

**ZONING BOARD OF APPEALS**

**MINUTES**

**Wednesday, February 24, 2021**

**Chair Rodolakis** opened the meeting at 7:01 PM with following narrative:

Alternative 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:

<b>Join Zoom Meeting Option</b>	<b>Telephone Number Option</b>
<a href="https://zoom.us/j/96503230224">https://zoom.us/j/96503230224</a>	888-475-4499 U.S. Toll Free
Meeting ID: 965 0323 0224	Meeting I.D. 965 0323 0224

3. Applicants, their representatives and individuals required or entitled to appear before the Zoning Board of appeals may appear remotely and are not permitted to be physically present at the meeting, 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).

**Chair Rodolakis took roll call of members present and absent:**

<b>Member</b>	<b>Present via Zoom</b>	<b>Present via Phone Call</b>	<b>Absent</b>
Alves E.	x		
Bodensiek H.	x		
Dewey J.			x
Hansen M.	x		
Hirsch D.			x
Pinard P.	x		
Rodolakis A.	x		
Walantis T.	x		

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**Taping of meeting**

No one was taping meeting this evening.

**MINUTES**

None this evening.

**OLD BUSINESS**

**Chair Rodolakis** noted no old business.

**New Business**

**Appeal No. 2021-008** David F. and Colleen F. Cappellucci have applied for a Special Permit in accordance with Section 240-91.H 3. (a) – Developed Lot Protection. The Applicants are proposing to demolish an existing single-family dwelling and construct a new single-family dwelling with attached 2-car garage in accordance with the plans prepared by North side Design Associates, while maintaining the existing nonconforming setback on the southerly side of the property. The subject property is located at 31 Eel River Road, Osterville, MA. as shown on Assessor’s Map 116 as Parcel 106. It is located in the Residence C (RC) Zoning District.

**Chair Rodolakis** indicated that a document was received by their attorney, Michael Scholls (spelling) early yesterday requesting a continuance due to a scheduling conflict. Our next meeting will be March 10<sup>th</sup>. **Chair Rodolakis** moved to continue this matter, Appeal No. 2021-008 to March 10<sup>th</sup>. at 7:00 PM. Motion was seconded by **Mr. Hanson**.

**Roll call vote taken:**

<b>Member</b>	<b>Appeal No. 2021-008</b>	<b>Absent</b>
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.		x
Hansen M.	In favor	
Hirsch D.		x
Pinard P.	In favor	
Rodolakis A.	In favor	
Walantis T.	In favor	

Unanimous vote – all in favor to continue Appeal No. 2021-008 to March 10<sup>th</sup> at 7:00 PM.

**Appeal No. 2021-009** - Robert and Sandra Kelleher have applied for a Special Permit in accordance with Section 240-47.1 B. (4) Family Apartments. The Applicants are proposing to demolish the existing detached garage and create a 2-bedroom family apartment in a proposed 28 feet by 40 feet detached accessory structure (garage). The property is located at 1680 Hyannis Road, Barnstable, MA as shown on Assessors Map 299 as Parcel 061. It is located in the Residence F-2 (RF-2) Zoning District.

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**Chair Rodolakis** introduced Mr. & Mrs. Kelleher via Zoom. Mr. & Mrs. Kelleher indicated that they were going between two meetings (the other being the Historical Society). Mrs. Kelleher noted that the Historical Society was very interested in this case. **Chair Rodolakis** requested that either Mr. or Mrs. Kelleher stay as ZBA needed one of the applicants present. Mrs. Kelleher will be representative for the duo while Mr. Kelleher will attend Historical Society meeting. Mrs. Kelleher identified herself and gave her address (1680 Hyannis Road, Barnstable, MA). Mrs. Kelleher noted that they (Mr. and Mrs. Kelleher) are looking for relief to redo a detached garage with living space for their daughter. Mrs. Kelleher continued: her daughter will be living at this address full time. She and her husband are moving from Oregon. They are going to start out by living in the garage.

**Chair Rodolakis** asked Mrs. Kelleher if they understood the rules for a family apartment moving forward and she replied in the affirmative. **Chair Rodolakis** reiterated that every year they have to do an affidavit that if they don't live there full time – the family kitchen has to be pulled out. Mrs. Kelleher replied that they understood.

**Questions from the board:** **Chair Rodolakis** asked if anyone on the board had questions. None from the board.

**Chair Rodolakis** noted he didn't see anyone from the public who wishes to be heard.

**Chair Rodolakis** indicated that it would be brought back to the board for deliberation. It appears to be consistent with what ZBA looks for for family apartments. **Chair Rodolakis** asked if anyone on the board had any questions, comments. **Mr. Walantis** – stated no that it appeared to be what ZBA is looking for.

### FINDINGS

#### **Findings of Fact**

At the hearing on February 24, 2021, the Board made the following findings of fact in Special Permit Application No. 2021-009 a request to create a family apartment in a detached structure:

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 are preserved.

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**Roll Call was taken to accept these findings**

<b>Member</b>	<b>Appeal No. 2021-008</b>	<b>Absent</b>
Alves E.		
Bodensiek H.	In favor	
Dewey J.		x
Hansen M.	In favor	
Hirsch D.		x
Pinard P.	In favor	
Rodolakis A.	In favor	
Walantis T.	In favor	

**Chair Rodolakis** moved to accept the Special Permit with the following conditions 1-6 subject to Staff Memorandum which is dated February 12, 2021.

**Conditions**

Based on the findings of fact, a motion was duly made and seconded to grant Special Permit No. 2021-009 subject to the following conditions:

1. Special Permit No. 2021-009 is granted to Robert and Sandra Kelleher to demolish the existing detached garage and create a 2-bedroom family apartment in a proposed 28 feet by 40 feet detached accessory structure (garage) at 1680 Hyannis Road, Barnstable, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled “Plan Showing New Garage at 1680 Hyannis Rd Barnstable, Mass” prepared for Robert and Sandra Kelleher, by CapeSurv, dated January 26, 2021.
3. The proposed development shall represent full build-out of the lot. Further development of the lot or construction of additional accessory structures is prohibited without prior approval from the Board.
4. The Applicant must comply with the restrictions in Section 240-47.1 Family Apartments C. Conditions and Procedural Requirements 1-4 of the Ordinance as follows:
  - a. Certificate of occupancy. Prior to occupancy of the family apartment, a certificate of occupancy shall be obtained from the Building Commissioner. No certificate of occupancy shall be issued until the Building Commissioner has made a final inspection of the apartment unit and the single-family dwelling for regulatory compliance and a copy of the family apartment accessory use restriction document recorded at the Barnstable Registry of Deeds is submitted to the Building Division.
  - b. Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that there shall be no rental of the principal dwelling or family apartment unit to any non-family members, shall be signed and submitted to the Building Division.
  - c. At no time shall the single-family dwelling or the family apartment be sublet or subleased by either the owner or family member(s). The single-family dwelling and family apartment

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- d. shall only be occupied by those persons listed on the recorded affidavit, which affidavit shall be amended when a change in the family member occupying either unit occurs.
  - e. When the family apartment is vacated, or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use as an apartment shall be terminated. All necessary permit(s) must be obtained to remove either the cooking or bathing facilities (tub or shower) from the family apartment, and the water and gas service of the utilities removed, capped and placed behind a finished wall surface; or a building permit must be obtained to incorporate the floor plan of the apartment unit back into the principal structure.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
  6. The 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 the issuance of a building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

**Roll Call vote was taken to accept the conditions:**

<b>Member</b>	<b>Appeal No. 2021-008</b>	<b>Absent</b>
Alves E.		
Bodensiek H.	In favor	
Dewey J.		x
Hansen M.	In favor	
Hirsch D.		x
Pinard P.	In favor	
Rodolakis A.	In favor	
Walantis T.	In favor	

**The vote was all in favor.**

**COMMUNICATIONS**

None.

**POINT OF INFORMATION:** Mr. Bodensiek would like to offer an opinion on Oyster Place issue at next meeting but he would also like to vote. He noted he has actually watched the meeting of the 10<sup>th</sup> of February several times. He couldn't participate because he was driving in a snowstorm in South Carolina; had an unreliable connection and couldn't have the meeting with all. He noted he has reviewed the meeting several times. He thinks there is an affidavit he can sign for this date. Chair Rodolakis indicated that just talking about that generally, if they need him (Mr. Bodensiek) and he apologized because he had to recuse himself; Chair Rodolakis continuing; if they need you for that; there is a procedure by which you can certify that you paid attention to the meeting. Otherwise even though you weren't physically present and therefore you are entitled to vote. But....why don't you address that

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with Anna to see where they are off-line suggested **Chair Rodolakis**. Maybe call her tomorrow or email her to find out where you are and that can be addressed at the next meeting. **Mr. Bodensiek** expressed his thank you.

**NEXT MEETING**

March 10<sup>th</sup>, March 24<sup>th</sup> and April 14<sup>th</sup>.

**ADJOURNMENT**

<b>Member</b>	<b>Members</b>	<b>Absent</b>
<b>Alves E.</b>	<b>In favor</b>	
<b>Bodensiek H.</b>	<b>In favor</b>	
<b>Dewey J.</b>		X
<b>Hansen M.</b>	<b>In favor</b>	
<b>Hirsch D.</b>		X
<b>Pinard P.</b>	<b>In favor</b>	
<b>Rodolakis A.</b>	<b>In favor</b>	
<b>Walantis T.</b>	<b>In favor</b>	

All in favor of Adjournment.

Respectfully Submitted,

Elizabeth B. Silva  
Temporary Scribe