

# Zoning Board of Appeals MINUTES Wednesday, June 14, 2023 at 7:00 PM

To all persons interested in or affected by the actions of the Zoning Board of Appeals, you are hereby notified, pursuant to Section 11 of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, and all amendments thereto, that a public hearing on the following appeals will be held on Wednesday, June 14, 2023, at the time indicated:

## Call to Order

The Chairman calls the meeting to order at 7:01 with an introduction of Board Members:

Member	Present	Absent
Dewey, Jacob	X	
Bodensiek, Herbert	X	
Pinard, Paul	X	
Hansen, Mark	X	
Johnson, Denise	X	
Webb, Aaron		X

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

## Notice of Recording

The Chairman reads: 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.

## Minutes

May 10, 2023 and May 24, 2023 – Mark Hansen makes a motion to approve. Denise Johnson seconds.

### Vote:

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

## Old Business

**7:00 PM**

**Appeal No. 2023-006**

**Andersen**

Denise M. Andersen, Trustee of the Andersen 77 Parker Road Nominee Trust, has petitioned for two Variances from Section 240-13 E. Residence C (RC) District, Bulk Regulations, and 240-36 Resource Protection Overlay District (RPOD). The Petitioner seeks two variances to unmerge Lot 1 (40,075 sq. ft.) from Lot 2, a developed lot containing 43,915 sq. ft., pursuant to the plan prepared by Sullivan Engineering and Consulting, Inc. The subject property is located at 77 Parker Rd, Osterville, MA as shown on Assessor's Map 117 as Parcel 135. It is located in the Residence C (RC) Zoning District. Continued from March 22, 2023, April 12, 2023, April 26, 2023, May 10, 2023, and May 24, 2023. Pinard recused.

The Chairman asks whether anyone is present to represent the applicant. There is no response. The Chairman asks staff if they have received correspondence from the representative, Attorney Michael Schulz. They have not. The Board proceeds with the rest of the agenda items and returns back to this after. Attorney Schulz has been contacted and has requested to continue this item to June 28, 2023. Chair Dewey makes a motion to continue Appeal No. 2023-006 to June 28, 2023 at 7:01 PM. Paul Pinard seconds.

### Vote:

**Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Denise Johnson**

**Nay:**

**Appeal No. 2023-006 Andersen is continued to June 28, 2023 at 7:01 PM.**

## New Business

7:01 PM

Appeal No. 2023-011

773 South Main St., LLC

773 South Main Street, LLC has applied to modify Condition No. 4 of Appeal No. 2019-005 to allow an additional accessory structure on the property, and has applied for a Special Permit in accordance with 240-131.4(E) for relief from minimum yard setbacks, if the Board finds it necessary. The Applicant proposes to install an approximately 12 foot by 20.5 foot in ground pool approximately 3 feet from the westerly property line. The Applicant seeks to modify Condition No. 4 of Appeal No. 2019-005 to allow the proposed pool as an accessory structure. The subject property is located at 773 South Main Street, Centerville, MA as shown on Assessor's Map 185 as Parcel 013. It is located in the Craigville Beach District (CBD) and the Centerville River North Bank (CRNB) Neighborhood Overlay Zoning Districts.

Attorney Eliza Cox has requested to continue this item to July 12, 2023. Mark Hansen makes a motion to continue Appeal No. 2023-011 to July 12, 2023 at 7 PM.

### Vote:

**Aye:** Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson

**Nay:** None

Appeal No. 2023-011 773 South Main St., LLC is continued to July 12, 2023.

7:02 PM

Appeal No. 2023-012

MacKinnon, Trustee of MCCM Realty Trust

Donald J. MacKinnon, Trustee of MCCM Realty Trust has applied to modify Condition No. 4 of Appeal No. 2022-008 to allow an additional accessory structure on the property. The Applicant proposes to construct a free-standing garage/workshop. As per Condition No. 4 of Appeal No. 2022-008, approval is required for this accessory structure. The subject property is located at 910 Main Street, Cotuit, MA as shown on Assessor's Map 035 as Parcel 090. It is located in the Residence F (RF) Zoning District and the Resource Protection Overlay District (RPOD).

Sitting on this is Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, and Denise Johnson.

Attorney Eliza Cox is representing the applicant and is joined by him and Craig Ferrari, the engineer with Down Cape Engineering who did the site plan. The subject property meets all zoning setbacks except that it is on an undersized lot. Attorney Cox outlines for the Board the prior zoning decisions on the property. As part of the modification permit decision, a standard condition was added by the Board to prohibit any additional structures. She walks the Board through the site plan. The proposed structure is a 498 sq. ft. detached garage/workshop, is a custom design that is consistent with the area, and meets all setbacks. Section 240-43 allows by right accessory structures so if it weren't for the condition in the prior variance decision, they would not need zoning relief for this. She believes the proposed structure is in keeping with the neighborhood and is an appropriate level of development for the lot. She references Section 240-91H: while this section is for demolishing and reconstructing on an undersized lot and so doesn't directly apply here, it sets out by right allowed coverage and floor area ratios for undersized lots. If those were to be applied here, their proposal would meet the requirements. The plan has been approved by the Conservation Commission and the Board of Health.

**Chair Dewey brings it back to the Board for questions.** Paul Pinard asks if this structure will be hooked up to a septic system. Attorney Cox answers yes, there is a half bathroom proposed. The structure is not intended for living.

Attorney Cox hands out and walks the Board through a document of her requested edits to the Staff Report.

**Chair Dewey opens for public comment.** There is none. Chair Dewey makes a motion to close public comment. Paul Pinard seconds.

### Vote:

**Aye:** Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson

**Nay:** None

**The Board deliberates.** They discuss adding a condition to limit the bathroom to a half bath or to restrict habitation, but decide that the restriction is unnecessary.

**Paul Pinard moves to approve the modification of Variance No. 2022-008 Condition No. 4 and makes findings:**

Donald J. MacKinnon, Trustee of MCCM Realty Trust has applied to modify Condition No. 4 of Appeal No. 2022-008 to allow an additional accessory structure on the property. The Applicant proposes to construct a free-standing garage/workshop. As per Condition No. 4 of Appeal No. 2022-008, approval is required for this accessory structure. The subject property is located at 910

Main Street, Cotuit, MA as shown on Assessor's Map 035 as Parcel 090. It is located in the Residence F (RF) Zoning District and the Resource Protection Overlay District (RPOD).

1. Variance No. 2023-012 is seeking to modify Variance No. 2022-008 Condition No. 4 to allow an additional accessory structure on the property as submitted in the application and plan provided. The Applicant proposes to construct a free-standing garage/workshop at 910 Main Street, Cotuit, MA. All other conditions are in effect.

Mark Hansen seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

Paul Pinard reads through conditions 1-6 from the June 1, 2023 Staff Report, with edits as made by Attorney Cox.

1. Variance No. 2023-012, a modification of Variance No. 2022-008, is granted to Donald J. MacKinnon, Trustee of MCCM Realty Trust to amend the plan referenced in Condition #4 of Variance 2022-008 to refer to the revised site plan submitted with this petition which depicts an accessory structure on 910 Main Street, Cotuit.
2. The septic system on the subject property shall be maintained in perpetuity until such time as sewer is available and the property is connected to the municipal sewer system.
3. The site development shall be in substantial conformance with the plan entitled "Site Plan of #910 Main Street & #33 Oyster Place Road Cotuit, MA" prepared by Down Cape Engineering Inc., dated April 29, 2021 and last revised on March 13, 2023.
4. There shall be no further expansion of the structures or construction of additional accessory structures without approval from the Zoning Board of Appeals.
5. The Petitioner shall comply with Decisions and conditions issued by the Board of Health and Conservation Commission.
6. 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. The rights authorized by this Variance must be exercised within one year, unless extended.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay:**

Variance No. 2023-012 is granted with conditions.

**Correspondence**

None.

**Matters Not Reasonably Anticipated by the Chair**

Paul Pinard discusses that much of a berm for a property that came through the ZBA is dead, but there is nothing the Building Commissioner can do about it. Paul Pinard proposes that they draft a condition to use to protect the health/maintenance of vegetation for appeals that require a buffer, in order to make it easier for Building to enforce action.

**Discussion Regarding Withdrawals and Continuances**

Paul Pinard walks the rest of the Board through his comprehensive findings about other ZBA's regulations regarding withdrawals and conditions, and they decide on their preferred regulations. The Board has concerns that profuse and last-minute continuances negatively impact interested members of the public.

Withdrawals:

**Does an applicant need to attend a hearing to request a withdrawal?** An appearance by the petitioner or their representative at the hearing is not required if a written request has been made prior to the hearing.

**Does an applicant need to include a reason for withdrawal?** A reason for withdrawal is not required.

**Deadline for submission?** Applicants or their representative either need to submit a written request before 4:30 PM the Friday prior to the meeting or appear in person at a hearing to request a withdrawal.

Continuances:

**Is an appearance at a hearing required for a continuance even if a written request is made prior to the meeting?** An appearance by the petitioner or their representative at the hearing is not required at the first request for a continuance but for any subsequent requests an appearance by the petitioner or their representative is required to formally submit the request and state the reason for it for the Board's consideration.

The Board discusses that it is always an option for them to deny a continuance, in which case the petitioner would have to resubmit and abutters would have to be renoticed. The Board feels that at some point, a continued item should have to be renoticed. It is discussed that a request for a continuance should be submitted in writing early enough that an amended agenda can be submitted so the public is updated in some way.

**Deadline for submission?** Applicants or their representative either need to submit a written request before 4:30 PM the Friday prior to the meeting or appear in person at a hearing to request a continuance.

**Is there a limit on the number of times a continuance may be granted?** No specific rule is proposed but the Board would like to have a discussion after a third continuance request.

Miscellaneous:

- Written public comment should be submitted at least 48 hours prior to a hearing.
- Information provided less than one week prior to the hearing date may result in a continuance.

The next step is to put this all together for a final review by the Board. The Legal Department can help identify the appropriate steps.

**Upcoming Hearings**

June 28, 2023, July 12, 2023, July 26, 2023

**Adjournment**

Chair Dewey makes a motion to adjourn. Mark Hansen seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay:**

**Documents Used at This Meeting**

- May 10, 2023 Minutes
- May 24, 2023 Minutes
- 2023-012 MacKinnon application packet
- Staff Report for 2023-012 MacKinnon dated June 1, 2023
- Attorney Cox's suggested edits to Staff Report
- Paul Pinard's research project on withdrawals and continuances

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>