

Zoning Board of Appeals
MINUTES
Wednesday, March 26, 2025
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, March 26, 2025, at the time indicated:

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 live via Xfinity Channel 8 or high definition Channel 1072. It may also be accessed via the Government Access Channel live stream on the Town of Barnstable's website:
<http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>
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/84824907257	US Toll-free: 888 475 4499
Meeting ID: 848 2490 7257	Meeting ID: 848 2490 7257

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

Vice Chair Herb Bodensiek calls the meeting to order at 7:03 p.m. 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	
Pittenger, Natalie	X	
Tavano, Rodney	X (late)	
Webb, Aaron		X

Also present is Jim Kupfer, Director of Planning & Development; Anna Brigham, Principal Planner; Kate Connolly, Assistant Town Attorney; 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

March 12, 2025 – Chair Dewey moves to approve the minutes. Mark Hansen seconds. Paul Pinard says in the first appeal there is no vote recorded on the overall decision. Anna Brigham recommends holding off on taking a vote on the minutes and she will double check for the next meeting. Mark Hansen rescinds his second. Chair Dewey rescinds his motion.

Executive Session

Appeal No. 2023-010 Arista/Wendy's LLC - Executive Session for the purpose of discussing litigation strategy with respect to the case in the Land Court (24 Misc. 00088) by Arista/Wendy's LLC, for property at 715 West Main Street, Hyannis, appealing the denial of a special permit to construct a drive-through window at a Wendy's fast-food restaurant, if the Chair determines that an open session could be detrimental to the Board's and Town's litigation position.

Rodney Tavano joins the meeting at this point.

Chair Dewey moves to convene an executive session. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Larry Hurwitz, Mark Hansen, Rodney Tavano, Natalie Pittenger, Manny Alves
Nay: None

Executive session begins at 7:11 p.m.

The Board returns to open session at 7:46 p.m. Larry Hurwitz leaves the meeting.

Old Business

7:00 PM

Appeal No. 2024-036

Hyannis Series Four, LLC

Hyannis Series Four, LLC has filed an Appeal of an Administrative Official's Decision in accordance with 240-11(A)(1) Principal Permitted Uses in the RB, RD-1, and RF-2 Residential Districts. The Appellant seeks to overturn the Order to Cease, Desist, and Abate dated August 2, 2024. In the Notice of Zoning Ordinance Violation letter, the Chief Local Inspector stated that they observed a violation of Chapter 240-11(A)(1), namely, an apartment created on the second floor of a building used as a lodging house. The property is not owner-occupied and is not eligible under Chapter 240-47.1 Family Apartments or Chapter 240-47.2 Accessory Dwelling Units for a second unit as of right. The subject property is located at 48 Greenwood Ave, Hyannis, MA as shown on Assessor's Map 289 as Parcel 138. It is located in the Residence B (RB) Zoning District. Continued from October 23, 2024.

Chair Dewey says the Board received communication from Building Commissioner Brian Florence and Attorney Alva that the MA bylaw update makes this appeal moot. Chair Dewey moves to withdraw without prejudice. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Rodney Tavano, Natalie Pittenger, Manny Alves
Nay: None

Appeal No. 2024-036 Hyannis Series Four, LLC is withdrawn without prejudice.

New Business

7:01 PM

Appeal No. 2025-005

Cochran

Thomas C. Cochran III and Sarah S.H. Cochran have applied for a Special Permit pursuant to Section 240-91 H (3) Developed Lot Protection; demolition and rebuilding on non-conforming lots. The Applicants are seeking a Special Permit to allow the demolition of the existing dwelling and construction of a proposed dwelling on a nonconforming lot. The proposed dwelling will comply with all setbacks, lot coverage will be less than 20%, floor area ratio will be less than 30%, and the building height will not exceed 30 feet. The subject property is located at 82 Barnard Road, Osterville, MA as shown on Assessor's Map 140 as Parcel 192. It is located in the Residence F-1 (RF-1) Zoning District.

Chair Dewey assigns himself, Paul Pinard, Mark Hansen, Herb Bodensiek, and Manny Alves.

Attorney Michael Schulz is representing the applicant. He says that the proposal is consistent with the neighborhood. The proposal meets all requirements to proceed as of right except that a variance was issued in 1994 to move the lot line between this lot and a neighboring one, rendering it a nonconforming lot and not a legal preexisting nonconforming lot. He walks through the site plan.

Setbacks, lot coverage, FAR, and building height are conforming. They also received a letter of support from a neighbor at 46 Rambler Road.

Back to the Board for questions. Natalie Pittenger viewed the site and thought the left side of the house looked like it was closer to 6 feet from the property line. She asks if the new building is going to be less of a footprint. Attorney Schulz responds that the proposed is a greater footprint but conforms to all setbacks and makes that left side setback better with the removal of the existing garage. Manny Alves asks what makes this lot nonconforming. Attorney Schulz says in 1994 a piece of the lot was conveyed to the lot next door, which reduced the lot below 20,000 sq. ft., thus making it a nonconforming lot with the benefit of a variance, rather than a legal preexisting nonconforming lot. When it was developed in 1970 it was a requisite conforming lot, and then in 1985 when zoning went to one acre, it became a legal preexisting nonconforming lot. The group discusses the history of the property and the nonconformity.

The Chairman drops off the meeting due to tech issues. Acting Chair Herb Bodensiek moves to open public comment. Mark Hansen seconds.

Vote:

Aye: Paul Pinard, Mark Hansen, Herb Bodensiek, Manny Alves, Natalie Pittenger

Nay: None

Abstain: Jake Dewey (tech issues)

Herb Bodensiek says the Board received public comment in support from Bandanza of 46 Rambler Road. Mark Hansen moves to close public comment. Paul Pinard seconds.

Vote:

Aye: Paul Pinard, Mark Hansen, Herb Bodensiek, Manny Alves, Natalie Pittenger

Nay: None

Abstain: Jake Dewey (tech issues)

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

Vote:

Aye: Paul Pinard, Mark Hansen, Herb Bodensiek, Manny Alves, Natalie Pittenger

Nay: None

Abstain: Jake Dewey (tech issues)

Mark Hansen makes findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-91 H. (3) allows for the demolition and rebuilding of a residence on a nonconforming lot.
2. Site Plan Review is not required for single-family residential dwellings.
3. After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.
4. The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building. All proposed setbacks will conform to the Ordinance.
5. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 17.8% which does not exceed the threshold.
6. The floor area ratio shall not exceed 0.30 or 30% the existing floor area ratio of the structure being demolished, whichever is greater. The existing FAR is 13% and the proposed FAR is 23.9%, which does not exceed the threshold.
7. The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 ½ stories. The proposed height for the principal dwelling 21 feet 6 inches.
8. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

Paul Pinard seconds. Chair Dewey rejoins the meeting.

Vote:

Aye: Jake Dewey, Paul Pinard, Mark Hansen, Herb Bodensiek, Manny Alves, Natalie Pittenger

Nay: None

Mark Hansen says the appeal is subject to conditions 1-6 from the Staff Report dated March 11, 2025.

Vote:

Aye: Jake Dewey, Paul Pinard, Mark Hansen, Herb Bodensiek, Manny Alves

Nay: None

Special Permit No. 2025-005 Cochran is granted with conditions.

7:02 PM

Appeal No. 2025-006

Clark

James D. Clark and Christine D. Clark have appealed an Administrative Officials Decision. The Petitioners are appealing the Notice of Zoning Ordinance request for enforcement denial dated January 24, 2025 under M.G.L. Chapter 40A Section 7. The Petitioners submit that the decision of the administrative official dated January 24, 2025 was in error as the structure was erected at 968 Main Street is not a “pole supported by wires/ropes and burlap” but was constructed by 4 x 4 lumber cemented into the earth extending approximately 20 feet into the air directly on the common property line draped with burlap which encroaches at 978 Main Street. The subject property is located at 978 Main Street, Cotuit, MA as shown on Assessor’s Map 034 as Parcel 032. It is located in the Residence F (RF) Zoning District.

Chair Dewey assigns himself, Herb Bodensiek, Mark Hansen, Paul Pinard, and Rod Tavano.

Attorney Michael Schulz is representing the applicants. He shows the Board exhibit 1 from his application packet and explains that they believe the Building Department’s interpretation of 4x4’s cemented into the ground, connected by 2x4’s, extending 20 feet in the air, and draped in burlap, as “poles, minor incidental improvements as protective devices” is inaccurate and inconsistent with the definition of a structure. For background, the properties are perched high above Cotuit Bay and the houses are very close together, with the Clark home 5 feet from the property line. He shares an image of the lot line and explains that there is a row of hydrangeas on the Clark’s side of the lot line. Next to that, there is a 14-inch strip of dirt, and then there’s a stone wall that drops down about 8 feet. The abutters attempted to plant large arborvitae in the 14-inch strip of dirt and cover them with 4x4s and burlap. Attorney Schulz explains that his clients have made multiple attempts to reach out to the property owners to find a solution, but they were never answered. On December 3, Attorney Schulz reached out to the Building Department, and Inspector Kevin O’neil visited the site and decided to halt construction, deeming it a structure. After Kevin O’neil went back to the office, work was allowed to continue on the grounds that it is poles going into the air supported by wires. Section 240-128 defines “structure” as “any production or piece of work, artificially built up or composed of parts and joined together in some definite manner, not including poles, fences and such minor incidental improvements.” He submits to the Board that a pole under Mirriam Webster’s dictionary is a long, usually cylindrical object and references a flagpole. He submits that the objects in question are not poles with wires, but rather 4x4’s cemented into the ground connected by 2x4’s. The balls of the arborvitae are actually on his clients’ property. In addition to being a structure, the plantings also encourage trespassing because the neighbor can’t maintain or build their structure without going on his clients’ property. It’s also a danger given how high the structure is and that it has no building plan or evidence it can withstand the wind load coming from the bay.

Back to the Board for questions. Manny Alves asks what the structure is for. Attorney Schulz says its purpose is to protect the arborvitae from the wind. He met with the landscaper next door and walked through potential options, such as wrapping the trees in burlap rather than encasing them in a structure. The neighbors rejected that option. Chair Dewey asks if it’s temporary or permanent. Attorney Schulz says there’s been no agreement for how long it’s going to be up, but he imagines the owners won’t want to look at it in the summer so will probably take it down and put it back up annually. Chair Dewey reads the definition of tent and wonders about permanent anchors. Mark Hansen thinks it being cemented into the ground makes it similar to a fence and not temporary. The Board wants to hear from the Building Dept. The Board asks for evidence that it’s cemented into the ground. Attorney Schulz says it would require digging down into the ground to get photos of that because it’s now covered in dirt, but they extend 20+ feet high so he doesn’t know how else it could be standing. Paul Pinard asks for the definition of a fence. Attorney Schulz doesn’t think fences are defined under zoning but adds that fences are limited to 6 ft. in height.

Chair Dewey opens for public comment. Christine Clark, the owner/applicant addresses the Board. She says the structure typically goes up in November and comes down in May. It closes off her first and second floor window for 6 months of the year. She has safety concerns about if it were to fall on her house. She thinks it’s excessive screening, with 2 rows of trees plus a wall. She reiterates that she made attempts to contact the neighbor without success.

The Board would like to hear from the Building Department. Chair Dewey leaves public comment open and moves to continue this appeal to April 9, 2025.

Vote:**Aye:** Jake Dewey, Herb Bodensiek, Mark Hansen, Paul Pinard, Rod Tavano**Nay:** None

Anna Brigham will reach out to Building Commissioner Brian Florence about attending.

Appeal No. 2025-006 Clark is continued to April 9, 2025.

Correspondence

- Cape Cod Commission Meeting Agenda for Wychmere Hotel Expansion March 14, 2025, 12:00 pm.
- Cape Cod Commission Continued Hearing Notice for Wychmere Hotel Expansion March 27, 2025 at 3:00 pm.
- Cape Cod Commission Hearing Notice for Captain Berties Way Housing March 31, 2025 at 5:00 pm.
- Cape Cod Commission Proforma Hearing for Captain Berties Housing March 17, 2025 at 10:30 am.
- Cape Cod Commission RPP Meeting Agenda for March 19, 2025 at 1:00 pm.
- Cape Cod Commission Executive Committee Meeting Agenda March 19th, 2025 at 2:00 pm.
- Cape Cod Commission Meeting Agenda for Wychmere Hotel expansion for March 24, 2025 at 10:00 am.

Matters Not Reasonably Anticipated by the Chair

Chair Dewey reminds the Board to check whether their conflict of interest training is due. Genna Ziino believes the state is monitoring this now and will email out reminders, but she will check to make sure that's correct. Chair Dewey thinks some members may need to create accounts with the state system.

Discussion Item

In-ground pools, setbacks

Chair Dewey says the Board is seeing these requests a lot and wants to discuss if special permit provisions should be made to make a path for permitting. Jim Kupfer says the group could have a workshop format discussion about that, but he wants to define the Board's goals first. The 100-foot setback on Route 28 and 132 is to preserve tree canopy and offer a setback from busy corridors. He suggests that staff could come back to the Board with some ideas about accessory structures that might not need to adhere to full setbacks. Chair Dewey thinks the issue isn't exclusive to Route 28 and 132 and that issues are popping up all over town of people wanting pools inside setbacks. He thinks it's up to Town Council to have a robust public process to see if reducing those setbacks is what the public wants. Paul Pinard wants a definition for pools. Jim Kupfer will work with the Building Commissioner and form a subcommittee of members to work on this. Natalie Pittenger, Paul Pinard, and Manny Alves are interested in joining the subcommittee. Mark Hansen suggests investigating what nearby towns are doing for this. Jim Kupfer will start with some research and will reach out to set up a subcommittee meeting.

Manny Alves thinks signs also need to be discussed at a later time.

Upcoming Hearings

April 9, 2025 (in person), April 23, 2025 (remote), May 14, 2025 (in person)

Paul Pinard says he will not be present on April 9.

Adjournment

Chair Dewey moves to adjourn. Mark Hansen seconds.

Vote:**Aye:** Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Rodney Tavano, Natalie Pittenger, Manny Alves**Nay:** None

Meeting adjourned at 8:53 PM.

Documents Used at This Meeting

- March 12, 2025 minutes
- Appeal No. 2024-036 Hyannis Series Four, LLC application packet

- Update from Building Commissioner Brian Florence
- Appeal No. 2025-005 Cochran application packet
- Staff Report dated March 11, 2025 for Appeal No. 2025-005 Cochran
- Appeal No. 2025-006 Clark application packet
- Correspondence: Cape Cod Commission Meeting Agenda for Wychmere Hotel Expansion March 14, 2025, 12:00 p.m.
- Correspondence: Cape Cod Commission Cont. Hearing Notice for Wychmere Hotel Expansion March 27, 2025 at 3:00 p.m.
- Correspondence: Cape Cod Commission Hearing Notice for Captain Berties Way Housing March 31, 2025 at 5:00 p.m.
- Correspondence: Cape Cod Commission Proforma Hearing for Captain Berties Housing March 17, 2025 at 10:30 a.m.
- Correspondence: Cape Cod Commission RPP Meeting Agenda for March 19, 2025 at 1:00 p.m.
- Correspondence: Cape Cod Commission Executive Committee Meeting Agenda March 19, 2025 at 2:00 p.m.
- Correspondence: Cape Cod Commission Meeting Agenda for Wychmere Hotel expansion for March 24, 2025 at 10:00 a.m.

Respectfully submitted,
Genna Ziino, Administrative Assistant

Further detail may be obtained by viewing the video via the Barnstable Government Access Channel on demand at [town.barnstable.ma.us](https://www.town.barnstable.ma.us)