

**Zoning Board of Appeals
MINUTES
Wednesday, February 7, 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, February 7, 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. 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/85052795289	US Toll-free 888 475 4499
Meeting ID: 850 5279 5289	Meeting ID: 850 5279 5289

2. 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.
3. This meeting will be replayed via Xfinity Channel 8 or high definition Channel 1072. It may also be accessed via the Government Access Channel video on demand archives on the Town of Barnstable’s website: <https://streaming85.townofbarnstable.us/CablecastPublicSite/?channel=1>

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 at 7:01 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	
Johnson, Denise	X	
Webb, Aaron	X	

Also present is Anna Brigham, Principal Planner 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.

Old Business

7:00 PM

Appeal No. 2023-019

Vilsaint

Kevin Y. and Corrie L. Vilsaint have applied for a Special Permit in accordance with Section 240-47.2 Accessory Dwelling Units (ADUs). The Applicants seek to remove and replace an existing accessory structure with a new accessory dwelling unit (ADU). The Applicants also seek to modify Special Permit No. 2020-038 to allow further build out of the property for the accessory dwelling unit and additions to the principal dwelling. The subject property is located at 358 Flint Street, Marstons Mills, MA as shown on Assessor's Map 101 as Parcel 121. It is located in the Residence F (RF) Zoning District. Continued from August 23, 2023, October 25, 2023 December 6, 2023 and January 10, 2024. Members assigned: Jake Dewey, Aaron Webb, Herbert Bodensiek, Paul Pinard, and Denise Johnson.

The Board received a request from Attorney Kirrane to withdraw this appeal without prejudice. Manny Alves moves to accept the request for withdrawal without prejudice. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Manny Alves, Mark Hansen, Larry Hurwitz, Denise Johnson, Aaron Webb

Nay: None

Special Permit No. 2023-019 Vilsaint is withdrawn without prejudice.

7:01 PM

Appeal No. 2023-034

Bayridge Realty, LLC

Bayridge Realty, LLC has applied for a Comprehensive Permit pursuant to MGL Ch. 40B §20, 21, 22, and 23. The Applicant proposes to construct 14 housing units (24 bedrooms) within 4 detached buildings and associated parking and site improvements on 3.95 acres for rental purposes in accordance with MGL Ch. 40B, 760 CMR. The unit mix shall consist of 6 one-bedroom units, 6 two-bedroom units, and 2 three-bedroom units. 4 of the units will be restricted as affordable for low- or moderate-income persons. The subject property is located at 900 Old Stage Road, Centerville, MA as shown on Assessor's Map 192 as Parcel 001. It is located in the Residence C (RC) Zoning District. Continued from November 8, 2023 and January 10, 2024. Members assigned: Herbert Bodensiek, Paul Pinard, Aaron Webb, Mark Hansen, and Manny Alves.

The Board received a request from Attorney Freeman to continue to March 13, 2024. Mark Hansen moves to continue this to March 13, 2024 at 7:00 PM. Aaron Webb seconds.

Vote:

Aye: Jake Dewey, Manny Alves, Mark Hansen, Larry Hurwitz, Denise Johnson, Aaron Webb

Nay: None

Appeal No. 2023-034 Bayridge Realty, LLC is continued to March 13, 2024 at 7:00 PM.

7:02 PM

Appeal No. 2023-044

Alliegro

George and Debra Alliegro have petitioned for a Variance pursuant to Section 240-13 E. RF-1 Bulk Regulations – Minimum Side Yard Setback. The Petitioners seek a variance to construct an unconditioned, screened porch over an existing patio 12.6 feet from the lot line where 15 feet is required. The subject property is located at 202 Sea View Avenue, Osterville, MA as shown on Assessor's Map 138 as Parcel 014. It is located in the RF-1 Zoning District. Continued from January 10, 2024.

The Board received a request from Attorney Schulz to continue to February 28, 2024. Mark Hansen moves to continue this to February 28, 2024. Aaron Webb seconds.

Vote:

Aye: Jake Dewey, Manny Alves, Mark Hansen, Larry Hurwitz, Denise Johnson, Aaron Webb

Nay: None

Appeal No. 2023-044 Alliegro is continued to February 28, 2024.

7:03 PM

Appeal No. 2023-045

Alliegro

George and Debra Alliegro have applied to modify Special Permit No. 2016-018 Modification No. 3 to allow for the construction of a screened porch over an existing patio, which would increase the lot coverage from 16.2% to 18.3%. The subject property is located

at 202 Sea View Avenue, Osterville, MA as shown on Assessor's Map 138 as Parcel 014. It is located in the RF-1 Zoning District. Continued from January 10, 2024.

The Board received a request from Attorney Schulz to continue to February 28, 2024. Mark Hansen moves to continue to February 28, 2024 at 7:03 PM. Manny Alves seconds.

Vote:

Aye: Jake Dewey, Manny Alves, Mark Hansen, Larry Hurwitz, Denise Johnson, Aaron Webb

Nay: None

Appeal No. 2023-045 Alliegro is continued to February 28, 2024 at 7:03 PM.

New Business

7:04 PM

Appeal No. 2023-046

Prizzi

Maryellen and Anthony Prizzi have applied for a Special Permit in accordance with Section 240-47.2 C. (4) Accessory Dwelling Units. The Applicants seek to construct a 969 sq. ft. 1-bedroom Accessory Dwelling Unit (ADU), which exceeds the allowable size by 69 square feet. The subject property is located at 354 Wheeler Road, Marstons Mills, MA as shown on Assessors Map 082 as Parcel 016. The property is located in the Residence F (RF) Zoning District.

Sitting on this is Jake Dewey, Mark Hansen, Aaron Webb, Larry Hurwitz, and Denise Johnson.

Mr. Prizzi explains to the Board that he is proposing to build an ADU on his property for a handicapped friend. The property is 2.92 acres. They have to provide wheelchair access and that's where the extra 69 feet comes from—it's an elongated entryway and turning area for the wheelchair at the entry of the dwelling.

Chair Dewey brings it back to the Board for questions. Mark Hansen wonders if the plans were drawn specifically for handicap accessibility. He notes that there is a full bath and a half bath. The applicant explains that the full bath is a walk-in shower that's big enough for a wheelchair, and the half bath is for guests.

Chair Dewey opens for public comment. There is none. Paul Pinard joins the meeting at this point by phone only. Chair Dewey moves to close public comment. Denise Johnson seconds.

Vote:

Aye: Mark Hansen, Aaron Webb, Denise Johnson, Larry Hurwitz, Jake Dewey

Nay: None

The Board deliberates. Denise Johnson thinks given the size of the lot, this will not be out of proportion with the property. The Board discusses if there is a way to get rid of the extra 69 sq. ft. elsewhere than the handicapped entryway—potentially by removing the walk-in closet or the 35-sq. ft. half bath. Denise Johnson thinks someone in a wheelchair needs a bigger closet. The applicants explain that one of the closets is for a stackable washer/dryer. Mark Hansen thinks this could have been designed to be 900 sq. ft. The applicants explain that they are using the existing plans of their builder's ADU. Aaron Webb asks if these are the plans for the exact ADU that the Board approved for a different property. The applicants confirm. The Board is not comfortable with the idea of approving a plan that was designed for a completely different property and situation. Chair Dewey asks if the applicants would be comfortable with a condition that this can only be rented to a handicapped person. The applicants are not comfortable with that. The applicants can't identify a specific reason they cannot comply with the 900 sq. ft. limit.

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

Vote:

Aye: Mark Hansen, Aaron Webb, Denise Johnson, Larry Hurwitz, Jake Dewey

Nay: None

The Board deliberates. The Board feels as though this was not designed to be wheelchair accessible and it could be designed to fit within 900 sq. ft. Aaron Webb explains to the applicant that they have the option to withdraw without prejudice rather than be denied. The applicant requests to withdraw their appeal without prejudice. Aaron Webb moves to accept the withdrawal without prejudice. Mark Hansen seconds.

Vote:

Aye: Mark Hansen, Aaron Webb, Denise Johnson, Larry Hurwitz, Jake Dewey

Nay: None

Special Permit No. 2023-046 Prizzi is withdrawn without prejudice.

7:05 PM

Appeal No. 2023-048

Girardi

Michael and Barbara Girardi have applied for a Special Permit in accordance with Section 240-92B Nonconforming Buildings or Structures Used as Single-Family Residences. The Applicants seek to alter and expand a preexisting nonconforming structure by constructing an attached garage, partially enclose and expand an existing rear-facing deck, and to construct an addition. The subject property is located at 200 Indian Hill Road, Barnstable, MA as shown on Assessor's Map 336 as Parcel 060. The property is located in the Residence F-1 (RF-1) Zoning District.

Sitting on this is Mark Hansen, Paul Pinard, Aaron Webb, Jake Dewey, and Manny Alves.

Attorney Marian Rose is representing the applicants and is joined by Michael Girardi, one of the applicants. Attorney Rose walks the Board through the proposed changes. The lot is preexisting nonconforming in terms of size, width, and side setbacks (10.2 feet and 9.8 feet where 15 feet is required). The proposed southern side addition will be 10.5 feet away from the setback and the proposed northern side garage addition will be 11.1 feet away from setback, both of which are more conforming than the existing dwelling. Proposed is also the enclosure and expansion of the rear deck (expanded by 4 feet out) and a covered front porch. The existing house has 3 qualifying bedrooms and 1 bath. The plan is to keep the bedroom count the same but to add a master bath. They are proposing to change the existing one-car garage into a mudroom, part of which would be added to a new one-car garage resulting in a square footage increase of 224 ft. She believes this will not be more detrimental: there is no change to use, the preexisting side setbacks will be less nonconforming on the additions, the height will remain the same, the number of bedrooms won't change, and there will be no change to utilities or traffic.

Back to the Board for questions. Mark Hansen asks if there are wetlands. Attorney Rose answers there are not. There are homes on each side of the property. They didn't get letters from abutters but they did not hear any issues. Paul Pinard is concerned about lot coverage and asks if removing the proposed new deck would bring the coverage down to an allowed amount. Attorney Rose is not sure the numbers but because this is an addition and not a raze/replace, lot coverage is not limited. Anna Brigham, Principal Planner, confirms. Chair Dewey explains that their purview here is if it's more detrimental to the neighborhood, and the consideration of lot coverage limits in the neighborhood could be allowed. Attorney Rose adds that the proposed additions are primarily on the rear of property except the partial popout of the garage and the covered front porch. Aaron Webb doesn't find the proposal detrimental and agrees that there is no lot coverage limit in this case. Paul Pinard withdraws his concern about exceeding the allowed lot coverage but still holds concern about the lot being cramped.

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

Vote:

Aye: Jake Dewey, Mark Hansen, Paul Pinard, Aaron Webb, Manny Alves

Nay: None

The Board deliberates. Manny Alves feels that lot coverage does not apply here and what's proposed is modest. Aaron Webb agrees. Mark Hansen agrees that the lots are tight but does not think it's out of place for the neighborhood. He thinks the fact that they're not expanding up is good.

Manny Alves makes findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-92 B. allows for the alteration of a nonconforming dwelling 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. The additions do not propose an additional encroachment but are within the existing nonconforming setbacks.
4. The proposed alteration would not be substantially more detrimental to the neighborhood than the existing dwelling

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

Vote:

Aye: Jake Dewey, Mark Hansen, Paul Pinard, Aaron Webb, Manny Alves

Nay: None

Mark Hansen seconds Manny Alves' findings.

Vote:

Aye: Jake Dewey, Mark Hansen, Paul Pinard, Aaron Webb, Manny Alves

Nay: None

Manny Alves says the appeal is subject to Conditions 1-5 from Staff Report dated January 25, 2024.

Vote:

Aye: Jake Dewey, Mark Hansen, Paul Pinard, Aaron Webb, Manny Alves

Nay: None

Special Permit No. 2023-048 Girardi is granted with conditions.

7:06 PM

Appeal No. 2024-003

Potter Avenue Realty, LLC

Potter Avenue Realty, LLC has applied for a Special Permit in accordance with Section 240-94A Change of a Nonconforming Use to Another Nonconforming Use. The Applicant seeks to convert the existing office space that has been used as a medical/therapy business into five residential apartments: one 2-bedroom apartment and four 1-bedroom apartments. The building also contains two rental storage units and those will remain. The subject property is located at 11 Potter Avenue, Hyannis, MA as shown on Assessor's Map 308 as Parcel 150. The property is located in the Residence B (RB) Zoning District.

Chair Dewey recuses himself and leaves the meeting. Paul Pinard becomes Acting Chair and reads the appeal into the record. Mark Hansen recuses himself and leaves the meeting. Acting Chair Pinard assigns himself, Manny Alves, Denise Johnson, Larry Hurwitz, and Aaron Webb.

Attorney David Lawler is representing the applicant and is joined by Chuck Villa, the principal of the LLC, and Matt Eddy, Tim Sawyer, and Rick Fenuccio as the design professionals. Attorney Lawler explains that this property used to be zoned business and was Cape Cod Healthcare offices. Matt Eddy shares a presentation entitled "FINAL ZBA presentation_11 Potter Ave Hyannis_2_7_24." Attorney Lawler provides background information: the structure has operated with 2 storage units in the back, as a mixed use property of office and storage. Nothing about the storage units will change. The special permit will allow changing from one nonconforming use to another. He says the history of the property is important: it operated as 1 large medical office use, with very heavy usage and traffic. There were up to 12 employees, with 5 or 6 treatment rooms at a time. Then it became 3 separate units for therapy care and massage therapy. He explains that they submitted a traffic study report to illustrate that traffic will not be increased. This also received conditional Site Plan Review approval. He explains that it is his belief that the statute is essentially looking to ensure that the use change will be not more detrimental to the neighborhood. The traffic report clearly lays out that the prior use was far more active than the present use. It's on town sewer and there is more than enough parking under zoning. The proposal is 5 residential apartments, 4 one-bedroom and 1 two-bedroom. It's a residential neighborhood, and there is a multi-family unit diagonally across, in close vicinity. It will be consistent with the neighborhood and the proposed use will be less detrimental than the existing use as offices. The storage units are not heavily used and will not be changing and are preexisting nonconforming.

Paul Pinard brings it back to the Board for questions. Manny Alves asks to be walked through the requirements for 240-94A. Attorney Lawler and his team review:

- They received approvals through Site Plan Review from all departments.
- Parking requirements are met.
- There will be no increase in traffic. Attorney Lawler refers the Board to the traffic study.
- There will be no increased noise, dust, or odors. Residential use will be less active than the existing use.
- There will be no increase in hours of operation or employees/tenants. Attorney Lawler explains that he spoke with the Building Commissioner to understand how to compare a business use to a residential use. "Hours of operation" is difficult to compare to a tenant use, but he believes tenant hours will be consistent with the rest of the residential neighborhood. The prior use had up to 12 employees and up to 10 patients at any given time, which is greater than the proposed use.

Paul Pinard believes that if the change does not meet the language of “no increase in hours of operation” then the applicant will need to apply for a use variance, as advised in Site Plan Review. Attorney Lawler disagrees and believes the language was crafted with the thought of a business use to a business use, but the intent of the ordinance is for the change to be not more detrimental. This proposal is not more detrimental.

- It does not expand the gross floor area of the nonconforming use. They are not changing the footprint.
- It is on the same lot as occupied by the nonconforming use on the date it became nonconforming.
- It is not expanded beyond the zoning district in existence on the date it became nonconforming.

Larry Hurwitz asks if any apartments will be handicap-accessible or low income. Tim Sawyer says they were not required to make any handicapped or affordable units.

Paul Pinard opens for public comment. He says the Board received two letters from Elizabeth Dery of 14 Potter Ave in opposition, one of which was very worrisome. Elizabeth Dery of 14 Potter Ave addresses the Board. She has been a resident for 67 years and is concerned this housing will attract gangs. She has serious concerns about the safety of the neighborhood. She says the office building was low traffic. Paul Pinard moves to close public comment. Denise Johnson seconds.

Vote:

Aye: Paul Pinard, Denise Johnson, Aaron Webb, Manny Alves, Larry Hurwitz

Nay: None

Back to the Board for discussion. Denise Johnson asks what rental costs will be and whether the applicant is willing to limit the number of adult occupancy. Attorney Lawler is unsure of rental prices and says there are already limits in place by the town and they fall under the Board of Health, not zoning. It is not his client’s intent to bring in lots of people.

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. *(See letter dated January 8, 2024).*
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.
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 E, if applicable.

Manny Alves suggests noting that based on evidence received, provisions of 240-94A1 and A2 have been met. Paul Pinard agrees and makes that Condition no. 8:

8. The Board has found that sections 240-94A1 and A2 of the code of the Town of Barnstable have been met.

Denise Johnson seconds the findings.

Vote:

Aye: Paul Pinard, Denise Johnson, Aaron Webb, Manny Alves, Larry Hurwitz

Nay: None

Paul Pinard says the appeal is subject to conditions 1-4 from Staff Report dated January 29, 2024.

Vote:

Aye: Paul Pinard, Denise Johnson, Aaron Webb, Manny Alves, Larry Hurwitz

Nay: None

Special Permit No. 2024-003 Potter Avenue Realty, LLC is granted with conditions.

Correspondence

Preliminary subdivision plan application

Matters Not Reasonably Anticipated by the Chair

Regarding the proposed changes to the rules and regulations, Paul Pinard updates the Board that they are waiting for final approval from Jim Kupfer from Planning & Development, Kate Connolly from Legal, and Chair Dewey.

Upcoming Hearings

February 28, 2024, March 13, 2024, March 27, 2024

Adjournment

Paul Pinard moves to adjourn. Denise Johnson seconds.

Vote:

Aye: Paul Pinard, Denise Johnson, Aaron Webb, Manny Alves, Larry Hurwitz, Jake Dewey

Nay: None

Documents Used at this Meeting

- Request from Attorney Kirrane to withdraw without prejudice Appeal No. 2023-019 Vilsaint
- Request from Attorney Freeman to continue Appeal No. 2023-034 Bayridge Realty, LLC to March 13, 2024
- Request from Attorney Schulz to continue Appeal No. 2023-044 Alliegro to February 28, 2024
- Request from Attorney Schulz to continue Appeal No. 2023-045 Alliegro to February 28, 2024
- Appeal No. 2023-046 Prizzi application packet
- Appeal No. 2023-048 Girardi application packet
- Appeal No. 2024-003 Potter Avenue Realty, LLC application packet
- Document entitled "FINAL ZBA presentation_11 Potter Ave Hyannis_2_7_24"
- Correspondence: Preliminary subdivision plan application