

**Zoning Board of Appeals  
MINUTES  
Wednesday, April 23, 2025  
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, April 23, 2025, 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 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>
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/84115788632">https://townofbarnstable-us.zoom.us/j/84115788632</a>	US Toll-free: 888 475 4499
Meeting ID: 841 1578 8632	Meeting ID: 841 1578 8632

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 at 7:07 PM with an introduction of Board Members:

Member	Present	Absent
Dewey, Jacob – Chair	X	
Bodensiek, Herbert – Vice Chair	X	
Pinard, Paul – Clerk	X (late)	
Alves, Manny		X
Hansen, Mark	X	
Hurwitz, Larry	X	
Pittenger, Natalie	X	
Tavano, Rodney	X	
Webb, Aaron	X (late)	

Also present is Jim Kupfer, Director of Planning & Development; Anna Brigham, Principal Planner; Kate Connolly, Assistant Town Attorney; 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.

**Minutes**

None

## Executive Session

**Appeal No. 2023-010 Arista/Wendy's LLC** - Executive Session for the purpose of discussing litigation strategy with respect to the case in the Land Court (24 Misc. 00088) by Arista/Wendy's LLC, for property at 715 West Main Street, Hyannis, originally appealing the denial of a special permit to construct a drive-through window at a Wendy's fast-food restaurant, then appealing the grant of the special permit with conditions upon remand order by the Land Court, and the filing of a complaint for contempt against the ZBA for the remand special permit conditions, if the Chair determines that an open session could be detrimental to the Board's and Town's litigation position.

Chair Dewey declares that an open meeting discussion will have a detrimental effect on the litigation position of the ZBA.

Mark Hansen moves that the Zoning Board of Appeals convene in Executive Session under G.L. c. 30A section 21(a)(3) to discuss litigation strategy with respect to Arista/Wendy's LLC v. Town of Barnstable Zoning Board of Appeals at 715 West Main Street, Hyannis based on the Chair's declaration that an open meeting discussion may have a detrimental effect on the litigating position of the Zoning Board of Appeals in the appeals and that the Board will return to open session at the conclusion of the Executive Session. Herb Bodensiek seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Larry Hurwitz, Mark Hansen, Rodney Tavano, Natalie Pittenger**

**Nay: None**

The Board enters executive session at 7:13 PM.

The Board returns to open session at 8:05 PM. Aaron Webb and Paul Pinard have joined the meeting.

## Old Business

**7:00 PM**

**Appeal No. 2025-006**

**Clark**

James D. Clark and Christine D. Clark have appealed an Administrative Officials Decision. The Petitioners are appealing the Notice of Zoning Ordinance request for enforcement denial dated January 24, 2025 under M.G.L. Chapter 40A Section 7. The Petitioners submit that the decision of the administrative official dated January 24, 2025 was in error as the structure was erected at 968 Main Street is not a "pole supported by wires/ropes and burlap" but was constructed by 4 x 4 lumber cemented into the earth extending approximately 20 feet into the air directly on the common property line draped with burlap which encroaches at 978 Main Street. The subject property is located at 978 Main Street, Cotuit, MA as shown on Assessor's Map 034 as Parcel 032. It is located in the Residence F (RF) Zoning District. Continued from March 26, 2025 and April 9, 2025. Members assigned: Dewey, Bodensiek, Pinard, Hansen, Tavano.

The Board received a request from Attorney Michael Schulz to continue this to May 14. Chair Dewey moves to continue the appeal to May 14, 2025. Aaron Webb seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Rod Tavano**

**Nay: None**

**Appeal No. 2025-006 Clark is continued to May 14, 2025.**

**7:01 PM**

**Appeal No. 2025-008**

**Noelle**

Randolf J. and Barbara G. Noelle have applied for a Special Permit pursuant to Section 240-131.4 (D)(2)(a) Change, Expansion, Alteration of structures. The Applicants are seeking to increase the height of the structure from 14.9 feet to 16.28 feet in connection with the demolition and construction of a dwelling in accordance with the plans by Sullivan Engineering & Consulting, Inc and James Phillip Golden Architect. The subject property is located at 34 Short Beach Road, Centerville, MA as shown on Assessor's Map 206 Parcel 041. It is located in the Craigville Beach District – Long Beach Short Beach (CBD-LBSB) in the District of Critical Planning Concern (DCPC). Continued from April 9, 2025.

The Board received a request from Attorney Michael Schulz to withdraw without prejudice. Chair Dewey moves to withdraw the appeal without prejudice. Mark Hansen seconds.

**Vote:**

**Aye:** Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb, Larry Hurwitz, Rod Tavano, Natalie Pittenger

**Nay:** None

Special Permit No. 2025-008 Noelle is withdrawn without prejudice.

**New Business**

**7:02 PM**

**Appeal No. 2025-009**

**Loucks & Jatkola/Watson**

Kristi Loucks and Ross Jatkola have applied for a Special Permit pursuant to Section 240-56 Schedule of Off-Street Parking Requirements and Section 240-57 Circumstances warranting reduction of parking requirements. The Applicants are seeking relief from the parking requirements, which would require 14 dedicated parking spaces at 47 Warehouse Road under the Ordinance. The Applicants propose shared parking with the tenants at the jointly owned properties of 47 and 63 Warehouse Road. The subject property is located at 47 Warehouse Road Unit 3, Hyannis, MA as shown on Assessor's Map 293 as Parcel 050. It is located in the Business (B) Zoning District.

Chair Dewey assigns himself, Herb Bodensiek, Paul Pinard, Mark Hansen, and Aaron Webb.

Kristi Loucks, the applicant, explains to the Board that their business is personal training by appointment only. The building is 2,500 square feet without the loading dock, and they only take up to 10 people at a time (by appointment only). Ross Jatkola says there are 26 parking spots if you include the shared spots—14 in front of their building and 12 more with the shared parking. Jim Kupfer, Director of Planning & Development, explains that this went to Site Plan Review where it received a no detriment letter, but it is short parking per the new use. There are 26 spaces between the two properties (47 and 63 Warehouse Road) and technically between the two, they need 41 spaces but the parking analysis shows the actual need of the uses is significantly less than that. He confirms that this is under 240-57A. Conrad Watson, the owner of the property, says 63 Warehouse Road is a tile warehouse with one employee. The other two uses are storage warehouses, with very little coming and going. At 47 Warehouse Road, one tenant is a supplier to drugstores and the other is construction material storage.

**Chair Dewey opens for public comment.** Councilor Charlie Bloom speaks in support of the applicants, who he feels provide valuable training for the youth of Hyannis. He thinks Section 240-57A applies here.

Conrad Watson says Mr. Jatkola is a Barnstable High School football coach and is an upstanding member of the community. Chair Dewey moves to close public comment. Mark Hansen seconds.

**Vote:**

**Aye:** Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

**Nay:** None

**The Board deliberates.** Chair Dewey asks if the uses of the other rentals change, would the new tenant have to come before the Board for parking. Jim Kupfer says based on past practice, if it doesn't meet parking requirements, it would have to come before the Board. Aaron Webb asks how long the applicant has been in business. Ms. Loucks answers that they are just getting started at this location and in business.

Chair Dewey moves to close the public hearing. Mark Hansen seconds.

**Vote:**

**Aye:** Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

**Nay:** None

**Mark Hansen makes findings:**

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit.
2. 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.
3. A Site Plan has been reviewed and found approvable with conditions. *Site Plan Review Committee issued a No Detriment Letter on February 24, 2025.*

Aaron Webb seconds.

**Vote:**

**Aye:** Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

**Nay:** None

Mark Hansen says the appeal is subject to conditions 1-4 from the Staff Report dated April 10, 2025.

**Vote:**

**Aye:** Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

**Nay:** None

Special Permit No. 2025-009 Loucks & Jatkola/Watson is granted with conditions.

**7:03 PM**

**Appeal No. 2025-010**

**1185 Falmouth Road LLC et al**

1185 Falmouth Road LLC et al has applied for a Special Permit pursuant to Section 240-57 Circumstances Warranting Reduction of Parking Requirements. The Applicant is seeking relief from the parking requirements to convert 2 existing parking spaces into an outdoor patio for The Buttercup Café. There are 14 existing parking spaces on the property, and 413 parking spaces located within 300 feet of the property. The required parking under the ordinance is 35 parking spaces. The subject property is located at 3224 Main Street, Barnstable, MA as shown on Assessor's Map 299 as Parcel 029. It is located in the Village Business A (VB-A) and the Residence F-2 (RF-2) Zoning Districts.

Aaron Webb recuses himself and leaves the meeting. The Chairman assigns himself, Herb Bodensiek, Paul Pinard, Mark Hansen, and Natalie Pittenger.

Attorney Ashley McCormack is representing the applicant and is joined by Melissa Jankowsky, the business owner, and Garrett Horsfall of Kelly Engineering Group. Ms. Jankowsky has been managing restaurants on Cape Cod for 20 years, and opened this restaurant in 2020. She relies on the income from the summer months and the draw of outdoor seating is part of that. They were approved by Site Plan Review after installing more permanent structures of planters to protect diners in the parking lot. Mr. Horsfall shares the site plan and explains that the parcel is surrounded by a mix of commercial, residential, and public uses. The site itself has 5 uses (real state office, post office, salon, residential dwelling, and restaurant). There are 14 parking spaces on the parcel, and this proposal is to turn 2 spaces into an outdoor patio. There are 413 parking spaces available within 300 feet: 308 spaces in the public lot, 15 public on-street spaces, 12 spaces on the lot, and 78 spaces in adjacent lots.

**Back to the Board for questions.** Chair Dewey asks how many staff members work at the restaurant. Attorney McCormack says between 12 and 20. Ms. Jankowsky advises staff to park in the county lot across the street but sometimes staff park out back. Chair Dewey asks if there are any restrictions on the county parking lot. Attorney McCormack says it's a public lot—there is no signage showing restrictions aside from no overnight parking. Chair Dewey asks if the parking lot is ever at 100% capacity. Attorney McCormack has never seen it full anecdotally. 15 street parking spaces within 300 ft. Mark Hansen asks if it's going to be a seasonal space. Ms. Jankowsky says they've used it the last 4 summers from May-August. The proposed planters would completely block off the 2 spots. The required number of parking spaces is 35 parking spaces for the building, and the actual number will be 12. The other tenants had no formal objections, and the owner of the property is in support.

**Chair Dewey opens for public comment.** The Chairman says the Board received a letter from Dugas with concerns about parking and congestion. Bob Kelly speaks in opposition as owner of The Dolphin restaurant at 3250 Main Street. He takes issue with the applicant saying there are 413 parking spaces available, when many of those are privately owned. He thinks losing 2 spaces would be a detriment.

Jeffrey Bilezikian of 3220 Main Street speaks in opposition with concern that there's not enough parking. He thinks the parking numbers the applicant provided are misleading and untrue. The portion of parking to the left is privately owned and used for his tenants, so should not be counted on this parking analysis.

Chair Dewey moves to close public comment. Herb Bodensiek seconds.

**Vote:**

**Aye:** Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Natalie Pittenger

**Nay:** None

**The Board deliberates.** The Chairman has concerns about the lack of detail about the county parking lot and asks the applicant if they could get a leasing agreement. Mark Hansen says he has a PO box at that post office and can't think of a time when he couldn't find a parking space—he thinks people come and go. Chair Dewey asks who owns the spots in the rear and if there's a parking agreement. Bob Kelly says they are owned by the Dolphin Restaurant. Attorney McCormack says customers are not encouraged to park there and there is no agreement. She adds that the real estate office is only open by appointment, the salon is only open 3 days a week, and the post office is closed on Sundays. Chair Dewey asks if the applicant approached the county about an agreement for use of their lot. Attorney McCormack says they did not. She adds that Ms. Jankowsky isn't sure she can sustain her business if she's not able to utilize the parking spaces for outdoor seating. Natalie Pittenger asks how many customers are expected. Ms. Jankowsky aims to seat all 49 seats inside. There are 16 seats on these 2 parking spaces. The Chairman reiterates that he would like to see an agreement between tenants to share parking and feels that the county lot is a gray area. Herb Bodensiek reports that he has had parking trouble there anecdotally.

Rich Newburg represents 1185 Falmouth Road LLC, the landlord, and reports that the business has been running successfully from a landlord perspective for the last 4 years since the restaurant's opening. Mark Hansen reads from a document on the Cape Cod Commission website about the Barnstable Village Parking and Transit Program prepared by Barnstable County Cape Cod Commission staff that speaks to the general county complex parking lot usage: "spaces that are not designated or signed...these are open to anyone including employees, visitors, patrons of Main Street, and the general public." Paul Pinard thinks the county complex parking lot is often packed, but he thinks losing 2 parking spaces is irrelevant to the overall parking problem in that area. Chair Dewey expresses concern about the lack of any parking agreement and the disparity of the required 35 spaces versus the proposed 12. The Chairman polls the members: Ms. Pittenger, Mr. Hansen, and Mr. Pinard are in favor, and Mr. Bodensiek is opposed. The group discusses what part of the bylaw to lean on. Paul Pinard would like to see some kind of agreement about using the parking spaces. Mark Hansen proposes adding a condition to require a letter from the county that the lot is open parking available for the general public. Chair Dewey suggests the language "evidence satisfactory to the Building Commissioner that exhibits sufficient supplementary parking provided at the county complex."

Chair Dewey moves to close the public hearing. Mark Hansen seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Natalie Pittenger**

**Nay: None**

**Mark Hansen makes findings:**

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit.
2. 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 that evidence can be presented that there are sufficient available parking spaces located offsite, referencing 240-57D for available offsite parking in the county lot across the street. He finds that it has been operating for the past 4 years without complaint or detriment.
3. A Site Plan has been reviewed and found approvable with conditions. *Site Plan Review issued an approval letter on April 3, 2025.*

Natalie Pittenger seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Natalie Pittenger**

**Nay: None**

Mark Hansen says the appeal is subject to conditions 1-4 from the Staff Report dated April 10, 2025. The Board adds:

5. Petitioner will provide evidence satisfactory to the Building Commissioner showing evidence of ability to use the county lot as a business and for patrons.
6. Any change of use on that parcel requires the parking to come back before Site Plan Review and the Board.
7. The outdoor business on the 2 parking spaces with proposed planters can operate seasonally from May 1-October 31.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Natalie Pittenger**

**Nay: None**

**Special Permit No. 2025-010 is granted with conditions.**

7:04 PM

Appeal No. 2025-011

Doud

Michael & Florence Doud have applied for a Modification of Special Permit 2023-023. The Applicants are proposing an addition of a 12 ft. by 16 ft. first floor deck, a 12 ft. by 12 ft. second floor deck, and relocation of a bulkhead as required by a condition of the building permit. The subject property is located at 29 Lafayette Ave, Hyannis, MA as shown on Assessor's Map 287 as Parcel 045. It is located in the Residence F-1 (RF-1) Zoning District.

Chair Dewey recuses himself and leaves the meeting. Herb Bodensiek becomes Acting Chair and assigns himself, Paul Pinard, Mark Hansen, Aaron Webb, and Larry Hurwitz.

Bill O'Brien is representing the applicants and explains that because of how the house is positioned on the lot, its proximity to water, and its southern exposure, they were limited in where they could build. They are looking to put a 2-floor deck on the side of the house. It doesn't encroach into setbacks. They also were required to put a bulkhead on the back of house per the building inspector.

**Back to the Board for questions.** Paul Pinard asks if the upper deck is already built. Mr. O'Brien says the upper deck is framed. Natalie Pittenger asks what material is being used. Mr. O'Brien says it's a rubber roof that they are going to put decking over—it has a copper strip edge. Mark Hansen asks if the bulkhead is encroaching into the setback. Mr. O'Brien says the garage is on the property line. This was the only place they could put the bulkhead and the Building Department already accepted the as-built. The Board discusses whether the encroachment requires a variance. They ask staff for clarification about whether the applicant needs a variance for the bulkhead encroaching into the setback. Building Commissioner Brian Florence joins the meeting and says MGL Chapter 143 says a zoning ordinance cannot supersede a building code for needs of egress, so the bulkhead is allowed within the setbacks. Additionally, in a situation with a building closer to the setback than what's being proposed, that is the setback that rules—so the setback here is 0 because of the existing garage. Paul Pinard asks if the bulkhead shouldn't be included in the application in that case. It does because it's an alteration to the original special permit. Commissioner Florence says the Board could reference Section 102.2.1 of 780 CMR Building Code in their decision, that building code supersedes the zoning ordinance.

**Chair Bodensiek opens for public comment.** There is none. The Chairman moves to close public comment. Mark Hansen seconds.

**Vote:**

**Aye:** Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb, Larry Hurwitz

**Nay:** None

**Chair Bodensiek moves to close the public hearing.** Mark Hansen seconds.

**Vote:**

**Aye:** Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb, Larry Hurwitz

**Nay:** None

**Mark Hansen makes findings:**

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. *Section 240-125 allows for a modification of a Special Permit.*
2. 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.
3. A Site Plan has been reviewed and found approvable with conditions. *Site Plan Review is not required.*

Further Section 240-94 B. requires the Board to find that:

4. Any proposed expansion of the use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties. He adds that Section 780 CMR 102.2.1 shows that in this instance, the bulkhead does conform to the established setbacks.
5. The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming.
6. The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming.
7. At the discretion of the Zoning Board of Appeals, improvements may be required in order to reduce the impact on the neighborhood and surrounding properties including but not limited to the following:
  - (a) Greater conformance of signage to the requirements of Article VII;
  - (b) The addition of off-street parking and loading facilities;
  - (c) Improved pedestrian safety, traffic circulation and reduction in the number and/or width of curb cuts;

(d) Increase of open space or vegetated buffers and screening along adjoining lots and roadways. The applicant shall demonstrate maximum possible compliance with § 240-53, Landscape Requirements for Parking Lots, Subsection F, if applicable.

Aaron Webb seconds.

**Vote:**

**Aye:** Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb, Larry Hurwitz

**Nay:** None

**Mark Hansen says the appeal is subject to conditions 1-4 from Staff Report dated April 10, 2025. (Administrative note: the Staff Report included 5 conditions):**

1. Special Permit No. 2025-001 is granted to Michael and Florence Doud for a 12 ft. by 16 ft. first floor deck, a 12 ft. by 12 ft. second floor deck, and relocation of a bulkhead as required by a condition of the building permit at 29 Lafayette Ave, Hyannis, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Doud Residence Addition and Renovations" by Bruce A. Peterson dated September 23, 2024.
3. The proposed development shall represent full build-out of the lot. Further expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
4. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
5. 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 Special Permit must be exercised within two years, unless extended.

**Vote:**

**Aye:** Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb, Larry Hurwitz

**Nay:** None

**Appeal No. 2025-011 Doud is granted with conditions.**

Chair Dewey returns to the meeting at this point.

**Correspondence**

None

**Matters Not Reasonably Anticipated by the Chair**

**Upcoming Hearings**

May 14, 2025 (in person), May 28, 2025 (remote), June 11, 2025 (in person)

**Adjournment**

Chair Dewey moves to adjourn. Herb Bodensiek seconds.

**Vote:**

**Aye:** Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb, Rodney Tavano, Natalie Pittenger

**Nay:** None

The meeting is adjourned at 10:25 PM.

**Documents Used at This Meeting**

- Request from Attorney Michael Schulz to continue Appeal No. 2025-006 Clark
- Request from Attorney Michael Schulz to withdraw without prejudice Appeal No. 2025-008 Noelle
- Appeal No. 2025-009 Loucks & Jatkola/Watson application materials
- Staff Report dated April 10, 2025 for Appeal No. 2025-009
- Appeal No. 2025-010 1185 Falmouth Road LLC et al application materials
- Staff Report dated April 10, 2025 for Appeal No. 2025-010
- Appeal No. 2025-011 Doud application materials

- Staff Report dated April 10, 2025 for Appeal No. 2025-011

Respectfully submitted,  
Genna Ziino, Administrative Assistant

*Further detail may be obtained by viewing the video via the Barnstable Government Access Channel on demand at [town.barnstable.ma.us](https://town.barnstable.ma.us)*

APPROVED