

# Zoning Board of Appeals MINUTES Wednesday, March 22, 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, March 22, 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/85040792896">https://townofbarnstable-us.zoom.us/j/85040792896</a>	US Toll-free 888 475 4499
Meeting ID: 850 4079 2896	Meeting ID: 850 4079 2896

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 Jake Dewey calls the meeting to order at 7:05 PM with an introduction of Board Members. David Hevenor, Channel 18 Video Specialist, says there was an issue with the recording and requests the Chairman start over. Chair Dewey calls the meeting to order for the second time for the record, this time at 7:14 PM.

Member	Present	Absent
Dewey, Jacob	X	
Bodensiek, Herbert	X	
Pinard, Paul	X	
Hansen, Mark		X
Johnson, Denise	X	
Webb, Aaron	X	

Also in attendance is Anna Brigham, Principal Planner; Kris Clark, Town Councilor Liaison; and Genna Ziino, Administrative Assistant.

### 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

February 22, 2023 - Herb Bodensiek makes a motion to approve. Denise Johnson seconds.

### Vote:

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

**Nay:** None

**Abstain:** Paul Pinard (he was not at the February 22 meeting)

**New Business**

**7:00 PM**

**Appeal No. 2023-006**

**Andersen**

Denise M. Andersen, Trustee of the Andersen 77 Parker Road Nominee Trust, has petitioned for two Variances from Section 240-13 E. Residence C (RC) District, Bulk Regulations, and 240-36 Resource Protection Overlay District (RPOD). The Petitioner seeks two variances to unmerge Lot 1 (40,075 sq. ft.) from Lot 2, a developed lot containing 43,915 sq. ft., pursuant to the plan prepared by Sullivan Engineering and Consulting, Inc. The subject property is located at 77 Parker Rd, Osterville, MA as shown on Assessor's Map 117 as Parcel 135. It is located in the Residence C (RC) Zoning District.

The Board received a request<sup>1</sup> from Attorney Michael Schulz to continue this to April 12, 2023. Chair Dewey told Attorney Schulz the April 12 agenda is busy so this may get pushed. Paul Pinard moves to continue to April 12, 2023. Aaron Webb seconds.

**Vote:**

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

**Nay: None**

**Appeal No. 2023-006 Andersen is continued to April 12, 2023.**

**7:01 PM**

**Appeal No. 2023-007**

**Brazilian Assembly of God**

Brazilian Assembly of God in Hyannis has applied for a Modification Permit in accordance with Section 240-8 A. (3) Modification Permit for Exempt Uses. The Applicant, a non-profit religious institution, proposes an approximately 9,400 square foot addition to the existing church on the property. The expansion will increase the number of seats and the existing steeple will be removed and the ridgeline lowered. The proposed expansion will meet all building setbacks, except for the southerly side yard setback which is proposed at 11 feet where 30 feet is required. The proposed 576 seats require 192 parking spaces where 83 currently exist. The Applicant has parking agreements with abutting properties. Zoning relief is requested in accordance with Section 240-33E Bulk Requirements, Side Yard Setback; Section 240-56 Schedule of Off-Street Parking; and Section 240-33 Special Screening Requirements. The subject property is located at 959 Mary Dunn Road, Hyannis, MA as shown on Assessor's Map 332 as Parcel 012. It is located in the IND (Industrial) Zoning District.

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

Attorney Liza Cox is representing the applicant. She shares her screen and walks through a presentation<sup>2</sup> describing the project and the requests. She is joined by Dennis Dasilva, the pastor of the church; Glenn Knowles, the project architect; and Dan Ojala, the civil engineer for the project. The property is 959 Mary Dunn Road and the surrounding area. Trinity Christian Academy is an abutter, and the closest abutter is the Carriage House apartment building to the south. The property is 2.21 acres, with about 200 feet of frontage on Mary Dunn Road. It was developed in 2000 with a 14,300 square foot church. There are 83 on-site parking spaces. There is onsite septic, but they will be connecting to town sewer. She walks the Board through the proposed expansion. The church is proposing a 9,400 square foot addition split over 2 floors. This will increase seating by 200 and will include removing the steeple and lowering the roof. The expansion is focused in the east (new and enlarged lobby) and south (main sanctuary expansion). The expansion meets all requirements except the southerly setback, which is proposed at 11 feet.

The applicant is a non-profit religious institution so qualifies for the protections from the Dover Amendment. The use is exempt but the town may apply reasonable dimensional regulations. They are seeking relief from three requirements: Section 240-33(E), Bulk Requirements for Side Yard Setback; Section 240-56 Off-Street Parking Requirements; and if necessary, 240-33(F) Special Screening Requirements.

The existing side yard setback is 31 feet and the proposed is 11 feet. Because the purpose of the modification is to expand the seating, and because of the orientation of the church on the land, compliance would not allow for the sanctuary to be expanded without having to completely redesign the interior of the building and reduce the existing parking area. Granting the proposal will not create a public safety hazard of the surrounding properties and will not create a nuisance to surrounding properties. The only property that will be impacted by the request, the Carriage House Apartments, has submitted a letter in support. The required parking is 192, proposed is access to 213 (83 on site, 61 at abutting Trinity Academy, 69 spaces at nearby CapeAbilities). They have submitted letters of agreement from both abutters. On-site church parking is adequate for all non-service times. Regarding the special screening requirements, she believes that requirement does not fall within the bulk regulations applicable to an exempt use

<sup>1</sup>Attorney Schulz's request to continue:

<https://itlaserfiche.town.barnstable.ma.us/WebLink/DocView.aspx?id=876321&dbid=0&repo=TownOfBarnstable>

<sup>2</sup>Attorney Cox's presentation:

<https://itlaserfiche.town.barnstable.ma.us/WebLink/DocView.aspx?id=895467&dbid=0&repo=TownOfBarnstable>

and so relief is not required. She refers to Trustees of Tufts College v. City of Medford SJC case, which explored the reasonableness of dimensional requirements to exempt uses. She believes it's unreasonable based on the significant cost of redesign.

**Chair Dewey brings it back to the Board for questions.** Chair Dewey asks how many parking spaces are in the agreements. Attorney Cox says 213 spaces, exceeding the requirement. Chair Dewey asks about a lighting and landscape plan. Attorney Cox says a plan was not included because there are no changes to the site plan or existing conditions. Chair Dewey asks about design standards. Attorney Cox says there are no design restrictions in the IND zoning district. Paul Pinard requests condition no. 3 say, "must provide continuous parking on and offsite for at least 192 spaces." Aaron Webb asks if there will be screening added to the 11-foot buffer. Dan Ojala says there is none planned and there is not much room, but the apartment side is heavily buffered.

**Chair Dewey opens for public comment.** None. He makes a motion to close public comment. Paul Pinard seconds.

**Vote:**

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

**Nay:** None

**The Board deliberates.** Attorney Cox has suggested changes to conditions from the staff report<sup>3</sup>: No. 1 is not really a condition and could be removed. No. 3 has a typo: it says 82 spaces onsite but there are 83.

**Chair Dewey makes a motion to approve and makes findings:**

Brazilian Assembly of God in Hyannis has applied for a Modification Permit in accordance with Section 240-8 A. (3) Modification Permit for Exempt Uses. The Applicant, a non-profit religious institution, proposes an approximately 9,400 square foot addition to the existing church on the property. The expansion will increase the number of seats and the existing steeple will be removed and the ridgeline lowered. The proposed expansion will meet all building setbacks, except for the southerly side yard setback which is proposed at 11 feet where 30 feet is required. The proposed 576 seats require 192 parking spaces where 83 currently exist. The Applicant has parking agreements with abutting properties. Zoning relief is requested in accordance with Section 240-33E Bulk Requirements, Side Yard Setback; Section 240-56 Schedule of Off-Street Parking; and Section 240-33 Special Screening Requirements. The subject property is located at 959 Mary Dunn Road, Hyannis, MA as shown on Assessor's Map 332 as Parcel 012. It is located in the IND (Industrial) Zoning District.

1. The application falls within a category specifically excepted in the ordinance for a grant of a modification permit. Section 240-8 A. (3) allows for alterations for Exempt Uses. He finds this is an exempt use.
2. Site Plan Review Committee found the project approvable subject to zoning relief in a letter dated February 7, 2023.
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.

Herb Bodensiek seconds.

**Vote:**

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

**Nay:** None

Chair Dewey says this appeal is subject to conditions from the staff report dated March 9, 2023, striking condition 1 and modifying condition 3 to specify 83 parking spots onsite and the applicant should continuously provide parking on and offsite for at least 192.

**Vote:**

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

**Nay:** None

**Special Permit No. 2023-007 Brazilian Assembly of God is granted with conditions.**

**Correspondence**

None.

**Matters Not Reasonably Anticipated by the Chair**

Councilor Clark thanks Denise Johnson for her representation of the ZBA at the last Planning Board meeting.

<sup>3</sup> Staff Report for 2023-007:

<https://itlaserfiche.town.barnstable.ma.us/WebLink/DocView.aspx?id=875437&dbid=0&repo=TownOfBarnstable>

### **Upcoming Hearings**

April 12, April 26, May 10. The Board discusses whether meetings will be online or in person. Staff is waiting to hear if the state extends the remote meeting authorization, so April 26 and after will be determined once that is announced.

### **Adjournment**

Chair Dewey makes a motion to adjourn. Paul Pinard seconds. The meeting is adjourned at 7:52.

### **Vote:**

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

**Nay: None**

### **Documents Used at This Meeting**

- February 22, 2023 minutes
- Letter request from Attorney Michael Schulz to continue Appeal No. 2023-006, dated March 21, 2022 [sic]
- PPT Presentation entitled "Brazilian Assembly of God in Hyannis, 959 Mary Dunn Road, Hyannis, Barnstable Zoning Board of Appeals" created by Attorney Liza Cox and dated March 22, 2023
- Staff Report for 2023-007 created by Anna Brigham and dated March 9, 2023

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>