

**Zoning Board of Appeals
MINUTES
Wednesday, January 25, 2023 at 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 25, 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
https://townofbarnstable-us.zoom.us/j/86438948901	US Toll-free 888 475 4499
Meeting ID: 864 3894 8901	Meeting ID: 864 3894 8901

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 7:06 PM and takes roll call:

Member	Present	Absent
Dewey, Jacob	X	
Bodensiek, Herbert	X	
Pinard, Paul	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

January 11, 2023 – Herb Bodensiek makes a motion to approve the minutes. Denise Johnson seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Denise Johnson, Aaron Webb

Nay: None

Abstain: Paul Pinard (he was not at the January 11 meeting)

Old Business

None

New Business**7:00 PM****Appeal No. 2022-057****Wentworth**

Peri S. Wentworth has applied for a Special Permit in accordance with Section 240-47.2 C. (4) Accessory Dwelling Unit. The Applicant seeks to construct a detached two bedroom Accessory Dwelling Unit which exceeds the allowable “as of right” square footage. The proposed Accessory Dwelling Unit is 1,876 square feet and the “as of right” size is 900 square feet, thereby exceeding the allowable size by 976 square feet. The subject property is located at 16 Walley Court, Hyannis, MA as shown on Assessors Map 324 as Parcel 020. The property is located in the Residence B (RB) Zoning District.

Sitting on this is Chair Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, and Denise Johnson.

Attorney David Lawler is representing the applicant. He is joined by Craig Ashworth of E.B. Norris, who is the builder. The applicant is a longtime resident, mainly for summers. She is in her 70s and while in good health, is planning an ADU for a caregiver for when she needs it in the future. She plans to have one of her adult children move in to care for her, or hire a caregiver. The proposed ADU complies with all other requirements except for square footage. It is in keeping with the neighborhood and the intent of the bylaw.

Chair Dewey brings it back to the Board for questions. Herb Bodensiek asks why the applicant is not doing a family apartment. Attorney Lawler explains that a family apartment has to be attached to the main house, and his client wants to have a separate structure for privacy. Furthermore, at some point it may not be family staying there but rather an outside caregiver. He believes Town Council anticipated some people would want bigger ADUs than the bylaw allowed for and included a provision that applicants could apply for a special permit. Paul Pinard asks if the main house is under construction now. Mr. Ashworth says yes. Chair Dewey asks if the applicant’s family is going to rent the ADU out—because the intent of the ADU bylaw is to create rental property, not family housing. Attorney Lawler says it may not always be housing family, but the applicant’s family will be renting it for the first 12 months. He will create a lease. Aaron Webb asks for clarification about whether the proposed ADU is the structure labeled “guest house” on the plans submitted. Mr. Ashworth answers yes. The Board and Mr. Ashworth discuss whether the dimensions on the plan (30’x40’) are correct, as Mr. Ashworth previously said the dimensions were 30’x36’. Mr. Ashworth says the Board should assume what they have is right. He adds that the plan was mistakenly labeled a “guest house” by a draftsman who is not familiar with the project. The applicant knows it’s an ADU with a long-term lease requirement.

Chair Dewey opens public comment. Joyce McClay of 8 Walley Court asks if the proposed ADU could be used as an Airbnb. Attorney Lawler says an ADU only allows a 12-month lease, not short-term rentals. Donna Nightingale of 12 Walley Court asks for clarification about size and square footage. Attorney Lawler says the application was for the plan that was submitted, 30’x40’. Chair Dewey makes a motion to close public comment. Paul Pinard seconds.

Vote:**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Denise Johnson, Aaron Webb****Nay: None**

The Board deliberates. Herb Bodensiek is concerned about doubling the 900 square foot limit—that’s not a moderate infraction. He is skeptical that it will go to a home health aide and believes in actuality it will be a guest house. Chair Dewey agrees: the intent of the ordinance was not to allow for second houses to be built. The Board discusses the intent of the bylaw and whether the application should have been submitted as a guest house rather than an ADU. Paul Pinard believes the only issue before the Board is the size, not the categorization.

Attorney Lawler requests to continue the appeal to allow him time to address the Board’s issues. Herb Bodensiek requests that Attorney Lawler look into applying as a family apartment, because an ADU of this size would be setting a precedent he is not comfortable allowing. Chair Dewey and Paul Pinard discuss whether the issue before the Board is simply size, or if it’s that a different categorization is more appropriate. Chair Dewey makes a motion to continue this item to March 8, 2023, as Paul Pinard and Aaron Webb are not available for the February 22 meeting. Herb Bodensiek seconds.

Vote:**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Denise Johnson, Aaron Webb****Nay: None**

Appeal No. 2022-057 Wentworth is continued to March 8, 2023.

7:01 PM**Appeal No. 2022-053 **READVERTISED******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 24 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.

Sitting on this is Herb Bodensiek, Paul Pinard, Aaron Webb, Jake Dewey, and Denise Johnson.

Attorney Mark Boudreau is representing the applicant and is joined by Charles Riley, one of the owners of the property. Attorney Boudreau provides background: a home was constructed on this site in 1958. At that time there were no requirements for how close you could build from the edge of water, and so the house was built fairly close to the water. As of right, the owners can tear down and build on the same foundation. The old property had a 7'x15' deck of crumbling concrete that's been removed, which also violated the 50 foot setback. He explains that the uniqueness in this case is the topography of the building itself. Because the home is already encroaching into the setback, the owners couldn't meet a 50-foot setback for their deck. In terms of hardship, this is one of the only properties without a back deck looking at the lake. There are only two neighbors who would be able to see the proposed deck, and they both wrote in support. Councilor Gordon Starr was concerned about the 50-foot barrier between the structure and the water, but the proposed boundary will be an improvement. The previous structure where the deck is proposed was a tar driveway with some crab grass—it was eroding into the lake. The proposal has gone through the Conservation Commission, which requires 152 plantings to ensure the natural state of the area is maintained. Having to fulfill that boundary will severely limit their ability to use their backyard, but they're willing to sacrifice that to get this relatively modest deck.

Chair Dewey brings it back to the Board for questions. Paul Pinard asks how high off the ground the deck is. The applicant says about 9-10 feet up. Attorney Boudreau adds that all water off the roof will go into drains, not the lake. It is quite an environmental improvement. The Board feels that Conservation's approval assuaged their concerns, and they believe this will be an improvement.

Chair Dewey opens for public comment. The Board received a letter from Councilor Gordon Starr with concerns for the environmental impacts, a letter in support from Jean Turnbull, and a letter in support from Kevin Price and Sarah Slackman. Diane Verschure of 69 Holly Point speaks in favor. Chair Dewey makes a motion to close public comment. Denise Johnson seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Denise Johnson, Aaron Webb

Nay: None

Paul Pinard requests to hear more about the hardship, as this is a variance. Attorney Boudreau says the hardship is the ability to use the property to its full extent. If they have no deck, they can't really use their back yard. Paul Pinard is not convinced. Aaron Webb feels that because there was a previous deck, there was an expectation that they could have a deck. The only other way to put a deck would be to move the house back, which is not feasible, so it's a hardship.

Denise Johnson, with input from Chair Dewey, makes 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 Board finds that the topography of the structure is unique in how it is already built within the setback.
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. The existence of a deck is necessary or a substantial part of their land is unusable.
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. No abutters are opposed, and it is in keeping with the surrounding homes.

Aaron Webb seconds. The Board votes to approve as read and discussed.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Denise Johnson, Aaron Webb

Nay: None

Denise Johnson says this appeal is subject to the following conditions:

1. Variance No. 2022-053 from Section 240-7 G. (2) – Setbacks from Wetlands/Great Ponds is granted to Heather L. Riley and Charles E. Riley, Trustees, to allow the construction of a 12 foot by 24 foot deck with a 4 foot entrance located 27 feet from a Great Pond where 50 feet is required at 36 Holly Point Road, Centerville, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Proposed Project Site Plan" Sheet C2.0 by Baxter Nye Engineering & Surveying dated June 4, 2021 with a last revision date of September 02, 2022.

3. The above-described deck shall represent full build-out of the lot. No further additions or accessory structures shall be permitted without approval from the Board.
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 Variance must be exercised within one year, unless extended.

Attorney Boudreau finds the conditions acceptable.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Denise Johnson, Aaron Webb

Nay: None

Variance No. 2022-053 Riley is granted with conditions.

Correspondence

The Cape Cod Commission will hold a virtual public hearing on Thursday, February 2, 2023 at 3:00 pm to discuss the 35 Scudder Residential Community at 35 Scudder Ave, Hyannis.

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

February 8, 2023 (in person), February 22, 2023 (Zoom), March 8, 2023 (Zoom)

Adjournment

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

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Denise Johnson, Aaron Webb

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>