

Zoning Board of Appeals MINUTES

Wednesday, April 27, 2022 - 7:00 PM

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://zoom.us/j/92214051704 | 888 475 4499 US Toll-free |
| Meeting ID: 922 1405 1704 | Meeting ID: 922 1405 1704 |

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 and takes roll call:

| Member | Present | Absent |
|----------------------|----------|--------|
| Dewey, Jacob – Chair | X | |
| Hirsch, David | X (late) | |
| Bodensiek, Herbert | X | |
| Hansen, Mark | X | |
| Pinard, Paul | 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. No response.

Minutes

March 23, 2022 – Mark Hansen makes a motion to approve. Denise Johnson seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Johnson

Nay: None

Old Business

7:00 PM

Appeal No. 2022-001

Robert A. Savoie, Trustee Robert A. Savoie Rev Tr

Robert A. Savoie, Trustee of the Robert A. Savoie Revocable Trust has applied for a Special Permit pursuant to Section 240-91 H.3 Developed Lot Protection. The applicant seeks to demolish a 2,529 square ft. single family dwelling and construct a 9,409 square ft. single family dwelling on a nonconforming lot containing 20,678 square feet. The demolition will include the existing dwelling,

shed, and retaining walls. The construction will include the dwelling and retaining walls. The subject property is located at 24 Overlea Road, Hyannis, MA as shown on Assessors Map 287 Parcel 150. It is located in the Residence F-1 (RF-1) Zoning District.

The Board received a request from Attorney Boudreau to withdraw without prejudice dated April 19, 2022. Mark Hansen makes a motion to withdraw without prejudice. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Todd Walantis, Mark Hansen, Aaron Webb, Denise Johnson

Nay: None

Appeal No. 2022-001 Robert A. Savoie is withdrawn without prejudice.

7:01 PM

Appeal No. 2022-006

White

Allen J. White has petitioned for a Variance from Section 240-24.1.5 B. Dimensional, Bulk and Other requirements in the Single Family Residential District. The Petitioner is seeking a variance from minimum lot area where 20,000 square feet is required and 15,358 sq. ft. is provided and rear yard setback where 10 feet is required and 3 feet is provided. The subject property is located at 438 South Street, Hyannis, MA, as shown on Assessor's Map 308 as Parcel 123. It is located in the Single Family (SF) Residential District. Continued from March 9, 2022 and March 23, 2022. Members assigned: Hirsch, Bodensiek, Hansen, Webb, Dewey.

Attorney Schilling is representing the applicant. He wants to clarify some things from the last meeting:

1. The Board had asked how far the house was from the rear setback. It is 10 feet from the setback. The desk and the steps make it within 3 feet of the setback, but the applicant is willing to remove those if necessary.
2. It was stated that his client owned Lots 1 and 2 according to the Barnstable Assessors' records. That is not correct. There were two sales to his client, but both were for Lot 2.
3. It was also discussed that his client had common ownership because he was an owner and was the trustee of Homestead Realty Trust. The nominee trust was controlled by the beneficiary, which was his client's daughter, so there was no common ownership and anyway, the lots were not merged in 2003. They were merged in 1985.
4. It was stated that the issue came from a defective title and could be fixed by title insurance, which is not correct. Both lots have clear transfers of ownership making their record titles valid.

He addresses the three-prong test. He refers to a map he previously sent the Board that shows the properties in the area and that his client's lot is uniquely shaped. The fact that the lots mistakenly came under separate ownership is a hardship. They are not asking the Board to create any new lots, but rather to restore the lot to its original state.

Chair Dewey brings it back to the Board for questions. The Board discusses how the two lots merged and what is being asked of them for this Variance.

Chair Dewey opens for public comment. None. Jake Dewey makes a motion to close public comment. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, David Hirsch, Herb Bodensiek, Mark Hansen, Aaron Webb

Nay: None

The Board deliberates. Aaron Webb says he believes the question posed is whether the Board will grant a variance for an undersized lot. Going back and forth about how and when and why is a waste of time because there is no clear answer, and he does not believe the applicant is at fault. Mark Hansen says it's tricky because the White family benefitted from the sale of Lot 2 because of the trust. Attorney Schilling says the land cannot be sold if the Board doesn't grant a variance for this. The Chairman suggests leaving the history of the lots out of the picture, and considering if this came in as a fresh item with no history, would they grant the variance. Todd Walantis adds that although he is not sitting on this, he feels as though the appeal is trying to clean something up. The Board is concerned about setting a precedent. David Hirsch thinks if the Board doesn't issue the variance, they are penalizing the property owner. Herb Bodensiek agrees because he can't see another way to fix the issue.

Aaron Webb makes findings for Appeal No. 2022-006:

Allen J. White has petitioned for a Variance from Section 240-24.1.5 B. Dimensional, Bulk and Other requirements in the Single Family Residential District. The Petitioner is seeking a variance from minimum lot area where 20,000 sq. ft. is required and 15,358 sq. ft. is provided and rear yard setback where 10 ft. is required and 3 ft. is provided. The subject property is located at

438 South Street. Hyannis, MA, as shown on Assessor's Map 308 as Parcel 123. It is located in the Single Family (SF) Residential 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.
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
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.

Herb Bodensiek seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Aaron Webb

Nay: Jake Dewey

Aaron Webb reads that the appeal is subject to conditions 1-3 as written in Staff Report dated February 22, 2022. Attorney Schilling approves. Mark Hansen adds that he thinks because the White family benefitted from the sale, he recommends a donation to the Affordable Housing Trust. Attorney Schilling says his client has and will continue to donate.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Aaron Webb

Nay: Jake Dewey

Appeal No. 2022-006 White is granted with conditions.

7:02PM

Appeal No. 2022-004

Coughlin

Patrick K. Coughlin and Kimberly Piculell Coughlin have applied for a Special Permit pursuant to Section 240-131.4D (2)(a) Change, Expansion or Alteration of Uses or Structures and Section 240-131. 4 E. Dimensional Relief for the front yard setback where 15 feet is required and 4.7 feet and 4.8 feet is provided. The Applicants seek to alter/expand the existing dwelling pursuant to the plans prepared by Sullivan Engineering & Consulting, Inc. and Atelier R Design. The existing dwelling contains 2,704 square feet and the proposed dwelling contains 3,264 square feet. The subject property is located at 186 Lake Elizabeth Drive, Centerville, MA as shown on Assessor's Map 226 Parcel 184. It is located in the Craigville Beach District – Craigville Village (CBD-CV) Zoning District in the District of Critical Planning Concern (DCPC). Continued from March 9, 2022 and April 13, 2022. Members assigned: Dewey, Hirsch, Bodensiek, Webb, Hansen.

Attorney Michael Schulz is representing the applicants. He is joined by Raymond Atelier, the architect. The property is 10,340 square feet and is improved with a single-family dwelling constructed in 1971. He refers to a memo he sent the Board on March 3, 2022. The structure is consistent with the rest of the neighborhood in terms of size and setback. The applicants are proposing to alter and expand the existing dwelling and maintain the existing setback on Lake Elizabeth Ave. They will be keeping at least 80% of the walls and 50% of the roof intact so as not to trigger a voluntary demolition. They will be pouring a new foundation as the current one is in disrepair. They will be constructing a partial second floor of 668 square feet. He notes four letters of support from neighbors. He reads through his findings and suggests that the application meets the requirements for a special permit.

Chair Dewey opens for public comment. The Chairman reads that letters in support were received from Alan Shoemaker, Jim Lane, Kenneth and Lisa Barksdale, Douglas Farquhar and Terry Franklin, and Sue Connolly. Mark Hansen makes a motion to close public comment. David Hirsch seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Aaron Webb, Jake Dewey

Nay: None

Mark Hansen makes findings for Appeal No. 2022-004:

Patrick K. Coughlin and Kimberly Piculell Coughlin have applied for a Special Permit pursuant to Section 240-131.4D (2)(a) Change, Expansion or Alteration of Uses or Structures and Section 240-131. 4 E. Dimensional Relief for the front yard setback where 15 feet is required and 4.7 feet and 4.8 feet is provided. The Applicants seek to alter/expand the existing dwelling pursuant to the plans prepared by Sullivan Engineering & Consulting, Inc. and Atelier R Design. The existing dwelling contains 2,704 square feet and the proposed dwelling contains 3,264 square feet. The subject property is located at 186 Lake Elizabeth

Drive, Centerville, MA as shown on Assessor's Map 226 Parcel 184. It is located in the Craigville Beach District – Craigville Village (CBD-CV) Zoning District in the District of Critical Planning Concern (DCPC).

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-131.4(D)(2)(a) and 240-131.4 (E) allows for expansion of lawfully existing structures with a Special Permit from the Board.
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. 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.
4. Contributes to and respects the character and historic development patterns of the area and minimizes inconsistent development and redevelopment impacts to the historic and community character resources in this area.
5. Protects and preserves scenic views and vistas and ways to the water.
6. Protects and improves natural resources, including but not limited to barrier beach and groundwater and coastal water quality and minimizes development and redevelopment impacts to the natural resources and ecosystems in this district.
7. The development complies with the setbacks and lot coverage requirements set forth herein, and is in character with surrounding structures, particularly structures that predate it. Relief is being requested for expansion of the structure in accordance with § 240-131.4D.
8. The redevelopment complies with the height limitations set forth herein.¹
9. The addition is set back at least 50 feet from the top of the coastal bank resource area.
10. Existing natural vegetation within the fifty-foot buffer area to salt marsh and undisturbed buffer areas 50 feet landward of the mean high-water mark of coastal water bodies shall be preserved to the maximum extent feasible.
11. The expansion does not exceed 25% of the gross floor area of structures in existence as of July 1, 1989, or do not exceed 10% of the gross floor area of structures in existence as of November 6, 2009.²
12. The expansion does not increase lot coverage over what is allowed under § 240-131.6, Coverage limitations, or by more than 10% over what was existing on November 6, 2009, whichever is greater.
13. The expansion does not increase flood hazards in the neighborhood.
14. The expansion maintains views to Nantucket Sound / Centerville River: a minimum 20 foot view shed is existing and maintained.

Herb Bodensiek seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Aaron Webb, Jake Dewey

Nay: None

Mark Hansen reads that the appeal is subject to conditions 1-4 from Staff Report dated February 22, 2022. Attorney Schulz finds the conditions acceptable.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Aaron Webb, Jake Dewey

Nay: None

Appeal 2022-004 Coughlin is granted with conditions.

7:03 PM

Appeal No. 2022-007

Tella

Srikanth and Brigid C. Tella have petitioned for a Variance from Section 240-91(H)(b)(1) Developed Lot Protection. The Petitioners seek a variance to construct a 16' x 32' pool at the property which would increase the lot coverage from 18.38% to 23.87%, exceeding the allowable limit of 20%. The subject property is located at 26 Hidden Lane, Osterville, MA as shown on

¹ BUILDING HEIGHT: The vertical distance from the grade plane to the highest point of a gable, hip or gambrel roof and the highest point of the coping of a flat roof. These height limitations shall not apply to chimneys cupolas, flagpoles or other similar appurtenances as approved by the Building Commissioner.) (Gable roofs having a slope of 7/12 or greater allowed maximum height; hip and other sloped roofs with a slope of 4/12 or greater are allowed five feet less than the max).

² Gross floor area is defined as the sum of all floor areas within a building or structure, measured from the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features. It shall include all areas capable of being used for human occupancy, including all basement floor areas, mezzanine and attic space and enclosed porches.

Assessor's Map 140 Parcel 203. It is located in the Residence C (RC) Zoning District. Continued from March 23, 2022 and April 13, 2022. Members assigned: Hirsch, Bodensiek, Hansen, Webb, Dewey.

Attorney Schulz is representing the applicants. The Tellas were before this Board on March 23, 2022. Attorney Schulz reviewed that hearing and believes the Board was concerned about setting precedent and whether the Tellas were able to articulate variance findings. He believes it would not set precedent because it is an exceptional circumstance. The site plan prepared by Peter McEntee and Terry Warner in 2014 for the teardown/rebuild reflected a future 16x32 foot pool and had a proposed lot coverage of 19.6%. That site plan was stamped and certified, and was used by the town to issue a building permit. If it didn't show lot coverage of less than 20%, it would not have issued—but it did issue. A broker also used that plan to entice the Tellas when they were purchasing their home, because they were looking for a home with a pool or the potential for a pool. In 2021 when they tried to put a pool in, they hired Sullivan Engineering who discovered that with a pool, the lot coverage was at 23%, not 19.6%. Rather than attempt to use the old site plan, the Tellas decided to recognize the situation and come before the Board. He reads through his proposed findings and suggests that the application meets variance requirements. The Tellas would be willing to impose a condition to remove the paved driveway and parking if that would help the Board's decision.

Chair Dewey reopens public comment. A letter was received from Patrick and Valerie Marolda in support. Jake Dewey makes a motion to close public comment. Mark Hansen seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Aaron Webb, Jake Dewey

Nay: None

The Board deliberates. Mark Hansen asks Attorney Schulz to explain how this passes the shape and topography prong of the 3-prong test. Attorney Schulz answers that the uniqueness is that the structure that was shown on the certified site plan was found to be erroneous through no fault of the Tellas. It doesn't affect generally the zoning district in which it's located. Aaron Webb and David Hirsch both think the variance should be granted, because the Tellas were relying on what should have been correct information. Jake Dewey believes it is not the town's responsibility to correct every engineer's mistake. Mark Hansen asks what size pool would fit under 20% lot coverage. Attorney Schulz responds it would be an 8x16 foot pool. Jake Dewey asks if there is an as-built from when the house was built. Attorney Schulz responds that there is not one, but the site plan said "future pool" not "proposed pool." Todd Walantis says he believes removing the driveway is more than enough. Mark Hansen agrees and thinks it could be stipulated in a condition that this is an extenuating circumstance. Jake Dewey believes it is a property owner's due diligence to not rely on a real estate broker's word as gospel. Attorney Schulz adds that he would agree were it not for the stamped plans—at some point in a process like this, you need to rely on a professional's official stamp of approval.

Aaron Webb makes findings for Appeal No. 2022-007:

Srikanth and Brigid C. Tella have petitioned for a Variance from Section 240-91(H)(b)(1) Developed Lot Protection. The Petitioners seek a variance to construct a 16' x 32' pool at the property which would increase the lot coverage from 18.38% to 23.87%, exceeding the allowable limit of 20%. The subject property is located at 26 Hidden Lane, Osterville, MA as shown on Assessor's Map 140 Parcel 203. It is located in the Residence C (RC) 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;
-The shape of the structure as shown on the 2014 certified plan with a 16x32 foot pool, that was reported in compliance, that was found to be erroneous, is a unique structural factor for the house.
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
-They purchased a home under the impression that the pool was part of the site plan, so if they are actually not able to build a pool, that is a financial detriment to their lot.
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.
-They've submitted letters of support, and a pool will not derogate.

Herb Bodensiek seconds.

Vote:

Aye: David Hirsch, Aaron Webb

Nay: Herb Bodensiek, Mark Hansen, Jake Dewey

Appeal 2022-007 Tella is denied. Attorney Schulz explains that the prior conversation led him to believe this appeal would be granted. He requests that the Board rescind the vote and instead continue the item to the next hearing, so he can present the Board with more clear explanations as to how this passes the 3-prong test. The Chairman requests an explanation for 1 and 2 of the prongs, and the Building Commissioner's reasoning as to why there was not an as-built completed. Jake Dewey makes a motion to rescind the denial. Mark Hansen seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Aaron Webb, Jake Dewey

Nay: None

Jake Dewey makes a motion to continue the item to May 11, 2022 at 7:01 PM. Mark Hansen seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Aaron Webb, Jake Dewey

Nay: None

Appeal 2022-007 Tella is continued to May 11, 2022 at 7:01 PM.

New Business

7:04 PM

Appeal No. 2022-011

Condinho

Kyle C. and Julie Condinho have petitioned for a Variance from Section 240-14 E. Bulk Regulations in the RC-1 and RF Residential Districts. The Petitioners seek a variance from the front yard setback in order to allow a newly constructed garage encroaching into the front yard setback by approximately 1.1 feet. The subject property is located at 34 Hi River Road, Marstons Mills, MA as shown on Assessor's Map 060 Parcel 012. It is located in the Residence F (RF) Zoning District.

Sitting on this will be Jake Dewey, Mark Hansen, David Hirsch, Herb Bodensiek, and Paul Pinard.

Attorney Mark Boudreau is representing the applicants. He is joined by Kyle Condinho. Attorney Boudreau explains that this is a .63 acre parcel where the garage was sited to be away from wetlands across the street from River Road. It has frontage on two roads. The lot tapers significantly from north to south, going from 139.19 feet down to 85.99 feet. It is also very steep. When the garage was constructed, on the north side it complied with the setback and on the south side it is 13 inches encroaching. He believes the shape of the lot and the soil conditions due to the wetlands are a hardship.

Chair Dewey opens for public comment. Four letters in support were received: Lynne Belfiore, Craig Condinho, Joanne Filkins, and Lillian and David Hiatt. Jake Dewey makes a motion to close public comment. Mark Hansen seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Paul Pinard, Jake Dewey

Nay: None

Mark Hansen asks if the encroachment was inadvertent. Attorney Boudreau answers yes.

Mark Hansen makes findings for Appeal No. 2022-011:

Kyle C. and Julie Condinho have petitioned for a Variance from Section 240-14 E. Bulk Regulations in the RC-1 and RF Residential Districts. The Petitioners seek a variance from the front yard setback in order to allow a newly constructed garage encroaching into the front yard setback by approximately 1.1 feet. The subject property is located at 34 Hi River Road, Marstons Mills, MA as shown on Assessor's Map 060 Parcel 012. It is located in the Residence F (RF) 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;
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
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.

David Hirsch seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Paul Pinard, Jake Dewey

Nay: None

Mark Hansen reads that the appeal is subject to conditions 1-4 from Staff Report dated April 19, 2022. Attorney Boudreau finds the conditions 1, 2, and 4 acceptable but requests number 3 be removed as they may want to add on to their house. It is expensive to come before the Board again. The Board is favorable. Mark Hansen reads that the appeal is subject to conditions 1, 2, and 4 from Staff Report dated April 19, 2022 with Condition No. 3 stricken. Paul Pinard seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Mark Hansen, Paul Pinard, Jake Dewey

Nay: None

Appeal 2022-011 Condinho is granted with conditions.

7:05PM

Appeal No. 2022-016

Crocker

Deacon Crocker has applied for a Special Permit pursuant to Section 240-47.1.B (4) Family Apartments. The Applicant proposes to convert an existing detached apartment unit, previously used as an accessory apartment unit in the Accessory Affordable Apartment Program (AAAP), into a family apartment. The subject property is located at 2110 Main Street, Barnstable, MA as shown on Assessor's Map 237 as Parcel 064. It is located in the Residence F (RF) Zoning District.

Sitting on this will be Jake Dewey, Mark Hansen, David Hirsch, Paul Pinard, Herb Bodensiek, and Todd Walantis.

The applicant bought the property from his parents the prior fall. The property has been in his family since 1634, and only his family has lived there. His parents currently live in the main house. They will be putting an addition on the cottage, and then his parents plan to live in the cottage while he lives in the main house. The Board discusses whether a family apartment or an ADU would be the best choice for this applicant. The applicant chooses to move forward with a family apartment special permit.

Chair Dewey opens for public comment. Paul Pinard wants to make sure they do not need to approve the addition to the cottage. The applicant and Anna Brigham explain that the cottage meets the requirements. The applicant's father, Deacon Crocker, addresses the Board to explain that the existing cottage is 224 sq. ft., and the addition is 390 sq. ft., totaling about 614 sq. ft. The main house is well over 1,500 sq. ft. The family apartment will be one bedroom and one bathroom. Jake Dewey makes a motion to close public comment. Paul Pinard seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Paul Pinard, Jake Dewey

Nay: None

Paul Pinard makes findings for Appeal No. 2022-016:

Deacon Crocker has applied for a Special Permit pursuant to Section 240-47.1.B (4) Family Apartments. The Applicant proposes to convert an existing detached apartment unit, previously used as an accessory apartment unit in the Accessory Affordable Apartment Program (AAAP), into a family apartment. The subject property is located at 2110 Main Street, Barnstable, MA as shown on Assessor's Map 237 as Parcel 064. It is located in the Residence F (RF) Zoning District.

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-47.1. B. allows a Special Permit for a Family Apartment in a detached structure.
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 family apartment would not be substantially more detrimental to the neighborhood than the existing dwelling.
5. The single-family nature of the property and of the accessory nature of the detached structure is preserved.

Herb Bodensiek seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Paul Pinard, Jake Dewey

Nay: None

Paul Pinard reads that the appeal is subject to conditions 1, 2, 4, 5, and 6 from Staff Report dated April 19, 2022. He proposes to eliminate Condition No. 3. Mark Hansen seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Paul Pinard, Jake Dewey

Nay: None

Appeal No. 2022-016 Crocker is granted with conditions.

7:06 PM

Appeal No. 2022-017

Cape Pups Playcare LLC, as Lessee

Cape Pups Playcare LLC, as Lessee, has applied for a Special Permit pursuant to Section 240-125 C. Special Permit Provisions and Section 403-3 B. Obtaining a Kennel License. The Applicant is proposing to operate a dog care business as well as a boarding facility. The Boarding facility requires a kennel license which requires a Special Permit. The subject property is located at 1336 Phinney's Lane, Units 1-5, 1-6, 1-7, Hyannis, MA as shown on Assessor's Map 274 as Parcel 018. It is located in the Residence G (RG), Residence F (RF) Districts and the Medical Services Overlay District (MSOD).

Sitting on this will be Jake Dewey, Mark Hansen, Paul Pinard, Herb Bodensiek, David Hirsch, and Todd Walantis.

Attorney John Kenney is representing the applicant. He is joined by Attorney Pat Nickerson from his office and the owners of the LLC, Jaime Henriques and Ashley LeBeouf. Their proposed business would be open 7 days a week and would open, at the earliest, 6 AM and close, at the latest, 8 PM. However, there would be overnight boarding. Services would include monitored playtime, feeding, bathing (but not grooming), and overnight boarding. Business operations would occur both inside and outside. There is roughly 2,300 square feet inside the building and roughly 2,100 square feet outside in a fenced-in back yard. There is no plan for employees to stay overnight, but cameras will be installed to monitor the premises overnight.

Back in 1985, the ZBA granted a special permit allowing the property to be used as miscellaneous business use, and the property has operated under that ever since. The applicants went to Site Plan Review pursuant to the ordinance, and received an approval letter dated October 8, 2021. On November 5, 2021 the applicants signed a lease for the premises. On January 1, 2022 they obtained a building permit and immediately began renovations to convert the building to their business purposes. In February of 2022, as they were preparing to open, they contacted Animal Control Officer Lewis to ask if a kennel license was required. Officer Lewis came to the property and told them they do need a kennel license and additionally, they need to go before the ZBA. On March 10, 2022 Site Plan Review revoked the October 8 approval letter and issued a new letter dated March 11 instructing the applicants to go before ZBA for a special permit. Their burden is to show they meet the requirements of 240-27 and 240-125 C. They had to go to Site Plan Review, come before the ZBA, and if the ZBA grants the special permit then they must have a public hearing with the Town Manager. The only part of 240-27 C that addresses kennels merely says the ZBA can impose conditions—there are no requirements set forth. The location has been developed and this will not derogate the neighborhood. This site was the site of a prior dog kennel. He believes the existing special permit meets the requirements.

Chair Dewey opens it up to the Board for questions. The Board believes this is a perfect location for this business.

Chair Dewey opens for public comment. The property owner, Jay Goodwin, addresses the Board to say he is in support of the project. Jake Dewey makes a motion to close public comment. Todd Walantis seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Paul Pinard, Jake Dewey

Nay: None

Chair Dewey makes findings for Appeal No. 2022-017:

Cape Pups Playcare LLC, as Lessee, has applied for a Special Permit pursuant to Section 240-125 C. Special Permit Provisions and Section 403-3 B. Obtaining a Kennel License. The Applicant is proposing to operate a dog care business as well as a boarding facility. The Boarding facility requires a kennel license which requires a Special Permit. The subject property is located at 1336 Phinney's Lane, Units 1-5, 1-6, 1-7, Hyannis, MA as shown on Assessor's Map 274 as Parcel 018. It is located in the Residence G (RG), Residence F (RF) Districts and the Medical Services Overlay District (MSOD).

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 (see letter dated March 11, 2022).

- Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.

Mark Hansen seconds.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Paul Pinard, Jake Dewey

Nay: None

Jake Dewey reads that the appeal is subject to conditions 1-5 from Staff Report dated April 19, 2022. Attorney Kenney requests changing Condition No. 1 to remove the reference to d/b/a. He also requests to strike Condition No. 4 because his client is a lessee and there are several other businesses that operate there. The Board is amenable. Jake Dewey reads that the appeal is subject to conditions 1-3 and 5 from Staff Report dated April 19, 2022, with Condition No. 1 stating that the special permit is granted to Cape Pups Playcare, LLC, and with Condition No. 4 stricken.

Vote:

Aye: David Hirsch, Herb Bodensiek, Todd Walantis, Mark Hansen, Paul Pinard, Jake Dewey

Nay: None

Appeal No. 2022-017 Cape Pups Playcare, LLC is granted with conditions.

7:07 PM

Appeal No. 2022-018

Holian Family Realty Trust

Janet Holian, Trustee, Holian Family Realty Trust, has petitioned for a Variance from Section 240-7 D. Lot Shape Factor for Parcel B on a plan showing Lot Division. The Petitioner is seeking to divide the existing lot into two lots. The subject property is located at 250 Windswept Way Osterville, MA as shown on Assessor's Map 051 Parcel 012. It is located in the Residence F-1 (RF-1) Zoning District and Resource Protection Overlay District (RPOD).

This item was taken out of order and was presented after Old Business Appeal No. 2022-001.

The Board received a request to continue this item to May 25, 2022 at 7:00 PM. Mark Hansen makes a motion to continue to May 25, 2022 at 7:00 PM. Herb Bodensiek seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, David Hirsch, Paul Pinard, Todd Walantis, Mark Hansen, Aaron Webb, Denise Johnson

Nay: None

Appeal No. 2022-018 Holian Family Realty Trust is continued to May 25, 2022 at 7:00 PM.

Correspondence

None.

Matters Not Reasonably Anticipated by the Chair

None.

Upcoming Hearings

May 11, 2022, May 25, 2022, June 8, 2022

Adjournment

Paul Pinard makes a motion to adjourn. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, David Hirsch, Paul Pinard, Todd Walantis, Mark Hansen, 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>