

**Zoning Board of Appeals  
MINUTES  
Wednesday, January 11, 2023  
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 January 11, 2023, 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
<a href="https://townofbarnstable-us.zoom.us/j/81915315738">https://townofbarnstable-us.zoom.us/j/81915315738</a>	US Toll-free 888 475 4499
Meeting ID: 819 1531 5738	Meeting ID: 819 1531 5738

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](mailto: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](mailto:anna.brigham@town.barnstable.ma.us).

**Call to Order**

Chair Jacob Dewey calls the meeting to order and takes roll call:

Member	Present	Absent
Dewey, Jacob – Chair	X	
Bodensiek, Herbert – Vice Chair	X	
Pinard, Paul – Clerk		X
Hansen, Mark	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.

**Minutes**

March 9, 2022; April 13, 2022; April 27, 2022; May 11, 2022; May 25, 2022; June 8, 2022; June 22, 2022; July 13, 2022; and December 7, 2022. Mark Hansen makes a motion to approve all minutes. Aaron Webb seconds.

**Vote:**

**Aye:** Jake Dewey, Herb Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson

**Nay:** None

**Old Business**

**7:00 PM**

**Appeal No. 2022-029**

**Leveroni**

Maureen Leveroni has applied for a Special Permit pursuant to Section 240.91 (H)(3) Nonconforming Lot and requests a finding under M.G.L. Chapter 40A Section 6 regarding compliance with floor area ratio. The Applicant proposes to demolish two existing single story structures and replace the structures with one, \*two story structure on the same or smaller footprint. The subject property is located at 14 Beale Way, Barnstable, MA as shown on Assessor's Map 279 Parcel 014. It is located in Residence F-1 (RF-1) Zoning District. Continued from June 8, 2022, and July 13, 2022, August 24, 2022, October 12, 2022, December 7, 2022.

*\*Revised to 1 story*

Sitting on this will be all members present: Jake Dewey, Herb Bodensiek, Mark Hansen, Aaron Webb, and Denise Johnson.

Attorney Paul Tardif is representing the applicant. He notes for the record that the plan has been revised to two single-story structures. When he was last before the Board, he had been in the process of finalizing their building coverage. It has since been confirmed at 20.6%. The plan is to replace the existing structures with two single-story structures. The setbacks will all get slightly better. The floor area ratio is well under 30% at 22.9%. The height for both structures will be no higher than 13 feet, which is the height of the current structures. He addresses that neighbors were concerned about access down Beale Way during construction, and he assures the Board that the applicant has the neighbors and their concerns at the front of her mind and will do everything she can to keep the street open and safe and finish the outside construction by summer.

Attorney Tardif adds that Attorney Ford, who is representing some neighbors, requested some changes to the conditions in the Staff Report, and those changes are acceptable.

**Chair Dewey opens it up to the Board for questions.** Herb Bodensiek asks why they changed from two stories to one story. Attorney Tardif responds that they changed it as a result of working with the neighbors to make sure it's satisfactory to all.

**Chair Dewey opens for public comment.** Attorney Michael Ford addresses the Board representing the Kaess family, who are immediate abutters. He has worked with Attorney Tardif to find a compromise and his clients have no problem with the project as it is now, with the most recent changes to the conditions.

Councilor Gordon Starr speaks in support.

Chair Dewey reads that the Board received three letters: one from the Barnstable Yacht Club, one from Joel and Bernice Renninger, and one from John Field. They were not opposed but were concerned about ensuring access to Beale Way during construction. Chair Dewey makes a motion to close public comment. Aaron Webb seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

**The Board deliberates.** Aaron Webb asks if the main issue from the public comment letters has been addressed—neighbors were requesting a defined logistics plan. Attorney Tardif explains that his client is sympathetic to the issues but believes the project won't take that long and a full-fledged plan is not necessary. Mark Hansen interprets the Yacht Club not attending the meeting to speak in opposition as confirmation that their concerns have been assuaged.

**Chair Dewey makes findings for Appeal No. 2022-029:**

Maureen Leveroni has applied for a Special Permit pursuant to Section 240.91 (H)(3) Nonconforming Lot and requests a finding under M.G.L. Chapter 40A Section 6 regarding compliance with floor area ratio. The Applicant proposes to demolish two existing single-story structures and replace the structures with one single-story structure on the same or smaller footprint. The subject property is located at 14 Beale Way, Barnstable, MA as shown on Assessor's Map 279 Parcel 014. It is located in Residence F-1 (RF-1) 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 the complete 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. The proposed side yard setbacks are greater than the existing setbacks.

5. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The existing lot coverage is 20.6% and proposed lot coverage is 21.3%.
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 20.6% and the proposed FAR is 20.5%.
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 8 feet 6 inches to the top of the plate (13 feet to the peak) and the proposed dwelling is 1 story.
8. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.
9. The application meets Floor Area Ratio.

Herb Bodensiek seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

Chair Dewey reads that the appeal is subject to the following conditions:

1. Special Permit No. 2022-029 is granted to Maureen Leveroni, pursuant to Section 240.91 (H)(3) Nonconforming Lot and requests a finding under M.G.L. Chapter 40A Section 6 regarding compliance with floor area ratio, to demolish two existing single story structures and replace the structures with one, one story structure on the same or smaller footprint at 14 Beale Way, Barnstable, MA.
2. The site development shall be constructed in conformance with the plan entitled “Certified Plot Plan” by Samiotes Consultants, Inc. dated December 19, 2022 and the plans entitled “Leveroni Residence 14 Beale Way, Barnstable, Ma” Sheet A101 by Sandbox Design, Studio, LLC, with a last revision date of December 16, 2022. There shall be no more than two (2) bedrooms as shown on the floor plan.
3. The total lot coverage of all structures on the lot shall not exceed 21.3% (which includes the bulkhead), and the floor-area ratio shall not exceed 20.5%.
4. The proposed redevelopment shall represent full build-out of the lot. Further any alteration, expansion or increase in the number of bedrooms of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board, after a public hearing prior written notice of which has been provided to abutters.
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/Land Court and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of the building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

**Special Permit No. 2022-029 Leveroni is granted with conditions.**

**New Business**

**7:01 PM**

**Appeal No. 2022-053**

**Riley**

Heather L. Riley and Charles E. Riley, Trustees have petitioned for a Variance pursuant to Section 240-7 G. (2) – Setbacks from Wetlands/Great Ponds. The Petitioners propose to construct an elevated 12 foot by 12 foot deck with a 4 foot entrance located 27 feet from a Great Pond where 50 feet is required. The subject property is addressed as 36 Holly Point Road, Centerville, MA as shown on Assessor’s Map 233 as parcel 039. The lot is located in the Residential D-1 (RD-1) Zoning District.

**Appeal No. 2022-053 Riley will be readvertised for January 25, 2023.**

**7:02 PM**

**Appeal No. 2022-054**

**Vilsaint**

Kevin Y. Vilsaint and Corrie L. Vilsaint have applied for a Special Permit pursuant to 240-47.1.B. (4) Family Apartments. The Applicants are seeking to demolish an existing 1,384 square foot accessory structure and construct a new 1,384 square foot detached family apartment. The subject property is addressed as 358 Flint Street, Marstons Mills, MA as shown on Assessor’s Map 101 as Parcel 121. It is located in the Residential F (RF) Zoning District.

The Board received a request to continue this to February 8. Mark Hansen makes a motion to continue to February 8, 2023 at 7:00 p.m. Aaron Webb seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

Appeal No. 2022-054 Vilsaint is continued to February 8, 2023 at 7:00 p.m.

**7:03 PM**

**Appeal No. 2022-056**

**Villani**

Paul Mazzola, G.C.I. Builders, on behalf of the owner Richard A. Villani, has petitioned for a Variance from Section 240-11 E. Bulk Regulations in the RB Zoning District. The Petitioner seeks a variance from the minimum bulk regulations to allow for the newly poured garage foundation to encroach into the rear setback with foundation setbacks existing at 6.2 and 6.4 feet, where 10 feet is required. The subject property is located at 109 Wagon Lane, Hyannis, MA as shown on Assessor's Map 270 as Parcel 198. It is located in the Residence B (RB) Zoning District.

Sitting on this will be all members present: Jake Dewey, Herb Bodensiek, Mark Hansen, Aaron Webb, and Denise Johnson.

Paul Mazzola addresses the Board representing Richard Villani. He provides background: they are looking for relief for a foundation that has been poured for an unheated garage. Confusion arose due to differing plot plans over the last two years as the project developed. He says most of the homes in the neighborhood encroach onto setbacks in one way or another.

**Chair Dewey opens it up to the Board for questions.** The Chairman asks when the foundation was poured. Mr. Mazzola says about a month ago. When he brought out an engineer for an as-built, it was discovered that they were encroaching into the setback. The Chairman wants to clarify the sequence of events. Mr. Mazzola explains that there was a gap in time between creating the original sketch with a 20-foot garage and creating the blueprint—somewhere along the way, a building plan with a 24-foot garage was mistakenly stamped and submitted along with the plan for the 20-foot garage. Mr. Mazzola missed the mistake, and the Building Department missed the mistake and issued a building permit. After that, he poured the foundation.

Mark Hansen asks for clarification whether the shed in the plot plan is on town land. Mr. Mazzola answers that it's an easement the town took within the last 20 years, but yes, the shed is on town land. He says there isn't one house on the street that hasn't been using the easement since the houses were built. Mark Hansen asks how much the garage would need to be reduced to meet the setback. Mr. Mazzola says 4 feet. Herb Bodensiek asks why they didn't line up the back of the garage with the back of the house. Mr. Mazzola says that was because of the roof pitch and the water flow—if he didn't do a jog, there would be problems with ice and water on the roof. Jake Dewey asks when the addition was put in, because it's encroaching as well. Mr. Mazzola believes it was built anywhere from 8-15 years ago and was built up from an existing structure, a porch.

**Chair Dewey opens for public comment.** Councilor Kris Clark asks if staff has any more information on how the addition was permitted apparently in violation. Anna Brigham explains that it was not part of the application so the applicant did not include details about the addition. Mark Hansen and Mr. Mazzola again discuss what was submitted and how the mistake was made.

Chair Dewey says if the Board is going to move forward with this, he suggests a condition about moving the shed onto the applicant's property. Herb Bodensiek says he drove by the property and noted two fences, possibly both on town land. Denise Johnson is not sure the Board should be allowing encroachment just because all the neighbors are doing it. Jake Dewey makes a motion to close public comment. Herb Bodensiek seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

Aaron Webb sees a path to allowing this. He sees no problem with number 2 or 3 of the 3-prong test, but is still unsure about number 1. Chair Dewey is concerned that that the town hasn't had adequate representation for this land. Councilor Clark thinks perhaps this needs to go through a town attorney. They discuss that the shed is a separate issue from this variance for the garage.

Chair Dewey discusses whether the roof makes this a unique structure and needs to be set back. He asks what the cost would be to cut the foundation. Mr. Mazzola says at least \$3,000. Herb Bodensiek says he will have a hard time approving this. They discuss whether there could be a compromise of cutting the foundation back 2 feet instead of 4. Mr. Mazzola says that wouldn't make sense structurally so wouldn't help him in this case. Chair Dewey and Mark Hansen agree that the structure of the roof necessitated setting back the garage.

**Mark Hansen makes findings:**

Paul Mazzola, G.C.I. Builders, on behalf of the owner Richard A. Villani, has petitioned for a Variance from Section 240-11 E. Bulk Regulations in the RB Zoning District. The Petitioner seeks a variance from the minimum bulk regulations to allow for the newly poured garage foundation to encroach into the rear setback with foundation setbacks existing at 6.2 and 6.4 feet, where 10 feet is required. The subject property is located at 109 Wagon Lane, Hyannis, MA as shown on Assessor’s Map 270 as Parcel 198. It is located in the Residence B (RB) Zoning District.

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. He finds that the existing design of the dwelling necessitated the placement of the garage in order to prevent water damage.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioners. He finds that removal of the foundation would be a financial hardship and a detriment to the dwelling.
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. He finds that the location of the garage fits into the neighborhood and is not a detriment to the public good.

Denise Johnson seconds.

**Vote:**

**Aye: Jake Dewey, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: Herb Bodensiek**

Chair Dewey requests a condition that clarifies that this does not make the shed preexisting nonconforming. Mark Hansen says the appeal is subject to suggested conditions 1-4 from the Staff Report dated December 27, 2022, with the addition of a number 5, acknowledging that the Board does not find the existing shed located on town property is preexisting nonconforming and it is up to the town to take action as needed.

**Vote:**

**Aye: Jake Dewey, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: Herb Bodensiek**

Variance No. 2022-056 Villani is granted with conditions.

**Correspondence**

Town Council Zoning Amendment 2022-144 and 2022-145 will be going forward on February 2, 2023 at 7 p.m. in person at the Crocker Hearing Room.

**Matters Not Reasonably Anticipated by the Chair**

**Upcoming Hearings**

January 25, 2023, February 8, 2023, February 22, 2023

**Adjournment**

Chair Dewey makes a motion to adjourn. Herb Bodensiek seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**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>.