spaces. In the conditions it doesn't say the designation is specific to the business and if the business changes they need to go back to the Board. Attorney Kenney responds that this is a nonconforming pre-existing use and the 41 spaces are adequate. Member Johnson asks if the café is going to use marketing to promote that it's open and do they plan on getting a liquor license? No, not at this time. Member Walantis questions how the parking spaces are laid out around the building. Visiting the sight it seems there is parking behind the building for use with the other warehouse. Commissioner Brian Florence requested a parking analysis. Discussion that the analysis must be the counts in the diagram on the site plan. Member Walantis points out that there isn't a walkway leading to the entrance and the parking spaces are not done in an efficient manner. Concerned when there is a larger event at night or customers at the café with the current parking access. Member Bodensiek doesn't see the need for the 84 spaces required and the 41 spaces for both the warehouse space and café are sufficient. Permitting would bring up any issues and have they resolved if it were a problem. Member Webb agrees the parking is adequate for the uses.

Public Comment was closed at the Hearing on December 14th.

Herb Bodensiek makes findings from the Staff Report dated October 12, 2021.

Vote on Findings

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

Nay: Todd Walantis

Herb Bodensiek moves to grant Special Permit No. 2021-052 subject to the following conditions:

1. Special Permit No. 2021-052 is granted to Bornbam Associates for a reduction of parking requirements and establish a new café use at 80 Airport Road, Hyannis, MA.
2. The site development shall be constructed in substantial conformance with the site plans entitled “Site Plan of #80 Airport Road, Hyannis, MA” dated April 16, 2021 which reflects 41 existing parking spaces.
3. The project shall comply with the Site Plan Review approval dated April 2, 2021, and August 23, 2021, the conditions of which shall be incorporated as conditions of this decision.
4. No further additions or alterations shall be permitted without approval from the Board.
5. The warehouse use requires 10 employees or less with off-set hours with the café hours.
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 prior to issuance of a building permit. The rights authorized by this Special Permit must be exercised within two years, unless extended.

Vote on Conditions

Aye: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Denise Johnson

Nay:

GRANTED WITH CONDITIONS

NEW BUSINESS

Chair Dewey reads for the record. Assigned Members: Jake Dewey, Herb Bodensiek, Mark Hansen, Aaron Webb, Todd Walantis

7:56 PM

Appeal No. 2021-064

Astrachan, Trustee/Hill Trustee

Mark S. Astrachan, Trustee and Barbara S. Hill, Trustee seek to modify Variance No. 2015-001 under MGL Ch. 40A §14 to allow for the increase of the total gross square footage of the dwelling. The Applicant’s current footprint limit is 2200 sq. ft. and 2200 sq. ft. of living area. They seek to increase the living space by 760 sq.ft. to a total of 2,960 sq. ft. by finishing the basement area. The added square footage is in the existing basement only and the footprint of the structure will not increase. All construction would take place within the existing structure. The subject property is located at 36 Old Colony Rd., Hyannis, MA as shown on Assessor’s Map 306 Parcel 117. It is located in the Residence B (RB) Zoning District.

Attorney Lawler discusses the history of Variance No. 2015-001 and the intent of not expanding the gross square footage of the dwelling with regard to massing on the lot. It didn’t take into consideration being able to expand the square footage from within the structure. The applicants are looking to the future with the thought of possibly having live in care in their older years. They would like to be able to create a space to address those needs. They are looking to expand the basement. The variance requirements have already been met with the initial filing in 2015.

Open to Public Comment: No response

Herb Bodensiek motioned to close public comment, Todd Walantis seconded

Vote:

Aye: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb

Nay: None

Todd Walantis makes Appeal Findings for Variance No. 2021-064 based on the original findings of Variance 2015-001.

1. In Appeal No. 2015-001, Garik Gevorgyan has applied for a variance from the one-acre minimum lot area requirement in the Residence B Zoning District (§240-11) to divide one lot into two, buildable lots for single-family residential use. The proposed lots would consist of 13,943 square feet and 18,076 square feet of upland. The Applicant also seeks relief from maximum lot shape factor requirements (§240-8D) for one of the proposed lots. The Applicant is seeking to demolish all existing structures on the property and redevelop the lot with two single-family dwellings.
2. The property is located at 36 Old Colony Road, Hyannis, MA as shown on Assessor's Map 306 as Parcel 117. It is zoned Residence B.
3. There are circumstances related to 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 lot is developed with two existing structures, one which formerly housed a nonconforming restaurant and one cottage located partially within the road layout. The lot is also irregularly shaped and impacted by wetlands.
4. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. The restoration of the property to single-family residential use will require the removal of the two existing structures and associated site work. The ability to develop two dwelling units on the property will finance this work. A literal enforcement of the Code would only allow for one dwelling, making the restoration of the property to single-family use financially prohibitive and resulting in a hardship to the applicant.
5. 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. The property will be divided into two lots comparable in size to surrounding properties and developed with single-family dwellings similar in character to nearby homes. The proposal eliminates a commercial structure and a nonconforming structure and will result in two dwellings which are harmonious with the neighborhood.

Vote on Findings

Aye: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb

Nay: None

Todd Walantis moves to grant Variance No. 2021-064 with conditions as follows

1. Variance No. 2021-064 is granted to Mark S. Astrachan, Trustee and Barbara S. Hill, Trustee, to allow for the increase of the total gross square footage of the dwelling in the existing basement only, and the footprint of the structure will not change, at 36 Old Colony Road, Hyannis.
2. The increase in gross square footage shall be in substantial conformance with the interior plans entitled "New Remodeling For: Barbara Hill, 36 Old Colony Road, Hyannis, MA" prepared by Cotuit Bay Design, LLC sheet A1 dated June 4, 2021, and sheet A2 dated September 6, 2021.
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 building permit. The rights authorized by this variance must be exercised within one year, unless extended.

Vote on Conditions

Aye: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb

Nay: None

GRANTED WITH CONDITIONS

Chair Dewey reads for the record. Assigned Members: Herb Bodensiek, Jacob Dewey, Mark Hansen, Aaron Webb, Denise Johnson

8:11 PM

Appeal No. 2021-065

Terry L Simpson Trustee

Terry L. Simpson, Trustee of the Blumist Trust has applied for a Special Permit pursuant to Section 240-131.4(D) Changes, expansion or alteration of uses or structure, Section 240-131.4 (E) Dimensional Relief, and Section 240-131.7 (D)(6) General Performance Standards. The Applicant seeks to remodel the single family residence and garage with an apartment to include replacing windows and roofing, re-siding shingles, interior work, and increase floor area with covered porches. The subject property is located at 531 South Main St., Centerville, MA as shown on Assessor’s Map 206 Parcel 069. It is located in the Craigville Beach District – Craigville Beach (CBD-CB) Zoning District.

Attorney Ted Schilling is representing the Terry L. Simpson, Trustee of the Blumist Trust. Also, in attendance are Ronald Welch and Damon Kendall of Kendall and Welch Builders, John Sullivan of Sullivan Engineering, and Gordon Clark, Northside Design, architect. The home was built in 1850 and has been renovated over the years. It was purchased in 2020 by the applicant. The renovations that are proposed will be an improvement to the property. The plans have been approved by Historical and Conservation.

Open to Public Comment: No comment

Herb Bodensiek made a motion to close public comment, Aaron Webb seconded.

Vote:

Aye: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson

Nay: None

Aaron Webb makes Appeal No. 2021-065 Findings from Staff Report dated December 27 2021, Denise Johnson seconds.

Vote on Findings

Aye: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson

Nay: None

Aaron Webb moves to grant Special Permit No. 2021-065 subject to the following conditions:

1. Special Permit No. 2021-065 is granted to Terry L. Simpson, Trustee of the Blumist Trust for a Special Permit pursuant to Section 240-131.4(D) (2) Changes, expansion or alteration of uses or structure, requiring a Special Permit because the expansion does not qualify under the as-of-right provisions, as the setback allowed is 15 feet where 1 foot is proposed, and the lot coverage allowed is 8,387 square feet where 8,146 square feet is proposed. The Applicant is also granted a Special Permit under Section 240-131.4 (E) Dimensional Relief for setbacks, as the setback allowed is 15 feet is required where 1 foot is proposed. The Applicant is also granted a Special Permit pursuant to Section 240-131.7 (D)(6) General Performance Standards as the setback from the coastal bank requires

50 feet and the proposed setback of the porch is 4.2 feet, proposed building is 10 feet, and the existing setback is 5.7 feet from Coastal Bank. The Applicant seeks to remodel the single family residence and garage with an apartment to include replacing windows and roofing, re-siding shingles, interior work, and increase floor area with covered porches. The subject property is located at 531 South Main St., Centerville, MA.

2. The proposed alteration shall be constructed in substantial conformance with the site plan entitled "Site Plan Proposed Improvements of 531 South Main St Barnstable (Centerville) Mass", prepared by Sullivan Engineering & Consulting, Inc., dated October 15, 2021.
3. There shall be no further expansion of the structure, construction of accessory structures, or impervious surface coverage on the lot unless approved by the Zoning Board of Appeals.
4. The Applicant shall comply with decisions and conditions issued by the Barnstable Historic Commission and Conservation Commission.
5. 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 building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Vote on Conditions

Aye: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson

Nay: None

GRANTED WITH CONDITIONS

Chair Dewey reads into the record. Assigned Members: Dewey, Bodensiek, Hansen, Walantis, Webb

8:24 PM

Appeal No. 2021-066

Manzi Cotuit Trust

Jim and Glenda Manzi, Trustee of the Jim Manzi Cotuit Trust and Glenda Manzi Cotuit Trust and Lisa Mingolla, Trustee of Slow Marsh One Nominee Trust have petitioned for a Variance from Section 240-36 D Resource Protection Overlay District. The Petitioners seek to swap equal sized 1,390 sq. ft. parcels of land between the properties 1446 Main St. and 1462 Main St. Cotuit, to eventually build a garage on 1462 Main St, Cotuit, MA, as shown on Assessor's Map 017 as Parcels 013 and 021. The said parcels are preexisting nonconforming with the 87,120 square foot minimum lot area requirement for parcels located within the Resource Protection Overlay District under 240-36D. Both parcels have been improved with a residence and are, thus, protected under 240-91G and 240-91C. Both lots are located in the Residence F (RF) Zoning District and in the Resource Protection Overlay District (RPOD).

Attorney Jennifer Carey represents the applicants. They are looking to swap equal sized parcels of land. The lots are pre-existing nonconforming. In the future, the Manzi's would like to build a garage on their property. Because of the wetlands, the only area available would be in the front of the house. The land swap would allow an area in the front of the property where it could be built.

Open for Public Comment - No comment

Herb Bodensiek motioned to close public comment, Todd Walantis seconded.

Vote:

Aye: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb

Nay: None

Mark Hansen asked where is the garage going to be located with regard to Lot C and Lot D. Looking at the plan the proposed garage would be near Lot C. The shed belongs to Lot B and will be moved. Chair Dewey asks if there is a reason why the garage can't fit on the lot without the land swap. The setbacks and the wetland make it so there is no other place to put the garage.

Todd Walantis makes Appeal Findings from Staff Report dated December 28, 2021

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 Board found that the location of wetlands, the size of the lot, and setback restrictions limit the development of the lot.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. The Board found that the land swap is the only way the Petitioner can construct a garage on 1462 Main St.
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. The Board found that the construction of a garage is not a substantial detriment to the public good.

Mark Hansen seconded.

Vote on Findings

Aye: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb

Nay: None

Todd Walantis moves to grant Variance No. 2021-066 subject to the following conditions:

1. Variance No. 2021-066 is granted to Jim and Glenda Manzi, Trustee of the Jim Manzi Cotuit Trust and Glenda Manzi Cotuit Trust and Lisa Mingolla, Trustee of Slow Marsh One Nominee Trust to allow the adjustment of the lot lines between two properties at 1446 Main Street and 1462 Main Street, Cotuit, MA.
2. The purpose of the application is to divide Lots 7 and 13 into four lots for conveyance. Lots C and D are of equal area and are not to be considered buildable lots. Lot C is to be combined with Lot A, and Lot D will be combined with Lot B.
3. The site development shall be in substantial conformance with the plan entitled "Plan of Land in Barnstable (Cotuit), Massachusetts" by CapeSurv dated August 20, 2021.
4. 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.

Vote on Conditions

Aye: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb

Nay: None

GRANTED WITH CONDITIONS

Correspondence

Virtual Meeting Notice from the Cape Cod Commission regarding South Cape Village Route 28 in Mashpee will be held Thursday January 13, 2022 at 1:00 pm

Matters Not Reasonably Anticipated by the Chair

None

Upcoming Meetings

January 26, 2022, February 9, 2022, February 23, 2022

Adjournment

8:34 PM Herb Bodensiek moved to adjourn, Aaron Webb seconded.

Vote:

Aye: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Johnson

Nay: None

Respectfully Submitted,

Rachael Toolas
Administrative Assistant