

Zoning Board of Appeals
MINUTES
Wednesday, December 11, 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, December 11, 2024, 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/Cab1ecastPublicSite/watch/1?channel=>
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://townofbarnstable-us.zoom.us/j/87665255429	US Toll-free 888 475 4499
Meeting ID: 876 6525 5429	Meeting ID: 876 6525 5429

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 Jake 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	
Pittenger, Natalie	X	
Tavano, Rodney	X	
Webb, Aaron	X	

Also present is Anna Brigham, Principal Planner; Betty Ludtke, Town Council Liaison; 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

October 23, 2024 and November 13, 2024 - The minutes were not included on the agenda for members so this item is skipped.

Old Business

7:00 PM

Appeal No. 2024-035

Tripp

Christopher Tripp has applied for a Variance pursuant to Section 240-14 E Bulk Regulations in the RC-1 and RF Residential Districts. The Applicant seeks a variance to the front yard setback to construct a pool with a 6-foot fence around it. The Applicant proposes to reduce the front yard setback to 58.98 feet where 100 feet is required along Route 28. The subject property is located at 12 Geraldine Road, Cotuit, MA as shown on Assessor's Map 040 as Parcel 009. It is located in the Residence F (RF) Zoning District. Continued from October 9, 2024 and October 23, 2024. Members assigned: Bodensiek, Webb, Hansen, Alves, Hurwitz.

The Board received a request to withdraw this appeal. Herb Bodensiek moves to withdraw. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Aaron Webb, Mark Hansen, Manny Alvez, Larry Hurwitz

Nay: None

Variance No. 2024-035 Tripp is withdrawn without prejudice.

New Business

7:01 PM

Appeal No. 2024-041

McGill

Scott and Melinda McGill have applied for a Special Permit pursuant to Section 240-91 H. (3) Developed Lot Protection. The Applicants are seeking a Special Permit to allow the demolition of the existing house and construction of a new dwelling on a nonconforming lot. The proposed dwelling will comply with all setbacks, lot coverage will be less than 20%, floor area ratio will be less than 30%, and the building height will not exceed 30 feet. The subject property is located at 394 Strawberry Hill Road, Centerville, MA as shown on Assessor's Map 248 as Parcel 228. It is located in the Residence B (RB) Zoning District.

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

Attorney Mark Boudreau is representing the applicants, who are seeking to replace the existing home, which has been in their family for more than 35 years, with a cape-style building. The proposed structure will comply with all setbacks and criteria under Section 240-91 in terms of height, lot coverage, and FAR. The proposal is a cape with 4 bedrooms. The subdivision this was in was created in 1961 and most lots are about a quarter acre. In the neighborhood there are many cape-style houses, so the proposed home is in keeping with the neighborhood.

Back to the Board for questions. Mark Hansen asks why this is before the Board. Attorney Boudreau explains that it's before the Board because it's a demo/rebuild on a preexisting nonconforming lot. Herb Bodensiek says this applicant was before the Board asking for relief for an oversized building 6 months ago. Attorney Boudreau explains that it was the applicant's original wish to do a 2-story cape, but it didn't comply with FAR or lot coverage so they withdrew their earlier application and changed the plans.

Chair Dewey opens for public comment. Karen Chaban of 125 Carlotta Avenue is an abutter and addresses the Board with concern that there is already a foundation poured from the first plan. Attorney Boudreau confirms and explains that the plan is to keep the foundation as it is and to lower the ceiling height of a significant amount of the basement, to be used for storage rather than living space. Chair Dewey moves to close public comment. Mark Hansen seconds.

Vote:

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

Nay: None

Chair Dewey moves to close the public hearing. Paul Pinard seconds.

Vote:

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

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 240-91(H)(3) allows for the 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. Further, Section 240-91(H)(3) requires the Board to find that if the proposed demolition and rebuilding cannot satisfy the criteria established is H(I) As-Of-Right, then the Board may allow the demolition and rebuilding by Special Permit provided the Board finds that:
5. The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building. All proposed setbacks will conform to the Ordinance.
6. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 19.4 feet which does not exceed the threshold.
7. 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 21.3% and the proposed FAR is 29.9%, which does not exceed the threshold.
8. 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 for the principal dwelling 26 feet, 6 ¼ inches.

The Board is also asked to find that:

9. 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, Herb Bodensiek, Aaron Webb, Mark Hansen

Nay: None

Mark Hansen says the appeal is subject to Conditions 1-6 from Staff Report dated November 19, 2024.

Vote:

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

Nay: None

Special Permit No. 2024-041 McGill is granted with conditions.

7:02 PM

Appeal No. 2024-042

Miles

Samuel J. Miles, as Trustee of the Miles Family Irrevocable Trust, has applied for a Special Permit pursuant to Section 240-93 B. Nonconforming Buildings or Structures Not Used as Single- or Two-Family Dwellings. The Applicant seeks to demolish a garage located 2.5 feet from the property line and construct a barn located 11.5 feet from the property line. The subject property is located at 693 Santuit-Newtown Road, Marstons Mills, MA as shown on Assessor's Map 028 as Parcel 011. It is located in the Residence F (RF) Zoning District.

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

Attorney Michael Schulz is representing and is joined by the applicants and architect Tim Luff. Attorney Schulz explains that the property is 1.7 acres of land improved with a dwelling circa 1945, a cottage circa 1945, and a garage that was built pre-1968. The garage is legal nonconforming. The proposed barn improves setback nonconformity but does not comply. They are moving the proposed barn 9 feet off the property line and the use of the structure will remain as storage/garage. He requests to strike Condition No. 3 from the proposed conditions in the staff report because it's a large lot.

Back to the Board for questions. Mark Hanson asks why the barn can't be brought into compliance. Jonathan Miles says there are mature trees with sentimental value that they don't want to remove. Chair Dewey would like to condition this so that the structure can't be converted to living space. Attorney Schulz is amenable.

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

Vote:

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

Nay: None

Chair Dewey moves to close the public hearing. Aaron Webb seconds.

Vote:

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

Nay: None

Paul Pinard makes findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-94 B. allows for 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 in accordance with Article IX herein subject only to the issuance of a special permit. Not applicable for single family residential uses.
4. The proposed repairs, alterations and/or expansion are not substantially more detrimental to the surrounding neighborhood.

Herb Bodensiek seconds.

Vote:

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

Nay: None

Paul Pinard makes a motion to grant Special Permit No. 2024-042 with conditions 1, 2, and 4 from the Staff Report dated November 19, 2024 and condition no. 3 as follows:

1. Special Permit No. 2024-042 is granted to Samuel J. Miles, as Trustee of the Miles Family Irrevocable Trust, for a Special Permit pursuant to Section 240-93 B. Nonconforming Buildings or Structures Not Used as Single- or Two-Family Dwellings to demolish a garage located 2.5 feet from the property line and construct a barn located 11.5 feet from the property line at 693 Santuit-Newtown Road, Marstons Mills, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Plot Plan - Proposed Barn" by BSS Design dated October 3, 2024.
3. The structure cannot be used for habitation without prior approval from the Board.
4. 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: Jake Dewey, Paul Pinard, Herb Bodensiek, Aaron Webb, Mark Hansen

Nay: None

Special Permit No. 2024-042 Miles is granted with conditions.

7:03 PM

Appeal No. 2024-043

Nantucket Stone

Nantucket Stone, as tenant, has applied for a Special Permit pursuant to Section 240-21 C. (3) Condition Uses. The Applicant seeks to use the property for a kitchen installation business. The Building Commissioner determined that a portion of the use would constitute manufacturing, which is a conditional use and allowed only by Special Permit. The subject property is located at 155 Rosary Lane, Building A, Bays 1 and 2, Hyannis, MA as shown on Assessor's Map 345 as Parcel 024. It is located in the Business (B) Zoning District.

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

Vinny Pizzi is representing the applicants because Attorney David Lawler is unable to attend. He explains that they are seeking a special permit to conduct manufacturing at this location. The neighborhood is industrial so is consistent with their proposed use.

Back to the Board for questions. Mark Hansen asks who the direct neighbors are and the hours of operation. Mr. Pizzi says the neighbors are American Stone and Fastenal and their hours are 9 a.m.-4 p.m. Paul Pinard asks why the proposed conditions cite a site plan and asks if the building is constructed. Mr. Pizzi answers that it is-it's an empty warehouse. Principal Planner Anna

Brigham explains that staff always cite a site plan in the decision to capture the current state of the property. Aaron Webb asks what they will be manufacturing. Mr. Pizzi says granite countertops.

Chair Dewey opens for public comment. There is none. The Chairman moves to close public comment. Aaron Webb seconds.

Vote:

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

Nay: None

Chair Dewey moves to close the public hearing. Paul Pinard seconds.

Vote:

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

Nay: None

The Board discusses whether they need to add any additional conditions and decide it's not necessary.

Mark Hansen makes findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit: Section 240-21 C. (3) allows for a Conditional Use 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 in accordance with Article IX herein subject only to the issuance of a special permit.

Paul Pinard seconds.

Vote:

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

Nay: None

Mark Hansen makes a motion to grant Special Permit No. 2024-043 with conditions 1-3 from the Staff Report dated November 19, 2024.

Vote:

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

Nay: None

Special Permit No. 2024-043 Nantucket Stone is granted with conditions.

7:04 PM

Appeal No. 2024-045

Simpson

Terry L. Simpson, as Trustee of the Blumist Trust, has applied for a Special Permit pursuant to Section 240-91 H. (3) Developed Lot Protection. The Applicant began with partial demolition but it was later determined that the demolition exceeded the allowable amount to be removed and shall be a full demolition and therefore needed compliance with Section 240-91 H. (3). The setbacks, lot coverage, and gross floor area comply with zoning. The project cannot proceed "as of right" because the lot is less than 10,000 sq. ft. The subject property is located at 146 Scudder Road, Osterville, MA as shown on Assessor's Map 140 as Parcel 032. It is located in the Residence C (RC) Zoning District.

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

Attorney Ted Schilling is representing the applicant. He reiterates that the project began as a partial demolition but it was later determined that it was considered a full demolition. The setbacks, lot coverage, building height, and gross floor area comply with zoning. They are before the Board because the lot has less than 10,000 square feet. The proposal is for 3 bedrooms and 2 full baths, which is the same as the existing building. The proposed is a similar size and design as other buildings in the neighborhood.

Back to the Board for questions. Chair Dewey asks for confirmation that they are only asking for relief for lot size. Attorney Schilling confirms.

Chair Dewey opens for public comment. The Chairman says the Board received public comment in support from Peter Hansen of 147 Scudder Road.

Joe and Suzanne Carig of 136 Scudder Road are present and express concern over their belief that the house is 3 feet too close to the lot line. The Carigs were told five years ago when they applied for a teardown that there were 15-foot setback, and the proposed is only 12 feet from the lot line. Attorney Schilling says the RC Zoning District has a 10-foot side setback, not 15, so they are conforming. Chair Dewey moves to close public comment. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Larry Hurwitz

Nay: None

Chair Dewey moves to close the public hearing. Aaron Webb seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Larry Hurwitz

Nay: None

Aaron Webb 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 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.

Further, Section 240-91(H)(3) requires the Board to find that if the proposed demolition and rebuilding cannot satisfy the criteria established is H(I) As-Of-Right, then the Board may allow the demolition and rebuilding by Special Permit provided the Board finds that:

4. The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building. All proposed setbacks will conform to the Ordinance.
5. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 19.9 feet which does not exceed the threshold.
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 21.3% and the proposed FAR is 29.9%, which does not exceed the threshold.
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 for the principal dwelling 15 feet, 4 inches.

The Board is also asked to find that:

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

Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Larry Hurwitz

Nay: None

Aaron Webb makes a motion to grant Special Permit No. 2024-045 with conditions 1-5 from Staff Report dated November 19, 2024.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Larry Hurwitz

Nay: None

Special Permit No. 2024-045 Simpson is granted with conditions.

Correspondence

- Cape Cod Commission Hearing Notice for the Sandwich Community Health Center on Thursday, December 5, 2024 at 3:00 p.m.
- Cape Cod Commission continued Hearing Notice for the Long Pond Rd Monopole project on Tuesday, December 10, 2024 at 5:00 p.m.
- Cape Cod Commission Hearing Notice for Wilkens Housing Phase II project being held on Monday, December 9, 2024 at 5:00 p.m.
- Cape Cod Commission agenda for the Executive Committee meeting on Thursday, December 5, 2025 at 1:45 p.m.
- Cape Cod Commission meeting on Thursday, December 5, 2024 at 3:00 p.m.
- Long Pond Monopole
- DRI public hearing notice

Matters Not Reasonably Anticipated by the Chair

Chair Dewey welcomes new members Natalie Pittenger and Rodney Tavano. Chair Dewey brings up conflict of interest training and that some members may be due soon. Paul Pinard says there are CPTC trainings coming up in January on special permits and variances that he recommends for new members. Anna Brigham will email out that information.

Upcoming Hearings

January 8, 2025 (in person), January 22, 2025 (remote), February 12, 2025 (in person)

Paul Pinard will not be available for the February 12 meeting. Anna Brigham notes that Administrative Assistant Genna Ziino will be out on maternity leave.

Adjournment

Chair Dewey moves to adjourn. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Mark Hansen, Manny Alves, Larry Hurwitz, Natalie Pittenger, Rodney Tavano

Nay: None

Documents Used at this Meeting

- Appeal No. 2024-035 Tripp application packet
- Appeal No. 2024-041 McGill application packet
- Staff Report dated November 19, 2024 for 2024-041 McGill
- Appeal No. 2024-042 Miles application packet
- Staff Report dated November 19, 2024 for 2024-042 Miles
- Appeal No. 2024-043 Nantucket Stone application packet
- Staff Report dated November 19, 2024 for 2024-043 Nantucket Stone
- Appeal No. 2024-045 Simpson application packet
- Staff Report dated November 19, 2024 for 2024-045 Simpson
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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>