

Zoning Board of Appeals
MINUTES
Wednesday, September 28, 2022
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 September 28, 2022, 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 via Channel 18 and may be viewed via the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/>
2. Real-time access to the Zoning Board of Appeals meeting is available utilizing the Zoom link or telephone number and Meeting ID provided below. Public comment can be addressed to the Zoning Board of Appeals by utilizing the Zoom link or telephone number and Meeting ID provided below:

Join Zoom Meeting Option	Telephone Number Option
https://townofbarnstable-us.zoom.us/j/83372256140	888 475 4499 US Toll-free
Meeting ID: 833 7225 6140	Meeting ID: 833 7225 6140

3. 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 Jacob Dewey calls the meeting to order at 7:01 PM and takes roll call:

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	

Notice of Recording

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

No response.

Minutes

None.

Discussion and vote

7:00 PM - Request for Minor Modification Cotuit Residences – Comprehensive Permit No. 2005-100

In 2007, Comprehensive Permit No. 2005-100 was granted for Five (5) units of multi-family housing on 2.38 acres. In a letter dated August 26, 2022, Attorney Patrick Nickerson, representing the Condo Association, requested a minor modification of Comprehensive Permit # 2005-100 so that the responsibility for maintenance of the existing landscaping is transferred from the Town to the Trust, and so that the Trust may make changes and improvements to the landscaping and its aesthetics

By permitting this minor modification to the Comprehensive Permit, the Trust will be empowered to make changes, improvements, and maintenance to the landscaping and aesthetics. The Town will also be relieved of its obligation to maintain the existing landscaping. Received request to continue to October 26, 2022.

Paul Pinard makes a motion to continue this to October 26, 2022. Mark Hansen seconds.

Vote:

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

Nay: None

Request for Minor Modification – Comprehensive Permit No. 2005-100 is continued to October 26, 2022.

Old Business

7:01 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. Continued from August 10, 2022, August 24, 2022, September 14, 2022.

7:02 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. Continued from September 14, 2022

Jacob Dewey reads appeals 2022-037 and 2022-045 into the record. Sitting on this are regular members Herb Bodensiek, Paul Pinard, Mark Hansen, Jake Dewey, and alternate member Aaron Webb.

Attorney Michael Schulz is representing MWV Associates LLC and 63 CIT Avenue LLC. The applicants are seeking a variance from minimum bulk regulations to clarify the lot line between 195 Ridgewood Ave and 313 Iyannough Rd. The properties are a series of small lots with two commercial structures (8,465 square foot structure at 195 Ridgewood Ave and a 3,416 square foot structure at 313 Iyannough Rd). The properties have been developed in their existing state from a 1964 variance (Variance No. 1964-56). In 1964 when they were developed, the B district had no bulk regulations and the RA-1 district had a minimum area of 7,500 ft. With the properties being developed in 1964 and conforming to the bulk regulations at that time, they became protected from subsequent amendments and rendered them nonconforming and remain so protected. The Town of Barnstable has assessed those two properties separately, which has rendered that historic division line at an odd angle. Down Cape Engineering has proposed a lot line that would clarify the old plans and the historic assessing line, which has caused some confusion. The proposed plan would clearly show two almost equal parcels. The plan would comply with all bulk requirements except for the minimum lot area. The petitioners suggest the following findings:

1. Owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;
 - The petitioners would suggest the shape issue does exist due to unclear lot lines from the two early-1900 plans depicting a compilation of small lots, along with the historic Assessing Division lot line. The division line between the B and the RA districts no longer exists. This is a shape issue specific to the land.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner;
 - The lots have been developed since 1964 and protected, but the lot line cannot be clearly conveyed due to the confusion, which if not changed will result in hardship both financial and otherwise.
3. Desirable relief could be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.
 - Clarification of the lot line and the assessing records would be in the public interest and would not be a substantial detriment.

Jacob Dewey opens it up to the Board for questions.

Mark Hansen asks if there are any current purchase and sales or documentation that this outcome would affect. Attorney Schulz says there are, which provides the standing for 63 CIT Avenue LLC.

Jacob Dewey opens for public comment.

None.

Jacob Dewey makes a motion to close public comment. Mark Hansen seconds.

Vote:

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

Nay: None

The Board deliberates. Mark Hansen asks if this would affect the drive thru there. Attorney Schulz answers no, and says there would need to be additional easements to make sure that the passing and repassing for 313 Lyannough Rd would not be impacted. Paul Pinard says when there's ambiguity the Board is obligated to resolve it; he is in support.

Mark Hansen makes findings for Appeal No. 2022-037:

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.

The statutory requirement of MGL Chapter 40A, Section 10 for granting a Variance is a three-prong test. The Board is required to find that each of the following 3 requirements has been met in order to consider granting the variance:

1. Owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;
 - The current shape of the lot, having unclear lot lines, division of small parcels, and non-matching plot plans makes it confusing to disseminate where those lot lines are and they therefore cannot be conveyed.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
 - That confusion does make lot lines unavailable to convey and would pose a hardship.
3. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.
 - Clarification of these lot lines would be in the public interest and the interest of surrounding properties.

Herb Bodensiek seconds.

Vote:

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

Nay: None

Mark Hansen reads that the appeal is subject to conditions 1-3 on the Staff Report dated July 29, 2022. Attorney Schulz finds the conditions acceptable.

Vote:

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

Nay: None

Variance 2022-037 MWV Associates LLC is granted with conditions.

Mark Hansen makes findings for Appeal No. 2022-045:

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 properties are located at 195 Ridgewood Ave and 313 Lyannough Road (Rt 28), Hyannis, MA.

The statutory requirement of MGL Chapter 40A, Section 10 for granting a Variance is a three-prong test. The Board is required to find that each of the following requirements has been met in order to consider granting the variance:

1. Owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;
-The lot lines are unclear and the Board finds an odd division, especially the diagonal lot line.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
-Confusion regarding lot lines makes the property currently unavailable to convey and difficult to assess.
3. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.
-Clarification is in the public interest, the interest of the Assessor's Division, and the interest of the parties who hold the purchase and sale agreement.

Paul Pinard seconds.

Vote:

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

Nay: None

Mark Hansen reads that the appeal is subject to conditions 1-3 on the Staff Report dated August 29, 2022. Attorney Schulz finds the conditions acceptable.

Vote:

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

Nay: None

Variance 2022-045 MWV Associates LLC is granted with conditions.

New Business

7:03 PM

Appeal 2022-046

30 Crosby Circle Realty Trust

Mark A. Crosby and Scott E. Crosby, Trustees of 30 Crosby Circle Realty Trust, have applied for a Special Permit pursuant to Section 240-91 (H)(3) Developed Lot Protection, Nonconforming Lot. The Applicants propose to demolish the existing 3,004 square foot dwelling and construct a new 2,281 dwelling with attached garage in accordance with the plans prepared by Sullivan Engineering and K. Marshall Works on a lot containing less than 10,000 square feet of

upland. The subject property is located at 30 Crosby Circle, Osterville, MA as shown on Assessor's Map 116 Parcel 022. It is located in Residence C (RC) Zoning District.

Sitting on this are regular members Herb Bodensiek, Paul Pinard, Mark Hansen, Jacob Dewey, and alternate member Denise Johnson.

Attorney Michael Schulz is representing the applicants, Mark A. Crosby and Scott E. Crosby, Trustees of 30 Crosby Circle Realty Trust. The property is a single-family home at 30 Crosby Circle in Osterville. It contains 8,144 square feet and was constructed in 1920. The dwelling is consistent with the rest of the neighborhood in terms of size and setback. The applicant has already received approval from the Barnstable Historical Commission and the Barnstable Conservation Commission for a full demolition. As shown on the plan prepared by Sullivan Engineering and Consulting and elevations prepared by K Marshall Works, the applicant is proposing to demolish the existing single-family dwelling and structures on the property and construct a new single-family dwelling. The proposal meets all of the performance criteria for as of right except that it is situated on a lot under 10,000 square feet, which requires relief from the Board. The applicant submits that this appeal fulfills and is within the spirit and intent of the ordinance and satisfies the requirements of the issuance of a special permit.

1. The application falls within a category specifically accepted in the ordinance for a grant of a special permit. Section 240-91H3 of this ordinance does allow for the Board to issue a special permit provided there are the required findings that are set forth in that section.
2. The proposed dwelling complies with 240-H1A. The applicants submit that the plans prepared by Sullivan Engineering and K. Marshall Works evidence that the proposed front yard setback is 20.7 feet, the side yard setbacks are 10.6 feet and 11.1 feet, and the rear setback is 14.2 ft., all of which are compliant.
3. All of the criteria under Section 240-H1B 1, 2, and 3 are met. The lot coverage is 27.7 which is less than the existing 27.8. The floor area ratio is 28% which is less than the maximum 30%. The building height, as defined from the vertical distance grade to the top of the plate is 19 feet, which is less than the maximum 30.
4. The proposed dwelling is not substantially more detrimental to the neighborhood than the existing dwelling.

Attorney Schulz states that the applicants have improved the setbacks and received the approval from the Barnstable Historical Commission and the Conservation Commission, and support from neighbors.

Jacob Dewey opens it up to the Board for questions. There are none.

Jacob Dewey opens for public comment.

The Chairman reads into the record that letters of support were submitted by Debra Foschi, Scott Crosby, Greg Egan, Kelly Curley, and Kristin Pardit, all of whom are residents of Crosby Circle.

Debra Foschi of 22 Crosby Circle addresses the Board. She would like clarification about the proposed building height. Attorney Schulz does not have measurements for the height to the peak because the definition of height under zoning is measured from the grade to the top of the structural plate (the top of the wall that intersects with the roof). From the grade to the top of the plate is 19 feet. Ms. Foschi asks if the proposed grade will change from the current grade. Attorney Schulz answers that the grade will not change. Mark Hansen adds that this particular structure has a low-pitch roof and estimates the structure is about 26 or 27 feet to the peak. Ms. Foschi asks for a comparison in square footage between the existing structure plus garage and the proposed structure plus garage. Attorney Schulz and the Board calculate that the existing structure is 3,004 square ft and the proposed structure is 3,064 square ft.

Jacob Dewey makes a motion to close public comment. Mark Hansen seconds.

Vote:

Aye: Herbert Bodensiek, Paul Pinard, Mark Hansen, Jake Dewey, Denise Johnson

Nay: None

Paul Pinard makes findings:

Mark A. Crosby and Scott E. Crosby, Trustees of 30 Crosby Circle Realty Trust, have applied for a Special Permit pursuant to Section 240-91 (H)(3) Developed Lot Protection, Nonconforming Lot. The Applicants propose to demolish the existing 3,004 square foot dwelling and construct a new 2,281 square foot dwelling with attached garage in accordance with the plans prepared by Sullivan Engineering and K. Marshall Works on a lot containing less than 10,000 square feet of upland. The subject property is located at 30 Crosby Circle, Osterville, MA as shown on Assessor's Map 116 Parcel 022. It is located in Residence C (RC) Zoning District.

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 demolition and rebuilding 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. The existing northerly side yard setback is 11.2 feet, the rear yard setback is 9.9 feet, the southerly side yard setback is 16.1 and the front yard setback is 21.5 feet. The proposed northerly side yard setback is 10.6 feet, the rear yard setback is 14.2 feet, the southerly side yard setback is 11.1 and the front yard setback is 20.7. The required setbacks are 20 feet front; side and rear are 10 feet.
5. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 27.7%, a reduction from the existing lot coverage of 27.8%.
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 proposed FAR is 28%.
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 is 19 feet to plate (30 feet maximum) and is 2 stories.
8. The proposed dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

Mark Hansen seconds.

Vote:

Aye: Herbert Bodensiek, Paul Pinard, Mark Hansen, Jake Dewey, Denise Johnson

Nay: None

Paul Pinard reads that the appeal is subject to conditions 1-6 on the the Staff Report dated September 8, 2022. Attorney Schulz finds the conditions acceptable.

Vote:

Aye: Herbert Bodensiek, Paul Pinard, Mark Hansen, Jake Dewey, Denise Johnson

Nay: None

Special Permit 2022-046 30 Crosby Circle Realty Trust is granted with conditions.

7:04 PM

Appeal 2022-047

Star Market

TRT Hyannis LLC/Star Market Company, Inc has filed an appeal of an Administrative Official's Decision in accordance with Section 240-125B(1)(a). The Building Commissioner issued a Cease & Desist Order on August 1, 2022. The violation states the refrigeration trailer parked at a loading dock on the side of the building has been used over an extended period of time to provide additional storage for the operation of the store, which is an expansion of use and as such it must be presented to Site Plan Review for approval pursuant to Section 240-100C. The subject property is located at 625 West Main Street, Hyannis, MA as shown on Assessors Map 248 as Parcel 076. It is located in the Highway Business (HB) Zoning District.

Sitting on this will be regular members Herbert Bodensiek, Paul Pinard, Mark Hansen, Jacob Dewey. Alternate member Aaron Webb requests that Denise Johnson sit on this instead of him, as he owns a business across the street from the applicant. Jacob Dewey discloses that he is an abutter.

Attorney Andrea McCarthy is representing the applicant. Joining her are Joe Ferrera, District Manager of Star Market and Alex Paul, Store Manager. Pursuant to Massachusetts General Law chapter 40A section 15 they notice the appeal of the decision of the Building Commissioner, which was dated August 1, 2022. This property is owned by TRT Hyannis LLC. It was leased to Stop and Shop Supermarket who entered into a sub-lease with the current tenant, Star Market Company. The sub-lease was dated July 5, 1996, and Star Market has been in this location since then. It's a 4.75 acre parcel and was constructed in 1965 as a supermarket and contains 35,481 square feet.

Attorney McCarthy provides background on the situation: The Building Commissioner made an on-site visit and indicated to the store manager that they had received a noise complaint. There is no noise regulation that can be relied on in Barnstable. It was then determined that the store was violating expansion of use because of the refrigerated trailer that was parked at the loading dock. Star Market has used the trailer as long as they've been in this location, and they use one at every store. At its inception, Star Market obtained all required permits and the use has remained the same since. Star Market has never received a complaint until this one. The trailer is not a permanent structure, and they have now moved the trailer to the other side of the store to accommodate and prevent noise. It is the applicant's position that the use of a refrigeration trailer at a loading dock does not fall within Chapter 240 Section 100C. This use does not necessitate the provision of additional off-street parking, additional lot area, or any other site alterations. There has been no alteration or expansion of the building or structure. There is nothing in the zoning bylaw that prevents the use of a trailer on the property, and there has been no change to require a special permit. Attorney McCarthy believes that the decision is in response to the noise complaint, therefore the applicant requests that the Board overturn and annul the decision of the Building Commissioner.

Jacob Dewey opens it up to the Board for questions.

Denise Johnson asks the attorney to clarify if this is standard practice for Star Markets. Attorney McCarthy answers yes. She says a trailer is necessary in case power is lost so stock wouldn't be destroyed.

Mark Hansen estimates that this trailer sits within 100 feet of a housing complex and expresses concern over the noise issue. Jacob Dewey tells the Board that they are charged with upholding or overturning the Building Commissioner's decision, not with deciding whether the trailer is a detriment to the neighborhood or other considerations of that nature. **He turns the floor over to Building Commissioner Brian Florence.**

The Building Commissioner begins by clarifying that even if the Building Department's initial response was to a noise complaint, which it partially was, a direct observation of a violation is probable cause for them to bring additional charges against the property. He then provides background for the situation: On July 7, 2022, the Building Division received a complaint concerning this property. The complaint originated from an occupant of the Cape Winds Resort that a freestanding refrigeration trailer was parked at the loading dock and was running loudly through the night. After multiple site visits and discussions with store managers, it was clear that the trailer was being used for the season to expand the store's freezer capacity to meet the demands of the store. The trailer's refrigeration unit runs constantly, cycling on and off to maintain the interior temperature of the trailer. The inspector also spoke with staff at Cape Winds, and found that multiple guests had requested to change rooms to be on the other side of the building to get relief from the noise. On August 1, the violation was issued for the expansion of the business by operating the refrigerated trailer to supplement Star Market's storage needs under section 240 100 C, requiring Site Plan Review for further regulatory review of the expansion. When the Commissioner saw that the applicant had filed an appeal with the Zoning Board of Appeals, he called and explained to Attorney McCarthy that Site Plan Review is not burdensome and is required of all business owners who want to expand their business. Attorney McCarthy understood but indicated that Star Market wished to use this tactic in order to avoid getting a site survey. The Commissioner adds that Site Plan Review is an opportunity for staff to get a look at a proposal and ensure it's not a detriment to the neighborhood. In this case, one issue the purpose and intent of the zoning ordinance brings forth is the idea of noise, congestion, dust, and other things that make a neighborhood uncomfortable to live in. While Star Market may use a trailer as a supplement during the season, it doesn't mean that every grocery store uses one, so he determined it's not customary and incidental and further review is required. The Commissioner adds that this is not a dimensional or use matter, so he is not even sure the Board can give the applicants the relief they're requesting.

Jacob Dewey opens it up to the Board for questions.

Herb Bodensiek asks Attorney McCarthy if their other stores have had similar problems. She answers that they have not. She adds that the trailer has been used at this location for approximately 26 years and it is customary. Herb Bodensiek feels that the problem ultimately is about noise. He is also unsure because he feels that many businesses in the area have trailers, and the trailer in question is technically temporary. Commissioner Florence reiterates that this violation has nothing to do with noise, and it doesn't matter if the trailer is temporary.

Paul Pinard asks Attorney McCarthy to address the issue of expansion of use. She responds that the Commissioner admitted that this complaint was initiated by noise and she believes he is using the expansion of use as a stepping stone. She believes that this does not fall under Chapter 240 Section 100 C, and is instead a noise violation. Chair Dewey explains that while the reason the Building Department originally came out to the property was because of a noise violation, that is not what the Commissioner is violating the applicant on. In referencing section 100 C, Jacob Dewey confirms that the trailer is taking up lot area. Jake Dewey and Paul Pinard draw the comparison that the Board considers a shed an expansion of structure. Denise Johnson expresses concern about whether having a refrigerated trailer is common industry practice and whether this could set precedent. The Commissioner says that the Building Department is a complaint-based organization without policing capabilities. This is not going to set precedent or affect Star Market's operations.

Jake Dewey opens for public comment.

Member Aaron Webb speaks as a member of the public and as an abutter. He believes it needs to be discussed that losing the trailer will affect Star Market's ability to do business. Site Plan Review is not necessarily a simple process.

Robert Whirlow addresses the Board as an owner at Cape Winds Resort. He made the original noise complaint. He says management of the resort was not notified of this meeting. (*Administrative note: notices were mailed to all certified abutters, including Cape Winds Resort, on September 13, 2022.*) He wants to clarify a few things he claims were erroneously presented. First, he claims the applicant did not move the trailer but instead added an additional trailer. There is an above 50 decibel droning of the trailer. He also feels the applicant is presenting conflicting information—the trailer can't be both temporary and here since the store's inception. He feels that just because other stores do it, doesn't mean the rules shouldn't be enforced. He disputes the applicant's claim that there have been no complaints before, because management at Cape Winds Resort said they have reported complaints before.

Jake Dewey makes a motion to close public comment. Mark Hansen seconds.

Vote:

Aye: Herbert Bodensiek, Paul Pinard, Mark Hansen, Jake Dewey, Denise Johnson

Nay: None

The Board deliberates. Mark Hansen asks the attorney to clarify whether or not a trailer has been there since Star Market began leasing the location. Attorney McCarthy says yes. Regarding Mr. Whirlow's accusation, she clarifies that the trailer that's the subject of this violation has been moved, and the second trailer in its place is not running. Jake Dewey asks who owns the trailer and if it is plugged into the building or running on a generator. The applicant says it's running on a diesel condenser, and there is a fuel tank in the trailer. CJ and J, a trucking firm Star Market uses, owns the trailer. It's registered and insured to go on the road. This specific trailer has been in place since May. They usually remove the trailer after Thanksgiving. That's the intent this year.

Jake Dewey says it doesn't matter whether the trailer is temporary or not—there is no clause for that in the ordinances. It is an expansion of business. It is allowing them to be a bigger business. Paul Pinard agrees. Denise Johnson questions whether this trailer is fundamental to their business. Jake Dewey says if the trailer has become necessary for their business, then they need to follow proper protocol for expanding their business—this is not the proper way. It needs to go before Site Plan Review.

Mark Hansen and Denise Johnson agree that it is an expansion of use. Herb Bodensiek hesitates to agree because it's temporary and an accepted practice, but says he technically has to agree that it is an expansion of use.

Jake Dewey makes findings:

The Board affirms the Building Commissioner's finding that the use of the refrigeration unit operating to regulate the trailer temperature to provide additional storage for the operation of the store is an expansion of use and therefore is in violation of Chapter 240-Section 100 C of the Ordinance. He adds that the Board determined that it is expanding the applicant's ability to increase their business and is an expansion of use. Paul Pinard seconds.

Vote:

Aye: Paul Pinard, Mark Hansen, Jake Dewey, Denise Johnson

Nay: Herb Bodensiek

The Building Commissioner's finding for Appeal 2022-047 Star Market is upheld.

7:05 PM

Appeal 2022-048

Pigott

William T. Pigott and Prudence A. Pigott have applied for a Special Permit pursuant to Section 240-91.H(3) – Developed Lot Protection, Nonconforming Lot. The Applicants are seeking to demolish an existing 4,132 square foot single-family dwelling and construct a 3,321 square foot single-family dwelling on a lot containing less than 10,000 square feet of upland in accordance with plans prepared by James Phillip Golden Architect and Down Cape Engineering. The property is located at 95 Sunset Lane, Barnstable, MA as shown on Assessor's Map 301 as Parcel 027. It is located in the Residence B (RB) Zoning District.

Sitting on this will be regular members Paul Pinard, Mark Hansen, Jake Dewey, and Herb Bodensiek, and alternate member Aaron Webb.

Attorney Michael Schulz is representing the applicants, William and Prudence Pigott, the owners. He informs the Board that since the application, there was a deed recorded vesting title solely in Prudence Pigott. The property is comprised of 8,396 square feet in an aquifer protection district. The single-family dwelling on the property was constructed in 1977. The dwelling is consistent with the rest of the neighborhood in terms of size and setback. The applicant received approval from Old Kings Highway Historic District and the Barnstable Conservation Commission. The property is served via town sewer. As shown on the site plan prepared by Down Cape Engineering and elevations prepared by James Phillip Golden Architect, the applicant is proposing to demolish the existing house and build a new one. The proposal meets all the criteria set forth in Chapter 240 Section 91H1 for the issuance of a building permit except that it's situated on a lot containing less than 10,000 square feet. He suggests the Board could find:

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 demolition and rebuilding on a nonconforming lot.
2. The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building. The existing front yard setback is 19.1 feet, side yard setback is 10.6 feet, rear yard setback to the water is 33.1 feet. The proposed front yard setback is 20.1 feet, side yard setback is 10.6 feet, rear yard setback to the water is 33.1 feet. The required setbacks are 20 feet front, side and rear are 10 feet.
3. All of the criteria in Section 240-91 H1 B1-3 are met with the materials included in the filing, the lot coverage is 19.9%, a reduction from the existing lot coverage of 20.7%. The proposed FAR is 39.5%, a reduction from the existing FAR of 43%. The proposed height is approx. 28 feet 6 inches to plate (30 feet maximum).
4. The proposed dwelling would not be substantially more detrimental to the neighborhood.

Jake Dewey asks for the height to the peak. Jimmy Bowes from Bayside Building and Attorney Schulz explain that they are conforming as far as height per zoning definition, but they weren't prepared with the exact number for the height to the peak. They know that height exceeds 30 feet (the existing house exceeds that too). Paul Pinard asks if the special permit if approved would affect the easement to the beach. Attorney Schulz and Jimmy Bowes answer that it absolutely would not affect the easement. They will be matching the exact footprint that exists now, except

that the house will be one foot shorter from the street to make it conforming. The only thing added, as a result of code, will be a basement with a bulkhead as a second means of egress.

Jake Dewey opens for public comment.

Attorney Paul Revere addresses the Board representing Joseph and Edith Dugas. Attorney Revere's first issue is his belief that the lot size is improperly calculated. He is concerned about deeds and whether the property is actually owned by Mrs. Pigott. The second issue is that he believes Mr. Ojala included the wetlands in his lot area but should not have. He believes the ZBA should not act until the lot size is properly calculated.

Attorney Revere's clients have additional concerns with the size of the house, the size of the lot, the air conditioner, the detriment to the neighborhood of putting a structure with more area above grade that's 600 square feet larger with 5 bedrooms, and the applicant's history with finished basements (he mentions a case, Costa 2021-69, where Prudence Pigott sold a house where she had previously maxed out the area above grade and agreed not to finish the basement, but then went on to finish the basement anyway and sell the property, and the next owners had to remove the finished basement). He believes these are significant questions that need attention, and the special permit should be denied or at least continued.

Attorney Schulz responds that Attorney Revere is not competent to speak on any lot size or lot areas. Dan Ojala, an engineer and land surveyor, has calculated the lot down to the inch, and it is correctly defined under zoning. Regarding living space above grade, the floor area ratio accounts for that. Attorney Schulz states that details about any prior house are irrelevant. The Board's decision tonight would be according to the plans submitted, with the basement unfinished. Mr. Bowes believes that Attorney Revere is referencing old, outdated information.

Jake Dewey asks the applicants to comment on the issue of ownership of the parcels. Mr. Bowes explains that Mr. and Mrs. Pigott finalized their divorce so they had to change the names on the parcels to Mrs. Pigott. She owns the entire lot, and he can provide paperwork confirming that fact.

Jake Dewey adds for the record that a letter from Densiesky in opposition was received.

Attorney Revere believes he has been misunderstood regarding the lots and deeds. There are two lots: the main 6,000 square foot lot and a beach lot. The deed dated 9/9/2022 for Prudence Pigott only refers to lot 225 on Land Court Plan 17993M, which is the 6,000 square foot upland portion. She did previously own with her husband the beach lot, but the deed Attorney Schulz provided only includes the 6,000 square foot lot. He suggests the Board address it either by a continuance or a condition. Mr. Bowes doesn't believe that is true but if so, they will remedy it.

Jake Dewey makes a motion to close public comment. Herb Bodensiek seconds.

Vote:

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

Nay: None

The Board deliberates. Paul Pinard believes including the beach lot is irrelevant because it's not going to be built upon and is protected by conservation. Mark Hansen, Aaron Webb, and Herb Bodensiek agree and see no issues that would prevent the Board from granting the special permit.

Aaron Webb 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 demolition and rebuilding 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. The existing front yard setback is 19.1 ft, side yard setback is 10.6 ft, rear yard setback to the water is 33.1 ft. The

proposed front yard setback is 20.1 ft, side yard setback is 10.6 ft, rear yard setback to the water is 33.1 ft. The required setbacks are 20 feet front, side and rear are 10 feet.

5. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 19.9%, a reduction from the existing lot coverage of 20.7%.
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 proposed FAR is 39.5%, a reduction from the existing FAR of 43%.
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 is approx. 28 feet 6 inches to plate (30 feet maximum) and is 2 stories.
8. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

Mark Hansen seconds.

Vote

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

Nay: None

Mark Hansen requests that the Board add a condition about clarifying the ownership of the parcels on the deed. Attorney Revere adds at this point that he has since found the corrected deed, so no longer believes the deed needs to be remedied. Aaron Webb reads that the appeal is subject to conditions 1-6 on the the Staff Report dated September 8, 2022. Attorney Schulz finds the conditions acceptable.

Vote

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

Nay: None

Special Permit 2022-048 Pigott is granted with conditions.

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

October 12, 2022 (in person) (Herb Bodensiek alerts the Board that he will not be able to attend.), October 26, 2022, November 9, 2022, December 7, 2022 (Nov. and Dec. via Zoom)

Adjournment

Paul Pinard makes a motion to adjourn. Mark Hansen seconds.

Vote

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

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>