

**Zoning Board of Appeals
MINUTES
Wednesday, June 25, 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, June 25, 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 18 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/84662570467	US Toll-free: 888 475 4499
Meeting ID: 846 6257 0467	Meeting ID: 846 6257 0467

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 Dewey calls the meeting to order at 7:03 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	
Pittenger, Natalie		X
Tavano, Rodney		X
Webb, Aaron	X	

Also present is Anna Brigham, Principal Planner, 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 26, 2025, April 9, 2025, April 23, 2025 – Aaron Webb moves to approve the March 26, April 9, and April 23, 2025 minutes. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Larry Hurwitz, Aaron Webb

Nay: None

Abstain: Manny Alves (was not present at April meetings)

Old Business

7:00 PM

Appeal No. 2024-039

25 Falmouth Rd, LLC

25 Falmouth Road LLC has filed an Appeal of an Administrative Official's Decision in accordance with M.G.L. Chapter 40A Sections 7, 8, and 15 and Section 240-88 of the Barnstable Zoning Ordinance. The Appellant is appealing the Decision of the Building Commissioner in issuing Building Permit BLDC 22-227, dated September 17, 2024. The permit was initially denied pending the receipt of a narrative to explain the expansion of the mechanical bays on the property. The Appellant's position is that the permit fails to take into account evidence and documentation from the town records and files, which conflict with the determination to issue the Building Permit. The subject property is located at 95 Falmouth Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 073. It is located in the Highway Business (HB) and Residence B (RB) Zoning Districts. Continued from November 13, 2024, January 8, 2025, February 12, 2025 and April 9, 2025. No members assigned.

Chair Dewey says the Board received a request from Attorney Ford to continue this to July 23, 2025. Anna Brigham explains that she told Attorney Ford he wasn't required to appear in person because the fault is on the town in this instance—we are waiting on a response from the Legal Department. The Chairman notes for the record that the continuance request has no address or signature. Aaron Webb makes a motion to accept the continuance to July 23, 2025. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Larry Hurwitz, Aaron Webb, Manny Alves

Nay: None

Appeal No. 2024-039 25 Falmouth Rd, LLC is continued to July 23, 2025.

7:01 PM

Appeal No. 2024-040

25 Falmouth Rd, LLC

25 Falmouth Road LLC has filed an Appeal of an Administrative Official's Decision in accordance with M.G.L. Chapter 40A Sections 7, 8, and 15 and Section 240-88 of the Barnstable Zoning Ordinance. The Appellant is appealing the Decision of the Building Commissioner in a letter dated September 4, 2024. The Appellant believes that the determination fails to take into account evidence and documentation from the town records and files, which conflict with the determination and do not address the concerns raised as set forth in the Appellant's enforcement letters and correspondence. The subject property is located at 95 Falmouth Road and 123 Falmouth Road, Hyannis, MA as shown on Assessor's Map 311, Parcels 073 and 078. Lots are located in the Highway Business (HB) and Residence B (RB) Zoning Districts. Continued from November 13, 2024, January 8, 2025, February 12, 2025 and April 9, 2025. No members assigned.

The Board received a request from Attorney Ford to continue this to July 23, 2025. Aaron Webb moves to approve the continuance to July 23, 2025. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Larry Hurwitz, Aaron Webb, Manny Alves

Nay: None

Appeal No. 2024-040 25 Falmouth Rd, LLC is continued to July 23, 2025.

7:02 PM

Appeal No. 2025-014

Millan/The Grove Street Realty Trust

Oscar Millan, as tenant, has applied for a Special Permit pursuant to Section 240-24(C)(1) Conditional Uses in the VB-A Business District and 240-125(C) Special Permit Provisions. The Applicant seeks to open an ice cream shop also selling prepackaged baked goods. The prior tenant was a caviar retail shop. There are 103 parking spaces and 7 are required. The subject property is located at 3821 Falmouth Road, Building 3, Suite A, Marstons Mills, MA as shown on Assessor's Map 057 as Parcel 004. It is located in the Village Business A (VB-A) Zoning District. Continued from June 11, 2025.

Chair Dewey assigns himself, Herb Bodensiek, Paul Pinard, Mark Hansen, and Aaron Webb.

Attorney Robert Mills is representing and is joined by the applicant, Oscar Millan. Attorney Mills explains that the use they're proposing is allowed as a conditional use, provided they obtain a special permit. They've been to Site Plan Review, which was

approved conditioned upon granting of this special permit. They are proposing no seating, all takeout. There will be no cooking on the premises. There will be 2-3 employees. Final Site Plan Review was approved June 5, 2025.

Back to the Board for questions. The group discusses whether there are any similar businesses in the surrounding area.

Chair Dewey opens for public comment. There is none. The Chairman moves to close public comment. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

Nay: None

Chair Dewey moves to close the public hearing. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

Nay: None

Paul Pinard makes findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit.
2. 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. He notes that there is more than adequate parking, and this is currently a shopping area with similar stores nearby.
3. A Site Plan has been reviewed and found approvable with conditions. *Site Plan Review issued an approval letter on May 15, 2025.*

Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

Nay: None

Paul Pinard says the appeal is subject to conditions 1-4 from the Staff Report dated May 29, 2025.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

Nay: None

Appeal No. 2025-014 Millan/The Grove Street Realty Trust is granted with conditions.

New Business

7:03 PM

Appeal No. 2025-015

Kelly

Bruce W. Kelly and Lisa Mycock Kelly have applied for a special permit pursuant to Section 240-91 H (3) Developed Lot Protection; Demolition and Rebuilding on Nonconforming Lots. The Applicants are seeking a special permit to allow the demolition of the existing dwelling and construction of a dwelling on a nonconforming lot. The prior lot was subdivided and as such, a special permit is required where the construction would otherwise be allowed as of right. The subject property is located at 34 Lake Street, Cotuit, MA as shown on Assessor's Map 020 as Parcel 018-001. It is located in the Residence F (RF) Zoning District.

Attorney David Lawler is representing the applicants and explains that an existing variance for the property has a condition that any expansion of the existing structures would require a modification of the variance. He doesn't think this proposal is an expansion of the existing structure because it's a new structure. He thinks the Board could agree with that and as a result not require a modification to the variance, in which case he will withdraw that appeal. Chair Dewey asks about the 1965 variance. Attorney Lawler wasn't aware of a 1965 variance and was referencing the variance from 2000.

Chair Dewey assigns himself, Herb Bodensiek, Paul Pinard, Mark Hansen, and Aaron Webb.

Attorney Lawler shares the site plan and explains that the dwelling is an increase from 542 sq. ft. to 925 sq. ft. The deck is another 545 sq. ft. The proposal meets all setbacks and regulations of the statute. 240-91H C allows for a demo/rebuild provided they meet

the criteria, which they do. He shows a map of the supporting abutters to demonstrate that every abutter wrote in support. The proposal is in keeping with the neighborhood's traditional Cape Cod style.

Back to the Board for questions. Mark Hansen asks for the setbacks. Attorney Lawler says the engineer John Odea is not present but assured that the setbacks meet the requirements. Chair Dewey asks for the gross floor area. Attorney Lawler says counting the deck it's 1500, not counting the deck it's 900, but either way they are still well below the limits.

Chair Dewey opens for public comment. The Chairman says the Board received letters in support from the Thompsons of 57 Lake Street, the Belangers at 81 High Street, the Longs at 7 Lewis Pond Road, the Dottridges of 51 Lake Street, Kevin Lowe of 25 Lewis Pond Road, Nancy Allen of 23 Lake Street, the Andreadis of 31 Lake Street, and Jeff David of 40 Lake Street.

Lisa Mycock Kelly, one of the applicants, addresses the Board to explain that their primary residence is a direct abutter to the parcel. The existing structure they're proposing to demo is down in a hole at the very back of the lot. They're trying to bring the building into the proper placement on the lot. The intention is to rent it and hopefully have one of their children live there in the future.

DJ Long of 7 Lewis Pond Road speaks in support.

Chair Dewey moves to close public comment. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

Nay: None

Chair Dewey asks how the Board feels about the variance application. He asks Attorney Lawler if he wants the Board to approve this and withdraw Variance No. 2025-016. Attorney Lawler confirms—he thinks this is not an expansion of the existing structure so doesn't require a modification of the variance.

Chair Dewey moves to close the public hearing. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

Nay: None

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. *Letters of support received.*
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 11.3%, 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 3.4% and the proposed FAR is 13.4%, 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 proposed dwelling is 18 feet 2 inches.*
8. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

Aaron Webb seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

Nay: None

Mark Hansen says the appeal is subject to conditions 1-6 from the Staff Report dated June 12, 2025.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

Nay: None

Special Permit No. 2025-015 Kelly is granted with conditions.

7:04 PM

Appeal No. 2025-016

Kelly

Bruce W. Kelly and Lisa Mycock Kelly have petitioned for a modification of Variance No. 2000-047. The prior variance includes a provision in Condition No. 3 requiring an amendment of that variance for any expansion or modification of the dwelling. The proposed dwelling will comply with setback requirements. The subject property is located at 34 Lake Street, Cotuit, MA as shown on Assessor's Map 020 as Parcel 018-001. It is located in the Residence F (RF) Zoning District.

Chair Dewey says the applicant requests to withdraw this appeal without prejudice as it's no longer necessary. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Larry Hurwitz, Aaron Webb, Manny Alves

Nay: None

Appeal No. 2025-016 Kelly is withdrawn without prejudice.

7:05 PM

Appeal No. 2025-017

Basta

Karim M. Basta, as Trustee of the Nadine M. Basta Trust, has applied for a special permit pursuant to Section 240-91 F Developed Lot Protection; Merged Lots. The Applicant seeks to transfer the vacant, unbuildable lot at 51 Studley Road, presently merged with 61 Studley Road, to Mr. and Mrs. Karim M. Basta, owners of 7 Houghton Road. With the requested relief, 7 Houghton Road and 51 Studley Road would merge into one lot. 51 Studley Road would remain an unbuildable lot. No additional building lot is proposed and no construction or redevelopment is proposed. The subject property is located at 61 Studley Road, Hyannis, MA as shown on Assessor's Map 306 as Parcel 009. It is located in the Residence B (RB) Zoning District.

Chair Dewey recuses himself and leaves the meeting. Herb Bodensiek becomes Acting Chair and assigns himself, Mark Hansen, Paul Pinard, Aaron Webb, and Manny Alves.

Attorney Michael Gill is representing and is joined by the applicant. The trust is the owner of abutting properties at 61 and 51 Studley Road. They are requesting relief to unmerge 51 Studley from 61 Studley. There is no intent to make the unmerged lot buildable here. It will remain unbuildable and nothing will change on the ground or in the neighborhood. There are 3 parcels affected by this application: 61 Studley, 51 Studley, and 7 Houghton Road directly south. All are owned by the Basta family and have been for more than 30 years. All are nonconforming parcels.

61 Studley Road was purchased in 1976 by the applicant's parents. It was purchased as a vacant lot and was improved in 1977 with a 3-bedroom home. Ownership was transferred to the Nadine Basta Trust. Mr. Basta died in 2022 and Mrs. Basta last November.

51 Studley is a vacant lot improved only with a basketball court and small shed. This lot was not originally part of the Studley Road subdivision. In 1974, an ANR plan created this lot, along with 5 Houghton and 7 Houghton. That 1974 plan that created 51 Studley has a note that says, "This parcel does not constitute a building lot in and by itself." The owners then sold the lot to the Bastas in 1991 and because of common ownership, 51 Studley then merged with 61 Studley.

7 Houghton Road is technically not part of this application because the requested relief is only to unmerge 51 from 61 Studley. 7 Houghton has a 4-bedroom home on it and has been owned by the applicant since 1995. The Bastas have been using 51 Studley as an accessory vacant lot for its basketball court and for parking. So while technically 51 Studley has been merged with 61 Studley for the last 30 years, it's essentially been part of the 7 Houghton property from a practical perspective.

They are requesting relief to unmerge 51 Studley from 61 Studley, which would increase the nonconformity of 61, despite the fact that their proposal would decrease the nonconformity of 7 Houghton. There will be no change to the current use or character of the lot or neighborhood. The family intends to immediately deed 51 to Karim Basta and his wife. This would immediately merge 7 Houghton with 51 Studley, and in doing so would return 7 Houghton to its original configuration and make it consistent with its current use. They are doing this because no one is using 61 since the senior Bastas died, so the family intends to sell that piece.

Attorney Gill says last October the Board granted a special permit for a very similar application: Mannheim Realty.

Back to the Board for questions. Manny Alves asks if there are plans to build on 51. Attorney Gill says no—from a zoning perspective it will merge with 7 Houghton. It's .13 acres, very small.

Aaron Webb asks if they can condition this that 7 Houghton is fully built out and changes would have to come back before the Board. Attorney Gill says the Mannheim condition was that any further reconfiguration would require Board approval, and he's fine with that. Mark Hansen suggests a condition to submit an 81X plan where they register the merged plan so that 51 goes away and they can record it as one lot. Attorney Gill has no objection to that. The Board discusses condition options. Paul Pinard says he thought he read that 51 Studley and 7 Houghton were merged. Attorney Gill says 5 Houghton, 7 Houghton, and 51 Studley were all one property owned by the Caggianos at one point, but they did an ANR to split them in 1974. The Board again discusses whether they want to unmerge without a plan or condition for 51 to merge with 7.

Chair Bodensiek opens for public comment. He says the Board received a letter from Baxter of 69 Studley Road in support.

The group again discusses options for conditioning.

Karim Basta thanks the Board for their public service and says they want to keep the lots in the family.

Chair Bodensiek moves to close public comment. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Mark Hansen, Paul Pinard, Aaron Webb, Manny Alves

Nay: None

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

Vote:

Aye: Herb Bodensiek, Mark Hansen, Paul Pinard, Aaron Webb, Manny Alves

Nay: None

Manny Alves makes findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit: *Section 240-91 F. allows for a Special Permit.*
2. 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. He finds that no new buildable lot is being created and there is public comment in support.
3. The single-family nature of the property and of the accessory nature of the detached structure are preserved.

Aaron Webb seconds.

Vote:

Aye: Herb Bodensiek, Mark Hansen, Paul Pinard, Aaron Webb, Manny Alves

Nay: None

Manny Alves says the appeal is subject to conditions 1-3 from the Staff Report dated June 12, 2025. Aaron Webb seconds.

Vote:

Aye: Herb Bodensiek, Mark Hansen, Paul Pinard, Aaron Webb, Manny Alves

Nay: None

Special Permit No. 2025-017 Basta is granted with conditions.

Chair Dewey returns to the meeting.

Correspondence

- Cape Cod Commission hearing notice for Barlows Landing Monopole being held on Wednesday, June 25, 2025 at 5:00 p.m.

- Cape Cod Commission continued hearing notice for NextGrid Solar Bourne on Thursday, June 26, 2025 at 3:00 p.m.
- Department of Environmental Protection Waterways Regulation Program simplified license application for 226 Holly Point Road
- Cape Cod Commission Regional Policy Plan Subcommittee meeting Wednesday, June 18, 2025 at 9:00 a.m.

Matters Not Reasonably Anticipated by the Chair

Chair Dewey asks whether there's been any update about the path to permitting pools discussion. May need to follow up with Legal.

Upcoming Hearings

July 9, 2025 (in person), July 23, 2025 (remote), August 13, 2025 (in person)

Adjournment

Chair Dewey moves to adjourn. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Larry Hurwitz, Aaron Webb, Manny Alves

Nay: None

Meeting adjourned at 8:31 PM.

Documents Used at this Meeting

- March 26, 2025, April 9, 2025, April 23, 2025 minutes
- Letter from Attorney Mike Ford requesting to continue Appeals No. 2024-039 and -040 25 Falmouth Rd, LLC
- Appeal No. 2025-014 Millan/The Grove Street Realty Trust application materials
- Staff Report dated May 29, 2025 for Appeal No. 2025-014
- Appeal No. 2025-015 Kelly application materials
- Staff Report dated March 11, 2025 for Appeal No. 2025-014
- Appeal No. 2025-017 Basta application materials
- Staff Report dated June 12, 2025 for Appeal No. 2025-017

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