

Zoning Board of Appeals
MINUTES
Wednesday, September 14, 2022
7:00 PM

Chair Jacob Dewey opens the meeting at 7:00 PM:

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

Also in attendance: Anna Brigham – Principal Planner, Jim Kupfer – Senior Planner,
and Genna Ziino – Administrative Assistant

Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18. In accordance with MGL Chapter 30A §20, I must inquire whether anyone is taping this meeting and if so, to please make their presence known.

No response.

Approval of Minutes

August 24, 2022 – Jacob Dewey makes a motion to approve as submitted. Herb Bodensiek seconds.

Vote:

Aye: Jacob Dewey, Herb Bodensiek, Todd Walantis, Denise Johnson, Aaron Webb

Nay: None

Old Business

7:00 PM

Appeal No. 2022-043

Munsell

David P. Munsell Jr. and Diane M. Munsell have applied for a Special Permit pursuant to Section 240-93 B. Nonconforming buildings or Structures not used as single- or two-family dwellings, Alterations by Special Permit. The Applicant is seeking a Special Permit to reconstruct/enlarge existing structure, a 450 square foot carriage house/barn and 80 square foot shed where 10 feet is proposed and 15 feet is required and to convert the same to a 2,723 square foot single family dwelling and 80 square foot shed. The subject property is located at 3075 and 3077 Main Street, Barnstable, MA as shown on Assessor’s Map 279 as Parcels 040 and 041. It is located in the Residence F-2 (RF-2) Zoning District. Continued from August 24, 2022.

All members present will sit on this. The Chairman asks Attorney Peter Freeman, who is representing the applicant, if he would prefer to present both appeals (2022-043 and 2022-044) at the same time. Attorney Freeman answers that he would rather present the special permit application first to see if the Board finds it acceptable, in which case the applicant would no longer need the variance.

Attorney Freeman introduces the people with him: Dan Ojala from Down Cape Engineering and Diane and David Munsell, the owners of the property. He explains that the applicants are applying for a special permit under this section because the situation involves a building that was a carriage house and not a residence.

Attorney Freeman offers a brief history: The Munsells bought their main residence, 3074 Main Street, in 2012. 3075 Main Street typically had been with it and considered an accessory use, except that it's across the street. They have added to the parcel at 3075 by purchasing an adjoining lot to make the property more conforming. The total square footage is approximately 12,639. Many neighbors are in support of this project, including St. Mary's Church and the Barnstable Historical Society. Use is not an issue as it's zoned for residential. Old King's Highway Historic District Committee and the Conservation Commission have already approved their plans. Attorney Freeman believes that beyond meeting the standards for a special permit, this project would be an improvement on a structure that currently feels, in his opinion, somewhat isolated and out of place. Attorney Freeman goes on to explain that many of the other lots in the area are also nonconforming in terms of size, setbacks, etc. The footprint of the proposed house is 1,461 square feet with an 80 square foot shed. For comparison, 3074 Main St. is 2,146 square feet; 3087 Main St. is 1,616 square feet; 3095 Main St. is 2,025 square feet; 3114 Main St. is 1,337 square feet. He comments that many of the letters in opposition cite the size of the home as their issue, but the data proves that this home will be in keeping with the streetscape.

Dan Ojala, a land surveyor and civil engineer for Down Cape Engineering, offers details on the site plan. He explains that the Munsells bought the adjacent property from the Barnstable Historical Society, which effectively doubled the size of their lot. When considering raze and replaces in Barnstable, lot coverage and floor area ratios are important factors. For this plan, lot coverage by structure is only 13% (can go up to 20%) and floor area ratio is 23.9% (can go up to 30%) so they are easily compliant with density and size requirements. They have restored almost the entire 50-foot buffer to the wetland in the back and are actually enhancing the buffer through a mitigation planting plan. The property is on town sewer and town water, so there is no concern about effluent. Mr. Ojala points out that there is 90 feet of space between the home and the Historic Society and 80 feet of space between the home and Saint Mary's Church on the other side—100 feet of space between neighbors is a rarity for this area, and also a good design for fire safety. Overall it is a modest addition to the streetscape.

Attorney Freeman adds that the barn was built in 1880—long before zoning—and so is unique in that way.

David Munsell addresses the Board to provide remarks and history. His family moved to Barnstable Village in 1974 and Diane Munsell's family moved here in 1978. He and Diane met soon after, and raised their children in Marstons Mills. In September of 2012 they purchased 3074 and 3075 Main St. Mr. and Mrs. Munsell have deep roots in the community and have been actively involved in numerous boards, committees, and local community initiatives over the past decade.

Mr. Munsell provides more history on their application: When they purchased 3074 and 3075 Main St. in 2012, the house at 3074 required significant updating and was their priority as it was the residence. The carriage house at 3075 was in complete disrepair and was not structurally sound. They made structural and cosmetic repairs to the carriage house in 2012 and 2013. The building has been cobbled together over the past two centuries—most of the walls are out of plumb and out of level, and the frame and structural integrity is acceptable as a barn, but not as a potential energy-efficient living space. Early in 2019 they approached the Barnstable Historical Society to purchase 3077 Main St., a triangular parcel abutting 3075 Main St. The Munsells supplied the historical society with a 3D representation of the future home, and the board approved the sale later that year. They have worked with Dan Ojala for a site plan with conservation approval and mitigation recorded and have worked with Beachwood Design on a design for a new home, which includes many of the design elements of the existing structure. They have included hip and steep roof designs, along with architectural corbels along the soffit and rake lines and diamond pattern windows. Mr. Munsell explains that he served on Old King's Highway Commission and it was very important to him to maintain the historical look and

charm of 6A. Last year, the Munsells offered to donate the carriage house structure to the Barnstable Historical Society and to provide some funding to help with the cost to move. They also offered it to a local resident. Neither offer panned out.

Mr. Munsell notes that he and Mrs. Munsell cross the street an average of 2-4 times a day and would feel much safer as they get older to stay on one side of the roadway. Attorney Freeman adds that this move makes sense from a pragmatic point of view. Not only do they have to cross a busy street multiple times a day, but the carriage house is also impractical as any kind of structure other than storage, and is difficult to renovate. Attorney Freeman shows the Board an image of the proposed house to show that it does include characteristics of the current structure and is in keeping with the area and the architectural and historical era.

Chair Jacob Dewey opens it up to the Board for questions.

Member Herb Bodensiek asks for clarification about what is behind the structure. Mr. Ojala explains that there is a lawn that extends down almost to the wetland. The Commission likes a 50-foot undisturbed buffer, so the Munsells are going to replace the lawn with blueberries and other low-growing shrubs to enhance the buffer. The entire back will be vegetated. Mr. Bodensiek asks why the proposed house couldn't be set back more from the façade of the existing carriage house. Mr. Ojala explains that is because of the 50-foot buffer. They are centered about as tight as can be between the front setback and the wetland buffer.

Mr. Bodensiek feels that the new building completely obliterates any semblance of the original structure, despite retaining and including the original walls of the current structure. Attorney Freeman responds that while the structure is expanded on the east side, once the proposed structure is built and actually 3D, the parts of the carriage house that have been retained will stand out much more than on a 2D rendering. Attorney Freeman passes around an aerial image to help the Board understand the lot. Dan Ojala adds that they are actually going to raise the barn and move it two feet to the east to save as much façade as they can. Mr. Munsell adds that the addition is only 2 feet forward from the existing barn.

Jacob Dewey asks if there is a reason why the entrance isn't off the private way instead of 6A; with the church on one side and Sturgis Library on the other, it's a busy area. Mr. Ojala says it is a circular drive, so one can enter via the side, and if it becomes a problem they can limit the driveway to one side. Their thought was to preserve the curb cut that has historically been there on 6A, and additionally introduce a new entrance on the side.

Jake Dewey asks if any part of the existing structure will be staying. Mr. Munsell responds that they are going to reuse the cupola, the corbels, and some boards from inside the barn. Anything they can repurpose, they will. Unfortunately, the windows in the current structure are not energy compliant and many other parts similarly cannot be used. The walls that will be remaining from the original structure will be where the two faux doors on the new structure are, to maintain the current look.

Jacob Dewey asks if this is a demo/rebuild. Attorney Freeman answers that it's an alteration/addition.

Jacob Dewey opens for public comment. Richard French addresses the Board to say he has known the Munsells since they got here. They've done everything tastefully with the collaboration of neighbors. He thinks this is a wonderful addition. Paul Galvin, a Barnstable resident and longtime family friend, says they've gone above and beyond with planning, and it will be well received.

Jacob Dewey reads the list of letters submitted into the record: letter in support from Counselor Gordon Starr, letter in support from Dan Jensen, letter in support from F. Anigbo, letter in opposition from G. Guill, letter in opposition from Guill, letter in opposition from J. Squibb, letter in opposition from Lindy Coggeshall, letter in opposition from M. Rueter, letter in opposition from Marcia Lay, letter in support from Meghan McLaughlin, letter in opposition from Melora Coggeshall, letter in support from R. Yourell, letter in support from R. French,

letter in support from Rep. Diggs, letter in support from Saint Mary's Church, letter in support from Smith, and letter in support from Temple.

Attorney Freeman says he believes there should be letters in support from Joseph Gonzalez and the Barnstable Village Association. (*Administrative note: The ZBA did not receive a letter in support from a Joseph Gonzalez. The ZBA did receive a letter from the President of the Barnstable Village Association, which was included in the list the Chairman read—Meghan McLaughlin—but that letter did not specify the support of the association; rather it was a personal letter of support.*)

Chair Jacob Dewey closes public comment. The Board deliberates.

Member Todd Walantis thinks the applicants have made effort to make the lot more conforming and to integrate the existing design into the proposed home. He thinks the home would be a wonderful addition to the area. Jacob Dewey thinks it fits in the spirit and intent of the special permit bylaw.

Jim Kupfer, Senior Planner for Town of Barnstable Planning & Development addresses the Board to draw attention to the fact that when the lot was subdivided it was undersized for a buildable lot. That's why in speaking with the applicant, it was recommended that a variance is required. In referencing the special permit, the intent under the article is, "to protect the property rights of owners of preexisting legally created nonconforming lots, uses, and buildings or structures, and to provide regulation of changes and expansion." It was the Planning Department's opinion that this would be more appropriate under the variance category and was not applicable to 240-93 in terms of special permit with that lot size.

Attorney Freeman rebuts that each section within the bylaw stands on its own, and the section they are applying under specifically addresses nonconforming structures that are not single-family or two-family residences, which is what the applicant has. He adds that even in the section about nonconforming lots, it talks about relief being needed if other aspects of the bylaw are not complied with. Section 240-93 B (the section they've applied under) says, "alterations or expansions in a preexisting nonconforming building or structure that do not meet the provisions of subsection A shall be permitted only by special permit." Attorney Freeman notes that it does not say "lot," and subsection A is largely dimensional things and complying with all the current requirements, which they don't because of the side setback. He thinks that very literally, they exactly qualify. They had only applied for the variance out of caution.

The Board asks Jim Kupfer to repeat his recommendation. Mr. Kupfer clarifies that it is and has been an undersized lot. It had a barn on it, not a dwelling of any kind. Put simply, an undersized lot that wants to build a single-family dwelling consistently needs a variance for lot area. Jacob Dewey questions whether it is being considered a developed lot and is going from a preexisting conforming use to a conforming use.

Attorney Freeman notes that Section A of 240-93 (they are applying under Section B of 240-93) says as of right you can alter/expand if "the alteration or expansion conforms in all other respects with all applicable requirements of this chapter." That includes lot size, and means they don't meet any of the requirements of this chapter. He doesn't think one must read the bylaw the way Mr. Kupfer said, and that under Section B the Board is empowered to grant a special permit for a property that doesn't comply with the other aspects of the bylaw.

Dan Ojala mentions that the piece of land that was added on to the original parcel is even older than 1937, and arguably met the zoning standards of the time (he doesn't think there was a minimum lot size at that time). It's a unique situation and might give more weight to the special permit.

The Board discusses whether to proceed with an abundance of caution and require the variance, or to go forward with the special permit. Jim Kupfer states that his opinion and recommendation is not changed by the new information but that ultimately the decision is up to the Board's interpretation of the ordinance.

Denise Johnson, Jake Dewey, Herb Bodensiek, and Todd Walantis support moving forward with a special permit.

Todd Walantis makes a motion to grant a special permit with these findings:

For Special Permit No. 2022-043, David P. Munsell Jr. and Diane M. Munsell have applied for a Special Permit pursuant to Section 240-93 B. Nonconforming buildings or Structures not used as single- or two-family dwellings, Alterations by Special Permit. The Applicant is seeking a Special Permit to reconstruct/enlarge existing structure, a 450 square foot carriage house/barn and 80 square foot shed where 10 feet is proposed and 15 feet is required and to convert the same to a 2,723 square foot single family dwelling and 80 square foot shed. Aside from the existing encroachment into the side yard setback, the proposed dwelling will comply with the other setback requirements. The subject property is located at 3075 and 3077 Main Street, Barnstable, MA.

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-93 B. allows for an expansion/alteration by Special Permit.
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.

Section 240-93 B. requires the Board to make the following finding:

4. The proposed repairs, alterations and/or expansion are not substantially more detrimental to the surrounding neighborhood. If the building or structure houses a nonconforming use, the provisions of § 240-94 shall also apply.

Attorney Freeman suggests adding two findings as numbers 5 and 6:

5. It has been approved by Old King's Highway Historic District Committee.
6. It has been approved by Conservation Commission.

Aaron Webb seconds the motion.

Vote:

Aye: Herbert Bodensiek, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis

Nay: None

Todd Walantis makes conditions from the Staff Report dated August 30, 2022 (the Chairman notes that he has a change for condition 1, to replace "reconstruct/enlarge" with "alter/expand"):

1. Special Permit No. 2022-043 pursuant to Section 240-93 B. Nonconforming Buildings or Structures not used as Single and Two-Family Residences by Special Permit, is granted to David P. and Diane M. Munsell to alter/expand the existing structure, a 450 square foot carriage house/barn and 80 square foot shed where 10 feet is proposed and 15 feet is required and to convert the same to a 2,723 square foot single family dwelling and 80 square foot shed at 3075 Main Street, Barnstable, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Plan of Land of #3075 & #3077 Route 6A Barnstable, MA" by Down Cape Engineering dated October 9, 2019.
3. The above-described development shall represent full build-out of the lot. No further additions or accessory structures shall be permitted without approval from the Board.
4. The 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 the issuance of a building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Vote:

Aye: Herbert Bodensiek, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis

Nay: None

Jake Dewey reads the following variance into record to be withdrawn without prejudice:

In Appeal 2022-044 David P. Munsell Jr. and Diane M. Munsell have petitioned for a Variance from Section 240-11 E. Bulk Regulations in the RF-2 Zoning District. The Petitioners seek a variance from the minimum bulk regulations to allow for the reconstruction/enlargement of the 450 square foot carriage house/barn and 80 square foot shed where 10 feet is proposed and 15 feet is required so they can be redeveloped into a 2,723 square foot Single Family Dwelling and 80 square foot shed. The subject property is located at 3075 and 3077 Main Street, Barnstable, MA as shown on Assessor's Map 279 as Parcels 040 and 041. It is located in the Residence F-2 (RF-2) Zoning District. Continued from August 24, 2022

Attorney Freeman requests to withdraw the application without prejudice. Aaron Webb makes a motion to withdraw. Denise Johnson seconds.

Vote:

Aye: Herbert Bodensiek, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis

Nay: None

7:02 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. Continued from July 13, 2022, July 27. Members assigned Dewey, Bodensiek, Pinard, Hansen, Johnson. Received request to continue to November 9, 2022.

Jake Dewey makes a motion to continue this to November 9, 2022 at 7:02 PM. Denise Johnson seconds.

Vote:

Aye: Herbert Bodensiek, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis

Nay: None

7:03 PM

Appeal No. 2022-034 READVERTISED

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 and Section 240-93 B. Alterations and expansions of a nonconforming structure not used as single or two family residences by Special Permit. 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. Continued from July 27, 2022. Members assigned Dewey, Bodensiek, Pinard, Hansen, Johnson. Received request to continue to November 9, 2022.

Jake Dewey makes a motion to continue this to November 9, 2022 at 7:03 PM. Herb Bodensiek seconds.

Vote:

Aye: Herbert Bodensiek, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis

Nay: None

7:04 PM

Appeal No. 2022-037

MWV Associates LLC

MWV Associates LLC has petitioned for a Variance from Section 240- 24.1.8 C. Dimensional, bulk and other requirements in the HG Hyannis Gateway Zoning District. The Petitioner seeks a variance from the minimum bulk regulations to clarify parcel records and Assessing division lines pursuant to the plan prepared by Down Cape Engineering. The subject property is located at 195 Ridgewood Avenue, Hyannis, MA as shown on Assessor's Map 328 as Parcel 073. It is located in the Hyannis Gateway (HG) Zoning District. Received request to continue to September 28, 2022.

Jake Dewey makes a motion to continue this to September 28, 2022 at 7:04 PM. Aaron Webb seconds.

Vote:

Aye: Herbert Bodensiek, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis

Nay: None

New Business

7:05 PM

Appeal No. 2022-045

MWV Associates LLC

MWV Associates LLC has petitioned for a Variance from Section 240- 24.1.8 C. Dimensional, bulk and other requirements in the HG Hyannis Gateway Zoning District. The Petitioner seeks a variance from the minimum bulk regulations to clarify parcel records and Assessing division lines pursuant to the plan prepared by Down Cape Engineering. The subject property is located at 313 Iyannough Rd, Hyannis, MA as shown on Assessor's Map 328 as Parcel 235. It is located in the Hyannis Gateway (HG) Zoning District. Received request to continue to September 28, 2022.

Jake Dewey makes a motion to continue this to September 28, 2022 at 7:05 PM. Aaron Webb seconds.

Vote:

Aye: Herbert Bodensiek, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis

Nay: None

7:06 PM

Appeal No. 2022-039 READVERTISED

157 Thornton Drive LLC

157 Thornton Drive LLC has applied for a Special Permit pursuant to Section 240-93 B. Expansion of a preexisting nonconforming structure and to Section 240-57 Reduction in Parking. The Applicant seeks to construct an approximately 2,002 square foot storage addition to the southern end of the existing building. The existing structure is nonconforming to numerous dimensional, parking, and screening requirements and the proposed expansion will also be nonconforming to dimensional, parking, and screening requirements. The subject property is located at 157 Thornton Drive, Hyannis, MA as shown on Assessor's Map 296 as Parcel 019. It is located in the Industrial (IND) Zoning District. Received request to continue to October 12, 2022.

Jake Dewey makes a motion to continue this to October 12, 2022 at 7:06 PM. Todd Walantis seconds.

Vote:

Aye: Herbert Bodensiek, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis

Nay: None

7:07 PM

Appeal No. 2022-040 READVERTISED

157 Thornton Drive LLC

157 Thornton Drive LLC has petitioned for a Variance from Section 240-33 E. Rear yard setback, Lot coverage, and Section 240-33 F. Special Screening, Section 240-56 Parking Schedule, and Section 240-57 Reduction of parking. The Applicant seeks to construct an approximately 2,002 square foot storage addition to the southern end of the existing building which will intensify existing nonconforming setback, lot coverage, screening and parking demand. The subject property is located at 157 Thornton Drive, Hyannis, MA as shown on Assessor's

Map 296 as Parcel 019. It is located in the Industrial (IND) Zoning District. Received request to continue to October 12, 2022.

Jake Dewey makes a motion to continue this to October 12, 2022 at 7:07 PM. Todd Walantis seconds.

Vote:

Aye: Herbert Bodensiek, Jake Dewey, Aaron Webb, Denise Johnson, Todd Walantis

Nay: None

Correspondence

The Barnstable Planning Board will hold a public hearing on Monday, September 26, 2022 at 7 PM to take comment on a proposal to amend the Code of the Town of Barnstable, Part I General Ordinances, Chapter 240 Zoning, Article III, Section 240-39 Shopping Center Redevelopment Overlay District.

Matters Not Reasonably Anticipated by the Chair

None.

Upcoming Hearings

September 28, 2022 (Zoom), October 12, and October 26 (Zoom)

Adjournment

Todd Walantis makes a motion to adjourn. Denise Johnson seconds.

Vote:

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

Nay: None

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>