

# Zoning Board of Appeals

## MINUTES

### Wednesday, May 11, 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
<a href="https://townofbarnstable-us.zoom.us/j/83718753592">https://townofbarnstable-us.zoom.us/j/83718753592</a>	888 475 4499 US Toll-free
Meeting ID: 837 1875 3592	Meeting ID: 837 1875 3592

3. Applicants, their representatives and individuals required or entitled to appear before the Zoning Board of Appeals may appear remotely, and may participate through accessing the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to [anna.brigham@town.barnstable.ma.us](mailto:anna.brigham@town.barnstable.ma.us) so that they may be displayed for remote public access viewing.

Copies of the applications are available for review by calling (508) 862-4682 or emailing [anna.brigham@town.barnstable.ma.us](mailto:anna.brigham@town.barnstable.ma.us).

#### Call to Order

Chair Jacob Dewey calls the meeting to order and takes roll call:

Member	Present	Absent
Dewey, Jacob – Chair	X	
Hirsch, David	X	
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

None.

#### Local Initiative Program Applications Policy Adoption

The Town of Barnstable requests to amend the Zoning Board of Appeals Comprehensive Permit Rules and Regulations by adding [“Procedures for Partnering on a Local Initiative Program Project”](#) as provided.

This item was taken out of order and was presented after Appeal No. 2021-057. Jim Kupfer, Senior Planner, addresses the Board with an update about the friendly 40B initiative. He sought feedback from other Boards and received no negative, so the plans remain the same as last time he presented. Tonight, he asks the Board to adopt the process to be an addendum. Paul Pinard is concerned that he has not had enough time to review the document. The Board decides to move this to the next meeting.

## Old Business

7:00 PM

Appeal No. 2021-057

O'Neill and Dunbar Point LLC

J. Brian O'Neill, Miriam O'Neill, and Dunbar Point LLC have applied for a Special Permit pursuant to Section 240-91 F Merged Lots. The Applicant seeks to relocate the property line between 689 and 697 Scudder Avenue which would result in the cottage to be part of 689 Scudder Avenue. The subject properties are 689 Scudder Ave and 697 Scudder Ave, Hyannis, MA on Assessors Map 287, Parcels 061 and 062. It is located in the Residence F-1 (RF-1) Zoning District. Continued from December 8, 2021, January 12, 2022, February 23, 2022, March 23, 2022.

The Board received a request to continue this item. The Board discusses whether to withdraw this item, as it has been continued so many times. Anna Brigham explains that there is an issue being held up by the town's legal department, so that's why they've requested to continue. Jake Dewey makes a motion to continue Appeal No. 2021-057 to July 13, 2022 at 7:00 PM.

### Vote:

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

**Nay: None**

Appeal No. 2021-057 O'Neill and Dunbar Point LLC is continued to July 13, 2022 at 7:00 PM.

7:01 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 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 and April 27, 2022. Members assigned: Hirsch, Bodensiek, Hansen, Webb, Dewey.

The Board received a request to continue this item. Jake Dewey makes a motion to continue Appeal No. 2022-007 to June 8, 2022 at 7:01 PM. Mark Hansen seconds.

### Vote:

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

**Nay: None**

Appeal No. 2022-007 Tella is continued to June 8, 2022 at 7:01 PM.

## New Business

7:02 PM

Appeal No. 2022-019

Stanley

Dean Stanley has applied for a Special Permit in accordance with Section 240-47.2 C. (4) Accessory Dwelling Unit. The Applicant seeks to construct a 969 square feet 1-bedroom Accessory Dwelling Unit (ADU) which exceeds the allowable size by 69 square feet. The subject property is located at 10 Oak Street, Centerville, MA as shown on Assessors Map 173 as Parcel 006. The property is located in the Residence F (RF) Zoning District.

Dean Stanley addresses the Board to provide background. He resides at 36 Masthead Lane in Centerville and the dwelling in the appeal is going to be his new residence. This property was originally purchased for his son, who is handicapped and was having trouble dealing with the stairs at his former house. They'd planned to build an auxiliary apartment for their son to use as income. Their son's health has deteriorated drastically since then, so they decided to sell their house and move in to this property to help him, as he needs daily help for himself and his daughter (he is a single parent). The property is compliant in terms of lot coverage and setbacks. They only need the special permit for the 69 square feet.

**Chair Dewey opens for public comment.** None. David Hirsch asks the Chair to assign members. He assigns himself, David Hirsch, Mark Hansen, Herb Bodensiek, and Paul Pinard. Jake Dewey makes a motion to close public comment. Herb Bodensiek seconds.

### Vote:

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

**Nay: None**

**The Board deliberates.** There is agreement that the Building Commissioner has approved everything else and a request for 69 square feet will have minimal impact.

**Herb Bodensiek makes findings for Appeal No. 2022-019:**

Dean Stanley has applied for a Special Permit in accordance with Section 240-47.2 C. (4) Accessory Dwelling Unit. The Applicant seeks to construct a 969 square foot 1-bedroom Accessory Dwelling Unit (ADU) which exceeds the allowable size by 69 square feet. The subject property is located at 10 Oak Street, Centerville, MA as shown on Assessors Map 173 as Parcel 006. The property 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 240-47.2. C. 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.

Paul Pinard seconds.

**Vote:**

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

**Nay: None**

Herb Bodensiek reads that the appeal is subject to Conditions 1-6 on Staff Report dated May 2, 2022. Mr. Stanley is amenable, except that his son may want to add a garage or shed in the future so Condition No. 3 is a problem. Herb Bodensiek reads that the appeal is subject to Conditions 1-6 from on Staff Report dated May 2, 2022, except striking Condition No. 3.

**Vote:**

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

**Nay: None**

**Appeal No. 2022-019 Stanley is granted with conditions.**

**7:03 PM**

**Appeal No. 2022-020**

**Borsatto**

Kelly Borsatto has applied for a Special Permit in accordance with Section 240-47.2 (C) (4) and Section 240-47.2.(C) (5) Accessory Dwelling Unit. The Applicant seeks to construct a 770 square foot 3-bedroom Accessory Dwelling Unit (ADU) which exceeds the number of bedrooms and number of adults. The subject property is located at 135 Sea Street, Hyannis, MA as shown on Assessors Map 307 as Parcel 279. The property is located in the Residence B (RB) Zoning District.

The Chairman reads a clarification that this will be creating, not just constructing, a 770 square foot accessory dwelling unit in existing floor area. He assigns David Hirsch, Paul Pinard, Mark Hansen, himself, and Denise Johnson. Herb Bodensiek says he knows an abutter but does not feel that will make him biased. Ms. Borsatto requests a different member take his place. The Chairman assigns Aaron Webb instead.

Ms. Borsatto addresses the Board to provide background. The property in the appeal is one she and her partner purchased last year with the intention of using it for employee housing for the workers they bring over from Brazil. Part of their contract is that they are provided with housing. They chose this location because their restaurant is close enough that workers wouldn't need a car. She also owns 525 South Street and a house on Newton Street—both are used for employee housing. The lack of housing on cape has really impacted her workers.

**Chair Dewey brings it back to the Board for questions.** Aaron Webb asks the applicant what exactly she is planning to do at this property. Ms. Borsatto explains that the property has a structure already framed out. What was planned as a garage, they are using for storage for their restaurant goods. The upstairs is a framed-out open space—that's what they would like to turn into 3 bedrooms, a bathroom, and a kitchenette. Jake Dewey asks Ms. Borsatto if she plans to live there. She explains that her partner's family lives there now. The Board discusses whether an owner needs to live on the property of the ADU they are renting out. The way it reads, it seems an owner is not required to be on the property, but both the principal dwelling and the ADU may not be rented—only one or the other. They also discuss that commercial use is not allowed at ADUs, so she would have to give up the business storage. Since Ms. Borsatto's family is not paying rent, the principal dwelling is not really being rented. The Board believes this is a tricky situation because this was not the intent of the ADU at all. Aaron Webb is not in favor.

**Chair Dewey opens for public comment.** David and Caroline Johnson of 125 Sea Street address the Board as abutters. Mr. Johnson informs the Board that Ms. Borsatto's application for special permit says "to be occupied by owner." Mr. Johnson summarizes that the main reasons they oppose this are safety, the size of the property, and the overall level of saturation of

multi-tenant dwellings nearby. There is a significant amount of traffic at this property already—there are at least 3 cars at this property, and they would be adding the potential for 3+ more. The property has already been expanded twice, and is already a large building on a small lot. He believes the spirit of the law is that the owner should live at the property. They are bordered by a women’s shelter, a rooming house, and numerous multi-tenant homes, whether legal or illegal, and believe their neighborhood is already saturated enough. Jake Dewey adds for the record that Mr. Johnson’s letter in opposition was also received.

Dawn Ericson-Taylor of 130 Sea Street addresses the Board in opposition. She seconds Mr. Johnson’s concerns. Her driveway is used already by the residents, and a resident even had an accident while pulling out after using her driveway. She says there’s anywhere from 6-8 regular vehicles at the location. She is also upset about the property being used for commercial use.

Lisa Coconides of 143 Sea Street addresses the Board in opposition. She also supports Mr. Johnson’s concerns. There’s already been an incident of a firetruck and an ambulance coming down their driveway to access this property. The area is too congested as it is, and she feels it’s not right to buy a single-family home and convert it for use for a business.

Jeff Brown of 50 Woodbury Avenue addresses the Board in opposition. He agrees with other abutters. There are already traffic, congestion, and safety issues. He believes their neighborhood is doing enough for workforce housing—it needs to go somewhere else. He also points out that despite the applicant’s family not paying rent, they are still technically renting per the law.

Jake Dewey adds that a letter in opposition from Jim Heaney was received. Jake Dewey makes a motion to close public comment. David Hirsch seconds.

**Vote:**

**Aye: David Hirsch, Aaron Webb, Paul Pinard, Denise Johnson, Jake Dewey**

**Nay: None**

Ms. Borsatto clarifies that the property is owned by she and her husband, so his family is family of the owner. Over the winter, they let some people who were looking for housing live there, but they are gone now. Her partner’s family does not have a vehicle so any vehicle coming and going would be a family member visiting.

**The Board deliberates.** Jake Dewey asks for clarification about the application. Ms. Borsatto explains that her contractor filed the application so it’s under his name as the applicant, with her as the property owner, but the house is actually in a trust. The Chairman asks why the application says “to be occupied by owner” with the ADU as a rental. She says that was a miscommunication with her contractor. The Chairman believes this should not be considered a single-family home and should go before Site Plan Review. The Board believes the intention of an ADU was that the owner must reside in one of the units—if that was the intention, the Planning & Development department need to correct the way the bylaw was written. They do not believe this proposal follows the spirit and intent of the ordinance and would be a detriment to the neighborhood.

Jake Dewey makes a motion to deny Appeal No. 2022-020. David Hirsch seconds.

**Vote:**

**Aye: David Hirsch, Aaron Webb, Paul Pinard, Denise Johnson, Jake Dewey**

**Nay: None**

**Appeal No. 2022-020 Borsatto is denied.**

**Correspondence**

\*Housing Assistance Update of status of affordable units in Cotuit

\*Cape Cod Commission Hearing Notice for Cape Cod Hospital Cancer and Cardiology Expansion to be held Virtually on Monday, May 16, 2022 at 5:00 p.m.

\*Dept of Housing & Community Development Subsidized Housing Inventory Biennial Update

\*Hearing Notice from the Cape Cod Commission for 35 Scudder Residential Community – Continued to May 17, 2022

**Matters Not Reasonably Anticipated by the Chair**

The Board discusses if they should return to in-person meetings. Staff is trying to make a hybrid option available. The Board would prefer in-person.

**Upcoming Hearings**

May 25, 2022, June 8, 2022, June 22, 2022

## **Adjournment**

Jake Dewey makes a motion to adjourn. Paul Pinard seconds.

### **Vote:**

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

**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>