

Zoning Board of Appeals MINUTES Wednesday, May 8, 2024 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, May 8, 2024, at the time indicated:

Call to Order

Chair Dewey calls the meeting to order at 7:04 PM with an introduction of Board Members:

Member	Present	Absent
Dewey, Jacob – Chair	X	
Bodensiek, Herbert – Vice Chair		X
Pinard, Paul – Clerk	X	
Alves, Manny	X	
Hansen, Mark		X
Hurwitz, Larry	X	
Johnson, Denise		X
Webb, Aaron	X	

Also present is Anna Brigham, Principal Planner and Genna Ziino, Administrative Assistant.

Notice of Recording

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.

Chair Dewey notifies the public that the Hearing Room’s screen technology is not working, so tablets are available for the public and meeting materials are available on the town website.

Minutes

March 13, 2024 – Aaron Webb moves to approve the minutes. Manny Alves seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Old Business

7:00 PM

Appeal No. 2023-039

Baird

Daniel and Karen Baird have filed an Appeal of an Administrative Official’s Decision in accordance with 240-125 B. (1)(A) and M.G.L. Chapter 40A Section 8. The Petitioners seek to overturn the Notice of Violation and Order to Cease, Desist, and Abate from the Building Commissioner, dated September 11, 2023. Summary of violations determined by the Building Commissioner include Barnstable Zoning Ordinance Chapter 240 Section 14 A.(1) RF Residential District and Chapter 240 Section 10C Prohibited Uses. Specifically, the use of a trailer/camper as a substitute dwelling unit or for temporary sleeping purposes on a property without a permitted principal dwelling. The subject property is located at 27 Falcon Road, West Barnstable, MA as on Assessor’s Map 196 as Parcel 032. It is located in the Residence F (RF) Zoning District. Continued from December 6, 2023, January 24, 2024, February 28, 2024.

Attorney Brian Wahl is representing the applicant. He explains that this matter has been resolved with the Building Department and he is here tonight to request a withdrawal. Aaron Webb moves to accept the withdrawal without prejudice. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Appeal No. 2023-039 Baird is withdrawn without prejudice.

New Business

7:01 PM

Appeal No. 2024-013

Cape Cod Hospital

Cape Cod Hospital has petitioned for a Variance pursuant to Section 240-64 Signs in Downtown Hospital District. The Petitioner proposes 3 identification/wayfinding signs on the new 4-story Barbey Pavilion under construction at the Cape Cod Hospital. The proposed signs exceed the maximum sign quantity, sign area, height above ground, and are proposed to be illuminated with an LED sign light strip. The subject property is located at 27 Park Street, Hyannis, MA as shown on Assessor's Map 342 as Parcels 001 and 039. It is located in the Downtown Hospital (DH) Zoning District.

Chair Dewey assigns himself, Paul Pinard, Manny Alves, Larry Hurwitz, and Aaron Webb.

Attorney Liza Cox is representing the applicant and is joined by Michael Bachstein, the Vice President of Facilities for Cape Cod Healthcare and Greg Siroonian, Consulting Architect. They are here seeking relief for 3 new wayfinding signs that will be located on Barbey Pavilion, a 4-story building that is currently under construction. She provides background: Cape Cod Hospital's emergency room is one of the busiest ER departments in the commonwealth and, in the summer, is the busiest ER in the summer months. The town line between Barnstable/Yarmouth runs right through the building. The hospital has numerous public entrances. In 2022 they got land use permits for the new pavilion, and they also got a DRI from the Cape Cod Commission. She walks through what will be on each floor of the building. The hospital is located in the Downtown Hospital Zoning District, which was created in 2022 as part of downtown Hyannis' form-based code. No zoning relief was needed for the pavilion.

She walks through a document (entitled "AP-2024-013 Cape Cod Hospital - Signage") to explain the 3 signs proposed. The west signage faces South Street and serves as a beacon to one of the major vehicular entrances to the hospital. It identifies the hospital and this added pavilion. It is proposed at 120 sq. ft. and is 1% of that façade. The center of the sign is proposed at 49 ft. high so it's visible as you come down the street. The south-facing signage faces hospital parking areas and provides the primary entrance to the new Davenport center. It's proposed at 40.5 sq. ft. The center of the sign is proposed at 7 ft. from the ground. The north-facing signage is the main façade of Cape Cod Hospital from Lewis Bay. The sign is proposed at 69.5 sq. ft., with the center proposed at 7 ft. from the ground. All signs are proposed to have downlit LED lighting, at 6.5 watts per foot, which is enough to illuminate the signs but will create no measurable impact and was already approved by the town and the Commission.

Attorney Cox explains that hospital guests are directed to go to specific entrances, so clearly identifying each entrance is critical. It is a matter of public safety. The Massachusetts Department of Public Health (DPH) says hospitals are unique, and has adopted mandatory signage criteria for hospitals: "exterior hospital entry points shall be clearly identified from all major exterior routes."

Attorney Cox says the zoning ordinance size allowances are completely inadequate and unsafe for this scenario. They have discussed this with the Building Commissioner, who has been supportive. The allowed signage would be only one sign, no more than 12 sq. ft. in total, and no more than 8 ft. high. She walks through the 3-prong test:

1. These are highly unique circumstances: this is a very large property, irregularly shaped, with multiple frontages, and a large and unique structure.
2. It would be unsafe to have just one sign on this property, and it would be inconsistent with the state mandate for hospitals.
3. She believes the proposed signs are appropriately sized and provide clear wayfinding. Regarding the lighting, the hospital is open 24/7 and the lights are downlit to not be overly bright.

Back to the Board for questions. Paul Pinard is concerned about the nearby residents and asks how the brightness compares to residential limits. Greg Siroonian says they did a light study for the entire site including the parking lot and they are well beneath the Cape Cod Commission's criteria. There will be no significant increase to ground lighting and the neighbors won't be looking at the actual light—the lights are facing the building. Manny Alves asks if the DPH requirements provide specificity. Attorney Cox answers no, it just requires signage at all major routes and all entrances. Chair Dewey doesn't believe the Board has the power to grant a variance for this, because the zoning district is the hospital. The Board discusses form-based code and the sign provision. Chair Dewey suggests that changing the signage allowance of the ordinance should be done through Town Council. Manny Alves is concerned because how can the Board compare whether this is unique in the district when it's the only property in the district. Attorney Cox says it was the Building Department who urged them to file with the ZBA.

Chair Dewey opens for public comment. There is none. The Chairman moves to close the public hearing.

Vote:

Aye: Jake Dewey, Paul Pinard, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Attorney Cox asks to withdraw without prejudice. Chair Dewey moves to accept the withdrawal without prejudice. Manny Alves seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Appeal No. 2024-013 Cape Cod Hospital is withdrawn without prejudice.

7:02 PM

Appeal No. 2024-014

Sarver

Michael and Maria Sarver have applied for a Special Permit pursuant to Section 240-91 H. (3) Developed Lot Protection. The Applicants propose to demolish the existing single-family dwelling and construct a new single-family dwelling in its place together with related site and landscaping improvements. The subject property is located at 120 Harbor Bluffs Road, Hyannis, MA as shown on Assessor's Map 325 as Parcel 102. It is located in the Residence B (RB) Zoning District.

Chair Dewey assigns himself, Paul Pinard, Manny Alves, Larry Hurwitz, and Aaron Webb.

Attorney Dan Creedon is representing the applicant. He explains that the applicants live in Pennsylvania and are scheduled to retire in August and relocate here permanently. They have applied under Section 91 H. (3) because the lot is nonconforming and under 10,000 sq. ft. They meet use and bulk requirements. They received three letters of support from neighbors and heard no opposition. Additionally, the occupied space would be lifted out of the flood plane, which is required of new construction. There would be mitigation to the northwest corner adjacent to wetlands. It's on town sewer and was approved by the Conservation Commission.

Back to the Board for questions. Paul Pinard asks Attorney Creedon to confirm whether they meet Section 240-91 H. (3) even though one of the setbacks will encroach further. Attorney Creedon says even though the setback will increase further, it still meets the requirement of only 10 feet so they do meet that section.

Chair Dewey opens for public comment. Aaron Webb says three letters were submitted in support from Evans, Liang, and O'Malley. Chair Dewey moves to close public comment and the public hearing. Aaron Webb seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Manny Alves 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 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 or otherwise must comply with required setbacks. The proposed front yard setback 22.1 feet and the existing front yard setback is 20.2 feet. The proposed side yard setback is 24.1 feet and the existing side yard setback is 26 feet. The proposed rear yard setback is 13 feet and the existing rear yard setback is 7 feet. The required setbacks are 20 feet front, 10 feet side and rear.
5. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The existing lot coverage is 21.9% and proposed lot coverage is 21.8%.
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 existing FAR is 20% and the proposed FAR is 29%.
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 23 feet to the top of the plate and 2 stories.

8. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

Aaron Webb seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Manny Alves says the appeal is subject to conditions 1-6 from the Staff Report dated April 23, 2024.

Vote:

Aye: Jake Dewey, Paul Pinard, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Special Permit No. 2024-014 Sarver is granted with conditions.

7:03 PM

Appeal No. 2024-015

Singh

Swapna Singh has applied for a Special Permit pursuant to Section 240-47.2 C. (4) Accessory Dwelling Units (ADU's). The Applicant proposes to use the existing 1,300 sq. ft. accessory structure, attached by a roof to the principal dwelling and formerly an exercise room, as an ADU, which exceeds the allowable size by 400 sq. ft. There is no new development proposed. The subject property is located at 144 Meadow Lane, West Barnstable, MA as shown on Assessor's Map 133 as Parcel 026. It is located in the Residence F (RF) Zoning District.

Chair Dewey assigns himself, Paul Pinard, Manny Alves, Larry Hurwitz, and Aaron Webb.

Swapna Singh explains that she is before the Board to legalize the existing ADU of the house she purchased. It is 1,300 sq. ft. structure, which exceeds the allowed size.

Back to the Board for questions. Chair Dewey asks if everything is on one floor. Ms. Singh answers yes. She explains that she is working with a septic professional and an engineer, so that will be made compliant. The ADU has 2 bedrooms. She has talked to the Building Commissioner about what changes they need to make to be compliant.

Chair Dewey opens for public comment. There is none. The Chairman moves to close public comment and the public hearing. Manny Alves seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

The Board deliberates. Chair Dewey asks for the size of the house. Ms. Singh answers 2,369 sq. ft. There is also a finished basement, which they're working with the Building Dept. to get a permit for, so with that it is 3,700 sq. ft. It's a 1.65-acre lot.

Aaron Webb makes a motion to approve based on the following findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-47.2. C. (4) allows a Special Permit for an Accessory Dwelling unit that exceeds the allowable size.
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. He finds there has been no negative public comment about it.

Larry Hurwitz seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Aaron Webb moves to approve based on conditions 1-6 from the Staff Report dated April 23, 2024. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Special Permit No. 2024-015 Singh is granted with conditions.

Correspondence

Notification Transmittal of application for a Definitive Subdivision at 307 Main Street, Hyannis, Subdivision No. 828, being heard by the Planning Board on May 13

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

May 22, 2024, June 12, 2024, June 26, 2024

Adjournment

Aaron Webb mentions that he possibly won't be at the June 12 meeting. Chair Dewey moves to adjourn. Manny Alves seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Documents Used at this Meeting

- March 13, 2024 minutes
- Appeal No. 2024-013 Cape Cod Hospital application packet
- Document entitled "AP-2024-013 Cape Cod Hospital – Signage"
- Appeal No. 2024-014 Sarver application packet
- Public comment in support from Evans, Liang, and O'Malley
- Staff Report dated April 23, 2024 for Appeal No. 2024-014
- Appeal No. 2024-015 Singh application packet
- Staff Report dated April 23, 2024 for Appeal No. 2024-015
- Notification transmittal from Planning Board

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>