

ZONING BOARD OF APPEALS

MINUTES FOR JULY 28, 2021

Chair Dewey called the live meeting to order. An introduction of members followed with roll call. **POINT OF INFORMATION:** When meeting in person, do not need a roll call vote it was noted. With a show of hands, all members were in attendance. No abstentions’.

NOTICE OF RECORDING:

Chair Dewey noted “Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. No one was taping meeting.

MINUTES

May 26, 2021. Member Pinard moved to accept minutes as presented. Motion was seconded and carried with 6 members present and 2 absent.

OLD BUSINESS

Chair Dewey read the following appeal for the record

Appeal No. 2021-033 Stone Frank Stone has petitioned for a Variance from Section 240-14.E – Bulk Regulations in the Residence F Zoning District. The Petitioner is seeking continued use of a hoop tent used for storage of vehicles located 7.57 feet and 14.31 feet from the side setback where 15 feet is required. The subject property is located at 23 Hamblin’s Hayway, Marstons Mills, MA as shown on Assessor’s Map 030 as Parcel 032. It is located in the Residence F (RF) Zoning District. Continued from June 23, 2021. Members assigned Herbert Bodensiek, David Hirsch, Alex Rodolakis, Jacob Dewey, and Paul Pinard.

Chair Dewey recognized Attorney Alva. Attorney Alva questioned whether all members were present at the last presentation of his appeal. All assigned tonight at this appeal are present. Attorney Alva passed out photos of the house. Attorney Alva also passed out a photo of a home in the neighborhood (which he stated you could almost throw a rock from Mr. Stone’s property) showing their similar hoop tent. Attorney Alva added that he had taken this photo for the Magistrate as well. He did get a copy of the Zoning Ordinance violations of what was requested of Mr. Florence who is here today. It was presented to the Magistrate when we agreed to file with the board today. There were a couple of items that were on there that we took care of. One from a neighbor, Mr. Grenier who said there were people living there. The town required that they have to move out and they are gone. As far as the basement area, it is going to be demolished. It’s all permitted to. The only items left is the one we are here for today which we applied for. We received another letter of support from a neighbor.

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Chair Dewey queried as to whether there were any questions from Attorney Alva. Hearing none **Chair Dewey** then turned to opening Public Comment.

PUBLIC COMMENT

Chair Dewey noted one letter came in from Meghan Mort (splg) which was submitted this afternoon. **Member Pinard** noted that there was no address for Ms. Mort. Attorney Alva asked his client, Mr. Stone, where she lived and he said approximately ¼ mile away on Hamblin. Mark Grenier of 6 Hamblin Hayway. He noted he was at the last hearing. He stands by the original 9 complaints he had at the last meeting and turned into the ZBA board. Mr. Grenier reiterated his comments from the June 23rd meeting. Brian Florence, Building Inspector spoke. Speaking through **Chair Dewey** Mr. Florence began. Mr. Florence had been to the site particularly because of neighbor complaints. There were multiple violations found on the site in 2018. Prior to that Mr. Stone's neighbors complained because he was running machinery all hours of the day for a business. 5 AM in the morning neighbors would wake up to the backup signal on one of the machines. When neighbors complained to him he replied, "I gotta do what I gotta do." Some of the violations included operation of a masonry business on the site without a home occupation registration; that is required in the Town of Barnstable. A legal and quite frankly dangerous apartment was occupied in the basement. It didn't have the proper egress, smoke detection. It was a dangerous situation. Two "Cease and desist" orders were issued. One for zoning and one for the building code. Mr. Stone refused to comply with our order so we were compelled to take him to court. We are still in court now and he still remains defiant. The basement apartment is still there. He has told us he was going to have it demolished.....that an architect will draw it up and have it permitted properly. We permitted the demolition of the apartment. It is not demolished. It's still there. That is not ZBA's issue, it is my issue. It goes to the character of the gentleman we are dealing with. We were scheduled to be before a judge this morning to hear our case against him. It was continued in order for the board to finish their deliberations on this variance issue. Mr. Florence continued...Attorney Alva indicating that the structure can't be seen is not factual. The property owners have made every effort to thwart zoning and comply with our ordinances and our orders. As to the variance request, Attorney Alva said Mr. Stone needs the tent. Needing a tent is not a test required for the issuance of a variance. In his last appearance Attorney Alva has not shown a need for hardship, financial or otherwise based on the shape, topography or soil conditions of the lot. The shape of the lot is square. There are no topography issues. Mr. Florence handed to all members a GIS map of the property showing that it is square. There is no soil condition that would prohibit him from building on the lot. I don't believe he meets the standard of a variance and the issuance of a variance would be a substantial detriment to the public good and would create a decision that would nullify and substantially derogate from the purpose and intent of the ordinance. If you look at hashed area, I put on this document (GIS) that's where he can put this tent. **Member Pinard:** when I looked at the code it did define the tent and defined a temporary structure but the only reference I could see to a tent while this appears to be a tent) and no one has said that this is a permanent business. Mr. Florence: These types of structures are not really they are temporary

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structures. **Chair Dewey:** Was a permit ever pulled to erect this structure. Mr. Florence: No Sir. It's generally for keeping motor homes. **Member Webb** questioned the area in the front of the house and moving the tent there. Mr. Florence noted that the hashed area is to the rear of property. **Chair Dewey:** And to be in full compliance he would have to apply for a building permit. Mr. Florence replied in the affirmative. **Member Walantis** noted he is struggling with this because it is not a permitted structure and he (Mr. Stone) should go through the proper channels. Continuing, **Member Walantis** noted that he felt there was no need to discuss it any further because Mr. Stone has not gone through the proper channels. Mr. Florence jumped in here and noted that this is not a new thing where people have constructed something and then come before board asking permission. There is no reason why you can't hear the case and put in condition they he would have to comply to. **Member Bodensiek:** It appears to be the home occupation issue here which is out of our jurisdiction. Attorney Alva: On the rental, they are evicted. As far as the demolition permit, my client applied for it, yes it's not done. There's no defiance on his part. He's broke. He can't work. He can barely walk some days when I see him. He's had some very serious surgeries. He's had to come up with for this today for my representation. Attorney Alva reiterated what he had stated at the June 23rd meeting. **Member Pinard** asked what the structure was used for at present. Mr. Stone introduced himself for the record. He began by noting he bought this off his neighbor on his right hand side. He had a big boat. I have a 36 ft RV, Class A unit. I had it stored in there. I use it now because I have a camper which is registered. I keep my camper and my trucks in there. Public Comment is closed.

Chair Dewey: Closed Public Comment.

Board Discussion: **Member Pinard** saw no hardship with this appeal. The law is the law and that's what we have to rule on. **Member Hanson** agreed with that. To say it was put up under pretense of having a business that was run that way. There are places to put it and I'm not seeing a hardship myself. **Member Bodenseik:** would say the same thing. The Commissioner deems that it could be moved back where it could be in compliance other than that I don't think this would be the kind of case we should be hearing. **Chair Dewey** turning to Attorney Alva asked what his thoughts were. Do you want to withdraw it; do you want us to vote on it? Attorney Alva replied at this time he would withdraw it. **Member Pinard** moved to withdraw this appeal without prejudice. Member Bodenseik seconded. All in favor.

NEW BUSINESS

Chair Dewey read into the record:

Appeal No. 2021-035 Connolly Gerald F. and Susan K. Connolly have applied for a Special Permit in accordance with Section 240-131.4 D (2) (a) Craigville Beach District Change, expansion, alteration of structures by Special Permit and Section 240-131.4 E Special Permit for dimensional relief. The Applicants seek to lift the dwelling out of the flood plain, pour a new foundation, add an addition and dormers and a balcony, remove screens from porch and realign posts in accordance with plans prepared by architect Irena Sumbera and Down Cape Engineering. The property is located at 28 Laurel Avenue,

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Centerville, MA as shown on Assessors Map 226 as Parcel 078. It is located in the Craigville Beach District Craigville Village (CBDCV) District of Critical Planning Concern (DCPC).

POINT OF INFORMATION: To **Chair Dewey** (who assigned **Member Hanson** to this appeal): **Member Hanson** indicated full disclosure that he is working on a project with Attorney Schultz and if no one has problem with that he (Member Hanson) would be happy to sit in on appeal. **Chair Dewey** asked Attorney Schultz if he had a problem with it and he responded in the negative. **Member Bodenseik** noted he was working with Attorney Schultz's office; not directly with Attorney Schultz.

Chair Dewey recognized Attorney Schultz on behalf of the Connolly's. The Connolly's did receive approval from the Historic Commission on June 15th. and Conservation Commission on June 22nd. A letter was submitted to the Board by Attorney Schultz on July 19th which he would like to make part of the record this evening in which he will refer to as he goes through the presentation. Attorney Schultz described the property and how it will be altered. **Member Hanson** asked if this was the last step (coming before ZBA). Attorney Schultz replied this was the last step.

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Chair Dewey opened up Public Comment.

There are four letters of support submitted to Anna Brigham for the board's review and entered into the record. Seeing no one wanted to speak, public comment is closed by **Chair Dewey**.

DISCUSSION AND DELIBERATION BY BOARD

Member Hanson noted that it is a very difficult area to comply and they (the Connolly's) are making every effort to comply to keep the character and to conform. You sought to have to applaud them for that because it does take a tremendous amount of effort to do it in an extremely difficult area. **Chair Dewey** noted that it was pretty straight forward. **Member Pinard** to make the findings.

FINDINGS

Read into record by **Member Pinard**.

The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-131.4(D)(2) and 240-131.4 (E) allows for expansion of lawfully existing structures with a Special Permit from the Board.

1. 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. The Board acknowledged the four letters of support.
2. The proposed alteration/expansions are not substantially more detrimental to the environment, community and/or historic character of the neighborhood than the existing building or structure. The Board found the project was not detrimental to the neighborhood.
3. Contributes to and respects the character and historic development patterns of the area and minimizes inconsistent redevelopment impacts to the historic and community character resources in this area.
4. Protects and preserves scenic views and vistas and ways to the water. The Board found there was no impact to the views.
5. Protects and improves natural resources, including but not limited to the barrier beach and groundwater and coastal water quality and minimizes development and redevelopment impacts to the natural resources and ecosystems in this district.
6. Protects human life and property from the hazards of periodic flooding.
7. Preserves the natural flood control characteristics and the flood control function of the floodplain. The Board found this project reduces the potential flood impact.
8. The development complies with the setbacks and lot coverage requirements set forth herein, and are in character with surrounding structures, particularly structures that predate it. Relief is being requested for expansion of the structure in accordance with § 240-131.4D.

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9. The redevelopment complies with the height limitations set forth herein.¹
10. The addition is set back at least 50 feet from the top of the coastal bank resource area.
11. Existing natural vegetation within the fifty-foot buffer area to salt marsh and undisturbed buffer areas 50 feet landward of the mean high-water mark of coastal water bodies shall be preserved to the maximum extent feasible.
12. The expansion does not exceed 25% of the gross floor area of structures in existence as of July 1, 1989, or do not exceed 10% of the gross floor area of structures in existence as of November 6, 2009.²
13. The expansion does not increase lot coverage over what is allowed under § 240-131.6, Coverage limitations, or by more than 10% over what was existing on November 6, 2009, whichever is greater.
14. The expansion does not increase flood hazards in the neighborhood.
15. The expansion maintains views to Nantucket Sound / Centerville River: a minimum 20 foot view shed is existing and maintained. The Board found there was no impact to views.

The vote to accept the findings was:

AYE: Jacob Dewey, Herbert Bodensiek, Paul Pinard, Todd Walantis and Mark Hansen

NAY: None

¹ BUILDING HEIGHT: The vertical distance from the grade plane to the highest point of a gable, hip or gambrel roof and the highest point of the coping of a flat roof. These height limitations shall not apply to chimneys cupolas, flagpoles or other similar appurtenances as approved by the Building Commissioner.) (Gable roofs having a slope of 7/12 or greater allowed maximum height; hip and other sloped roofs with a slope of 4/12 or greater are allowed five feet less than the max)

¹ Gross floor area is defined as “the sum of all floor areas within a building or structure, measured from the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features. It shall include all areas capable of being used for human occupancy, including all basement floor areas, mezzanine and attic space and enclosed porches.

CONDITIONS:

The following conditions were read into the record.

Special Permit No. 2021-035 is granted to Gerald F. and Susan K. Connolly to allow the lifting of the dwelling out of the flood plain, to pour a new foundation, to add an addition and dormers and a balcony, to remove screens from porch and realign posts in accordance with plans prepared by architect Irena Sumbera and Down Cape Engineering at 28 Laurel

4/12 or greater are allowed five feet less than the max)

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Avenue, Centerville, MA pursuant to Section 240-131.4 of the Craigville Beach District, District of Critical Planning Concern (DCPC).

1. The proposed alteration shall be constructed in substantial conformance with the site plan entitled "Site Plan of #28 Laurel Avenue Centerville, MA", prepared by Down Cape Engineering, Inc dated June 2, 2021.
2. 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.
3. The Applicant shall comply with decisions and conditions issued by the Board of Health and Conservation Commission.
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 prior to issuance of a building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

The vote was:

AYE: Jacob Dewey, Herbert Bodensiek, Paul Pinard, Todd Walantis and Mark Hansen

NAY: None

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Chair Dewey read the next Appeal.

Appeal No. 2021-036 Carr Leonard and Laurie Carr have applied for a Special Permit in accordance with Section 240-47.1 B. (4) Family Apartments. The Applicants are proposing to construct a detached 2-car garage with a 1-bedroom family apartment above. The proposed garage will comply with all required setbacks. The property is located at 121 Strawberry Hill Road, Centerville, MA as shown on Assessors Map 247 as Parcel 137. It is located in the Residence B (RB) Zoning District.

Chair Dewey recognized Leonard Carr who introduced himself and is representing his appeal. Mr. Carr noted that he would like to build a detached 2 car garage with a bedroom family apartment above. He will not be renting, it is for his children. **Chair Dewey** asked Mr. Carr if he was familiar with various options and replied in the affirmative.

Chair Dewey turned over to the board for discussion. **Member Pinard** noted that Mr. Carr had three structures on the property. Mr. Carr replied, Yes, his home, a small and large shed. Mr. Carr was asked if this would be year round. He noted that his daughter and children spend a lot of time with him and his home only has three rooms. His son comes down a lot as well.” It’ll be a one bedroom apartment.

Chair Dewey opened up for public comment.
Hearing none, Public Comment was closed.

BOARD DELIBERATIONS

Chair Dewey brought discussion back to board. It was noted that this seems to be the trend and request falls within that. Seems reasonable. Mr. Carr noted that he did read the conditions.

Member Walantis read into the record the following findings.

The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-47.1. B. allows a Special Permit for a Family Apartment in a detached structure.

1. Site Plan Review is not required for single-family residential dwellings.
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.
3. The proposed family apartment would not be substantially more detrimental to the neighborhood than the existing dwelling.
4. The single-family nature of the property and of the accessory nature of the detached structure is preserved.

The vote to accept the findings was:

AYE: Jake Dewey, Herbert Bodensiek, Paul Pinard, Todd Walantis, and Aaron Webb

NAY: None

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The following conditions are entered into the record.

Special Permit No. 2021-036 is granted to Leonard A. and Laurie M. Carr for the construction of a 900 square foot detached structure to be used as a Family Apartment above and 2-car garage below at 121 Strawberry Hill Road, Centerville, MA.

1. The site development shall be constructed in substantial conformance with the plan entitled "Certified Plot Plan 121 Strawberry Hill Rd., in Centerville Massachusetts" dated May 26, 2021 by BSC Group.
2. The proposed development shall represent full build-out of the lot. Further development of the lot or construction of additional accessory structures is prohibited without prior approval from the Board.
3. The Applicant must comply with the restrictions in Section 240-47.1 Family Apartments C. Conditions and Procedural Requirements 1-4 of the Ordinance as follows:
 - a. Certificate of occupancy. Prior to occupancy of the family apartment, a certificate of occupancy shall be obtained from the Building Commissioner. No certificate of occupancy shall be issued until the Building Commissioner has made a final inspection of the apartment unit and the single-family dwelling for regulatory compliance and a copy of the family apartment accessory use restriction document recorded at the Barnstable Registry of Deeds is submitted to the Building Division.
 - b. Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that there shall be no rental of the principal dwelling or family apartment unit to any non-family members, shall be signed and submitted to the Building Division.
 - c. At no time shall the single-family dwelling or the family apartment be sublet or subleased by either the owner or family member(s). The single-family dwelling and family apartment shall only be occupied by those persons listed on the recorded affidavit, which affidavit shall be amended when a change in the family member occupying either unit occurs.
 - d. When the family apartment is vacated, or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use as an apartment shall be terminated. All necessary permit(s) must be obtained to remove either the cooking or bathing facilities (tub or shower) from the family apartment, and the water and gas service of the utilities removed, capped and placed behind a finished wall surface; or a building permit must be obtained to incorporate the floor plan of the apartment unit back into the principal structure.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
6. 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.

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The vote was:

AYE: Jake Dewey, Herbert Bodensiek, Paul Pinard, Todd Walantis, and Aaron Webb

NAY: None

MATTERS NOT REASONABLY ANTICIPATED BY THE CHAIR

None

CORRESPONDENCE

None

UPCOMING HEARINGS

August 11, 2021, August 25, 2021, September 8, 2021

PUBLIC ANNOUNCEMENT

Future Meetings will be held via Zoom until further notice.

Respectfully Submitted

Elizabeth B. Silva

Temporary Scribe