

# Zoning Board of Appeals MINUTES

## Wednesday, October 11, 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, October 11, 2023, at the time indicated:

The meeting will be televised live via Xfinity Channel 8 or high definition Channel 1072. It may also be accessed via the Government Access Channel live stream on the Town of Barnstable's website:  
<http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

### Call to Order

Acting Chair Herb Bodensiek calls the meeting to order at 7:02 PM with an introduction of Board Members:

Member	Present	Absent
Dewey, Jacob		X
Bodensiek, Herbert	X	
Pinard, Paul	X	
Hansen, Mark	X (late)	
Hurwitz, Larry		X
Johnson, Denise	X	
Webb, Aaron	X	
Manny Alves	X	

Also in attendance is Jim Kupfer, Senior Planner; Anna Brigham, Principal Planner; and Genna Ziino, Administrative Assistant.

### Notice of Recording

The Acting Chairman reads: This meeting of the Zoning Board of Appeals is being recorded and broadcast on the Town of Barnstable's Government Access Channel. In accordance with MGL Chapter 30A §20, I must inquire whether anyone is recording this meeting and if so, to please make their presence known.

### Minutes

None.

### Old Business

**7:00 PM**

**Appeal No. 2023-010**

**Arista Hyannis LLC**

Arista Hyannis LLC has applied for a Special Permit in accordance with Section 240-25(B)(22) and 240-25(C)(10) Drive-Through for a proposed restaurant. The Applicant proposes to remodel the former bank building and change the use to a food service establishment with a drive-through. The subject property is located at 715 West Main Street, Hyannis, MA as shown on Assessor's Map 249 as Parcel 155. It is located in the Highway Business (HB) District. Continued from May 10, 2023 and July 26, 2023 and September 13, 2023. Members assigned: Jacob Dewey, Paul Pinard, Mark Hansen, Aaron Webb, and Herb Bodensiek.

The applicant has requested to continue this appeal to November 8, 2023. Mark Hansen arrives at this time. Attorney Eliza Cox is representing the applicant and explains that their engineer is in the process of drafting a response to the peer review of the traffic study. They've confirmed that the peer reviewer is available to attend the November 8 meeting. The Board and Attorney Cox discuss the continuance request and which meeting is most appropriate. Jim Kupfer suggests continuing to November 8 and in the meantime, trying to schedule an extra meeting in person with the Board. Paul Pinard makes a motion to continue this appeal to November 8, 2023 at 7 PM. Mark Hansen seconds.

### Vote:

**Aye: Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson, Aaron Webb, Manny Alves**

**Nay: None**

**New Business**

**7:00 PM**

**Appeal No. 2023-025**

**Ventura**

Richard and Catherine Ventura, Trustees of the Ventura Family Trust, have applied to modify Special Permit No. 2014-017 to allow for site alterations. The Applicant proposes to construct a 22 by 22 foot attached garage, relocate the gravel driveway, and remove plantings as needed. The proposed maximum lot coverage ratio would be 24.1% and the proposed gross floor area ratio would be 25%. The subject property is located at 64 Commerce Road, Barnstable, MA as shown on Assessor's Map 301 as Parcel 051. It is located in the Residence B (RB) and the Residence F-1 (RF-1) Zoning District.

Chair Bodensiek assigns himself, Mark Hansen, Denise Johnson, Paul Pinard, and Aaron Webb. He also reads into the record Appeal No. 2023-026 because the Petitioner has requested to present for both appeals together.

**7:01 PM**

**Appeal No. 2023-026**

**Ventura**

Richard and Catherine Ventura, Trustees of the Ventura Family Trust, have petitioned for a Variance pursuant to Section 240-91 H. Nonconforming Lot. The Petitioner seeks a variance from the 20% maximum lot coverage requirement to build a 22 by 22 foot attached garage, which would result in a maximum lot coverage ratio of 24.1%. The Petitioner proposes to remove the existing gravel driveway and construct a new gravel driveway to provide vehicular access to the garage. The subject property is located at 64 Commerce Road, Barnstable, MA as shown on Assessor's Map 301 as Parcel 051. It is located in the Residence B (RB) and the Residence F-1 (RF-1) Zoning District.

Attorney John Kenney is representing the applicant. He is joined by the applicants and Matt Eddy of Baxter Nye Engineering, the engineer for the project. Attorney Kenney provides background: this home is going to be the applicants' permanent retirement home. In 2014 they received a special permit to start the project of rebuilding the home. They have been doing the project in stages and once they began the process to build the garage, they realized it will exceed the allowed lot coverage. They are proposing to build a 22 x 22 ft. garage with a storage area above. They need storage as there is no basement on the property because of the proximity to the wetlands and the ocean.

He explains the uniqueness of this lot: the property fronts on two roads and the shape is uniquely attributable to the way Commerce Road veers toward his clients' property and creates a large gap area of green space between the edge of the pavement and the actual lot line of the property. There are evergreen trees (planted in 1968) that abut the property, and his clients have always treated that green buffer as part of their front yard and have cared for it for over 30 years. The effective lot coverage when you include the green buffer is 19.8% but because they technically don't own the buffer, the actual proposed lot coverage is 24.1%. He believes the intent of the lot coverage limit was to ensure uniformity, and aesthetically speaking, this proposal is in keeping with the neighborhood. He adds that if this were a vacant lot, the proposed garage and home would meet all zoning requirements as of right even without the green buffer because the 20% lot coverage would not apply.

**Chair Bodensiek brings it back to the Board for questions.** The Chairman asks what size garage would fit within the requirements. Matt Eddy answers that it would be a narrow, single-car garage. Paul Pinard asks for existing lot coverage and floor area ratio. Mr. Eddy answers that existing lot coverage is 18.8% and both the existing and proposed FAR meet requirements. They meet all setback requirements. The lot size is .21 acre, under 10k sq. ft. The existing total square footage of the home is 1,889 and the proposed is 2,300. Regarding the driveways, Mr. Eddy explains that it's gravel and that the existing driveway off Second Way will be altered and the small driveway off Commerce Road is proposed to be removed. Access to the proposed garage will be off Second Way.

**Chair Bodensiek opens for public comment.** Aaron Webb reads that the Board received public comment from Gilmore, Gruhn, Tryon, Bassett, Bonney, and Richards in support. Chair Bodensiek moves to close public comment. Aaron Webb seconds.

**Vote:**

**Aye: Herb Bodensiek, Mark Hansen, Denise Johnson, Paul Pinard, Aaron Webb**

**Nay: None**

**The Board deliberates.** The Board thinks closing the curb cut to Commerce Way is a benefit to the public. Mark Hansen thinks this is a modest request and will be in keeping with neighborhood and because the property abuts two roads, there are no abutters adversely affected by this.

**Paul Pinard makes findings for Appeal No. 2023-025:**

Richard and Catherine Ventura, Trustees of the Ventura Family Trust, have applied to modify Special Permit No. 2014-017 to allow for site alterations. The Applicant proposes to construct a 22 by 22 foot attached garage, relocate the gravel driveway, and remove plantings as needed. The proposed maximum lot coverage ratio would be 24.1% and the proposed gross floor area ratio would be 25%. The subject property is located at 64 Commerce Road, Barnstable, MA as shown on Assessor's Map 301 as Parcel 051. It is located in the Residence B (RB) and the Residence F-1 (RF-1) Zoning District.

1. He finds that the application falls within the category specifically excepted by this chapter.
2. An evaluation of all the evidence presented at the public hearing by the petitioner and interested parties as it relates to the fulfillment of the spirit and intent of this chapter without substantial detriment to the public good or the neighborhood affected. He finds that this is evidenced by the letters of support from neighbors.
3. 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. He finds that this will increase safety because of the removal of the entrance to Commerce Way.

Herb Bodensiek seconds.

**Vote:**

**Aye: Herb Bodensiek, Mark Hansen, Denise Johnson, Paul Pinard, Aaron Webb**

**Nay:**

Paul Pinard reads that the appeal is subject to conditions 1-6 from Staff Report dated October 3, 2023. Herb Bodensiek moves to accept those conditions. Mark Hansen seconds.

**Vote:**

**Aye: Herb Bodensiek, Mark Hansen, Denise Johnson, Paul Pinard, Aaron Webb**

**Nay: None**

**Special Permit No. 2023-025 is granted with conditions.**

**Paul Pinard makes findings for Appeal No. 2023-026:**

Richard and Catherine Ventura, Trustees of the Ventura Family Trust, have petitioned for a Variance pursuant to Section 240-91 H. Nonconforming Lot. The Petitioner seeks a variance from the 20% maximum lot coverage requirement to build a 22 by 22 foot attached garage, which would result in a maximum lot coverage ratio of 24.1%. The Petitioner proposes to remove the existing gravel driveway and construct a new gravel driveway to provide vehicular access to the garage. The subject property is located at 64 Commerce Road, Barnstable, MA as shown on Assessor's Map 301 as Parcel 051. It is located in the Residence B (RB) and the Residence F-1 (RF-1) 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 shape and topography of the lot are unique, and that the buffer zone would create an "effective lot coverage" of 19.8%.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. He finds that a single-car garage with no storage would not work for this situation. He also finds that there would continue to be traffic spillover on Commerce Road.
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 it is supported by neighbors and would have no negative impact on the neighborhood.

Herb Bodensiek seconds.

**Vote:**

**Aye: Herb Bodensiek, Mark Hansen, Denise Johnson, Paul Pinard, Aaron Webb**

**Nay: None**

Paul Pinard reads that the appeal is subject to conditions 1-5 from Staff Report dated October 3, 2023. Attorney Kenney finds them acceptable. Chair Bodensiek moves to accept the conditions. Aaron Webb seconds.

**Vote:**

**Aye: Herb Bodensiek, Mark Hansen, Denise Johnson, Paul Pinard, Aaron Webb**

**Nay: None**

7:02 PM

Appeal No. 2023-027

LaFrance

Ann LaFrance has applied for a Special Permit pursuant to Section 240-91 H. (3) Developed lot protection; demolition and rebuilding on nonconforming lots. The Applicant seeks to demolish the existing dwelling and construct a 3-bedroom, single-family dwelling. The proposed project will result in a reduction in the existing lot coverage (from 2,665 square feet to 2,659 square feet) and will have a gross floor area of 2,875 square feet where 2,995 square feet (30%) is the maximum. The subject property is located at 170 Fifth Ave, Hyannis, MA as shown on Assessor's Map 245 as Parcel 115. It is located in the Residence B (RB) Zoning District.

Herb Bodensiek assigns himself, Mark Hansen, Paul Pinard, Aaron Webb, and Manny Alves.

Attorney John Kenney is representing the applicant and is joined by the applicant and Attorney Patrick Nickerson. His client has owned the property since 1993. She is looking to raze and replace with a two-story house, one-car garage, and a covered porch totaling 2,875 sq. ft. The property was created and the house built in 1893. The lot predated the adoption of zoning. It was later zoned RA-1 in 1956, which rendered the structure nonconforming as it did not meet setbacks. In 1985 the lot itself became nonconforming. There is no record date of construction of the garage but they submitted an affidavit from Steve Cook from Cotuit Bay Design that estimates it to be pre-1950's. There was a structure added by a prior owner that they cannot find a permit for. His client converted the structure (which was a boat garage) to a sunroom in 1996.

The proposed structure is slightly smaller with a slightly smaller footprint. Section 240-91 H (3) provides that the proposed setbacks must be equal to or greater than the setbacks of the existing structure. The proposed house would have the same front setbacks and would make the side yard setbacks more conforming (from 2.5 ft. to 3.6 ft.). The existing septic system limited their ability to move the property back. The proposed home also lines up perfectly with the property next door, so keeps the street scene. There is no increase in bedrooms or intensity of use, and the proposed design would lessen the nonconformity.

**Chair Bodensiek brings it back to the Board for questions.** In response to questions, Attorney Kenney answers that it meets two front yard setbacks, which will be held. Regarding lot coverage, they're allowed 20% or existing lot coverage. The existing is 26.6% and proposed is 26.6% and it's 6 square feet less than the existing structure. It is a nonconforming structure on nonconforming lot. They will be replacing it with a similarly nonconforming structure, and reducing the nonconformity slightly.

**Chair Bodensiek opens for public comment.** Jim Walsh of 146 Fourth Ave speaks in support. John Horn of 141 4<sup>th</sup> Ave speaks in support. Scott McDonald of 62 Ocean Drive speaks in support. Richard Alger, a current Sandwich resident who used to live in this home attests that the garage was built pre-1950. Chair Bodensiek reads that the Board received letters from Topham and Welch in support. Aaron Webb moves to close public comment. Manny Alves seconds.

**Vote:**

**Aye: Herb Bodensiek, Mark Hansen, Paul Pinard, Aaron Webb, Manny Alves**

**Nay:**

**Mark Hansen makes findings, incorporating Attorney Kenney's requested changes:**

Ann LaFrance has applied for a Special Permit pursuant to Section 240-91 H. (3) Developed lot protection; demolition and rebuilding on nonconforming lots. The Applicant seeks to demolish the existing dwelling and construct a 3-bedroom, single-family dwelling. The proposed project will result in a reduction in the existing lot coverage (from 2,665 square feet to 2,659 square feet) and will have a gross floor area of 2,875 square feet where 2,995 square feet (30%) is the maximum. The subject property is located at 170 Fifth Ave, Hyannis, MA as shown on Assessor's Map 245 as Parcel 115. It is located in the Residence B (RB) 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 rear yard setback is greater than the existing rear yard setback. The proposed front yard setbacks are equal to the setbacks of the existing building.
5. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The existing lot coverage is 26.6% and proposed lot coverage is 26.6%.

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 28.7% and the proposed FAR is 29.9%.
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 6 inches to the top of the plate.
8. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

Herb Bodensiek seconds.

**Vote:**

**Aye: Herb Bodensiek, Mark Hansen, Paul Pinard, Aaron Webb, Manny Alves**

**Nay:**

Mark Hansen reads that the appeal is subject to conditions 1-6 from Staff Report dated October 3, 2023. Attorney Kenney requests to change No. 3 to say 29.9 as the FAR. Aaron Webb moves to accept the conditions. Paul Pinard seconds.

**Vote:**

**Aye: Herb Bodensiek, Mark Hansen, Paul Pinard, Aaron Webb, Manny Alves**

**Nay:**

**Special Permit No. 2023-027 LaFrance is granted with conditions.**

**7:03 PM**

**Appeal No. 2023-028**

**132 Bay Shore Road, LLC**

132 Bay Shore Road, LLC has applied to modify Special Permit No. 2002-095 to allow the Applicant to alter and expand the second floor living area. There will be no increase in footprint other than the extension of a covered stoop at the front entrance to the dwelling. The existing floor area is 2,125 square feet (plus 765 square feet of unfinished space) and the proposed floor area is 3,401 square feet. The subject property is located at 132 Bay Shore Road, Hyannis, MA as shown on Assessor's Map 325 as Parcel 080. It is located in the Residence B (RB) Zoning District.

Chair Bodensiek assigns himself, Mark Hansen, Aaron Webb, Paul Pinard, and Denise Johnson.

Attorney Marian Rose is representing the applicant. The proposal is to alter an existing second floor and partially alter the roofline. The work will not alter the footprint other than front stoop, about 23 sq. ft. The proposal will increase the gross floor area of the second floor. The property is undersized and the lot is nonconforming. The existing dwelling conforms with setbacks and is outside the buffer zone to the resource area of Lewis Bat. It conforms to lot coverage at 84.4%. The existing FAR is 2,125 sq. ft. and the gross FAR would be 3,401 sq. ft.

The 2002 decision provided that any expansion of footprint or area would require a special permit from this Board. Not substantially more detrimental to the environment or neighborhood, as the proposed work is almost entirely within the existing footprint and is mostly internal. This has been approved administratively by a conservation agent. The height will remain conforming and will be slightly lower. She shows photographs of homes in the neighborhood to demonstrate that the house is in keeping with the area.

She is joined by Chuck Rowland, engineer of the project, and Marijana Iwicki, architect of the project.

**Herb Bodensiek opens for public comment.** The Chairman reads that the Board received a letter in support from Botello. He moves to close public comment. Mark Hansen seconds.

**Vote:**

**Aye: Herb Bodensiek, Mark Hansen, Aaron Webb, Paul Pinard, Denise Johnson**

**Nay: None**

**Back to the Board for questions.** Paul Pinard asks if from the street side the view of the house will change. Ms. Iwicki says the look will change somewhat, the top of the roof will be 4.5 ft. taller than existing. This is due to finishing the unfinished side, which is on the front side. The stoop will come forward 5.3 inches from the existing wall, so will still conform to the front setback. Attorney Rose confirms that this relief is only required because the earlier special permit called out full buildout of the lot in conditions.

**Herb Bodensiek makes findings:**

132 Bay Shore Road, LLC has applied to modify Special Permit No. 2002-095 to allow the Applicant to alter and expand the second floor living area. There will be no increase in footprint other than the extension of a covered stoop at the front entrance to the dwelling. The existing floor area is 2,125 square feet (plus 765 square feet of unfinished space) and the proposed floor area is 3,401 square feet. The subject property is located at 132 Bay Shore Road, Hyannis, MA as shown on Assessor’s Map 325 as Parcel 080. It is located in the Residence B (RB) Zoning District.

1. the application falls within the category specifically excepted by this chapter.
2. An evaluation of all the evidence presented at the public hearing by the petitioner and interested parties as it relates to the fulfillment of the spirit and intent of this chapter without substantial detriment to the public good or the neighborhood affected.
3. A site plan has been reviewed and found approvable in accordance with Article IX herein subject only to the issuance of a special permit. (Site Plan is not required)
4. 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.

Mark Hansen seconds.

**Vote:**

**Aye: Herb Bodensiek, Mark Hansen, Aaron Webb, Paul Pinard, Denise Johnson**

**Nay: None**

Herb Bodensiek reads that the appeal is subject to conditions 1-5 from Staff Report dated October 3, 2023. Denise Johnson moves to accept the conditions. Mark Hansen seconds.

**Special Permit No. 2023-028 132 Bay Shore Road, LLC is granted with conditions.**

**7:04 PM**

**Appeal No. 2023-029**

**E.M. Crosby Boatworks, Inc.**

E.M. Crosby Boatworks, Inc. has applied for a Special Permit pursuant to Section 240-94 A and 240-94 B Change or Expansion of a Preexisting Nonconforming Use. The Applicant seeks to change the use from a landscaping business to a boat storage business. The Applicant proposes to store up to 75 boats on the property. The Applicant also seeks to construct an approximately 30 ft. by 80 ft. structure covered with a clear membrane to be utilized for the storage of wooden sailboats. The subject property is located at 140 Osterville West Barnstable Road, Osterville, MA as shown on Assessor’s Map 120 as Parcel 051-002. It is located in the Residence C (RC) Zoning District and the Wellhead Protection (WP) Overlay District.

Paul Pinard recuses himself from this appeal and leaves the meeting at this time. Herb Bodensiek assigns himself, Mark Hansen, Aaron Webb, Denise Johnson, and Manny Alves.

Attorney David Lawler is representing the applicant. He requests a two-week continuance to talk to concerned neighbors and get an updated site plan. Aaron Webb makes a motion to continue to October 25, 2023. Herb Bodensiek seconds.

**Vote:**

**Aye: Herb Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson, Manny Alves**

**Nay:**

**Appeal No. 2023-029 E.M. Crosby Boatworks, Inc. is continued to October 25, 2023.**

**Correspondence**

None

**Matters Not Reasonably Anticipated by the Chair**

**Upcoming Hearings**

October 25, 2023, November 8, 2023, December 6, 2023

**Discussion**

The Board discusses the proposed 2024 meeting schedule and whether there is a preference for in-person vs. remote meetings. There is a significant portion of the population that does not live here full time, so remote is good for that. Additionally, the Chair is

frequently out of town during the winter. They decide to wait until the Chair and Paul Pinard are present to make a decision about in person vs. remote. The Board expresses concerns about Laserfiche and the speed and quality of it, and the potential for printing certain documents for members.

### Adjournment

Herb Bodensiek makes a motion to adjourn. Denise Johnson seconds.

### Vote:

**Aye:** Herb Bodensiek, Mark Hansen, Denise Johnson, Aaron Webb, Manny Alves

**Nay:** None

### Documents Used at This Meeting

- Appeal No. 2023-025 Ventura and 2023-026 Ventura application packets
- Public comment from Gilmore, Gruhn, Tryon, Bassett, Bonney, and Richards in support of 2023-025
- Staff Report dated October 3, 2023 for Appeal No. 2023-025
- Staff Report dated October 3, 2023 for Appeal No. 2023-026
- Appeal No. 2023-027 LaFrance application packet
- Public comment from Topham and Welch in support of 2023-027
- Staff Report dated October 2, 2023 for Appeal No. 2023-027
- Affidavit from Steve Cook from Cotuit Bay Design
- Appeal No. 2023-028 132 Bay Shore Rd LLC application packet
- Public comment from Botello in support of 2023-028
- Staff Report dated October 3, 2023 for Appeal No. 2023-028
- Proposed 2024 hearing schedule

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>