

ZONING BOARD OF APPEALS

MINUTES

Wednesday, March 10, 2021

Chair Rodolakis opened the meeting at 7:00 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:

Join Zoom Meeting Option	Telephone Number Option
https://zoom.us/j/9127042476	888-475-4499 U.S. Toll Free
Meeting ID: 912 704 2476	Meeting I.D. 9127042476

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, 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.

Chair Rodolakis took roll call of members present and absent:

Member	Present via Zoom	Absent
Alves E.	x	
Bodensiek H.	x	
Dewey J.		x
Hansen M.	x	
Hirsch D.	x	
Pinard P.		x
Rodolakis A.	x	
Walantis T.		x
Webb, Aaron	X	

) Aaron Webb is newest member and welcomed by Chair Rodolakis.

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Taping of meeting

No one taping.

MINUTES

None this evening.

OLD BUSINESS

Chair Rodolakis read the following into record:

7:00PM Appeal No. 2020-042-Renoticed. Matthew J. MacKinnon, Trustee of 33 Oyster Place Realty Trust, is applying for a Special Permit in accordance with Section 240- 93(B) – Nonconforming Buildings or structures not used as Single or Two-Family Dwellings. The Applicant is proposing to alter the pre-existing, nonconforming pier by removing approximately 3,000 square feet of the solid fill pier and constructing an elevated wooden pier with associated ramps and floats for shared use with the Cotuit Fire District and the Barnstable Clean Water Coalition. The subject property is located at 33 Oyster Place Road, Cotuit, MA as shown on Assessor’s Map 035 as Parcel 101. It is located in the Residence F (RF) and Dock and Pier Overlay Zoning Districts. Continued from January 13, 2021, January 27, 2021 Matthew J. MacKinnon, Trustee of 33 Oyster Place Realty Trust, is applying for a Special Permit in accordance with Section 240- 93(B) – Nonconforming Buildings or structures not used as Single or Two-Family Dwellings. The Applicant is proposing to alter the pre-existing, nonconforming pier by removing approximately 3,000 square feet of the solid fill pier and constructing an elevated wooden pier with associated ramps and floats for shared use with the Cotuit Fire District and the Barnstable Clean Water Coalition. The subject property is located at 33 Oyster Place Road, Cotuit, MA as shown on Assessor’s Map 035 as Parcel 101. It is located in the Residence F (RF) and Dock and Pier Overlay Zoning Districts. **Continued from January 13, 2021 , January 27, 2021, February 10, 2021. Request to withdraw received February 25, 2021.**

Chair Rodolakis: has recused himself from this matter for each presentation of this appeal and will turn chair over to Mr. Hirsch. **Acting Chair Hirsch:** recognized Attorney Cox representing the applicant. A letter has been submitted dated February 25 asking if this matter could be withdrawn without prejudice. The letter was submitted to both the Zoning Board and ConCom which applications were submitted to both committees. Concom allowed the withdrawal on March 2nd and we are asking ZBA to withdraw without prejudice this evening.

Acting chair Hirsch: comments from the board: none noted. Bringing back to the board for a vote. All in favor for a roll call vote to allow petitioner to withdraw without prejudice.

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Member	7:00PM Appeal No. 2020-042	Absent
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.		x
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.		x
Rodolakis A.		
Walantis T.		x
Webb, Aaron	In favor	

Acting Chair Hirsch thanked Attorney Cox.

POINT OF INFORMATION: Chair Rodolakis noted that we will go with the regular members and since this is your first (your = Aaron Webb) we'll give you a free pass tonight in terms of sitting on any. Feel free to ask any questions if you so choose.

New Matters

Chair Rodolakis: **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. **Continued from February 24th.**

Chair Rodolakis recognizes Attorney Michael Scholls representing the Cappellucci family. A memo dated March 4th was submitted to ZBA and is attached as Exhibit 3. It is a GIS map of the dwelling in proximity to other dwellings in the neighborhood. It is consistent with the other dwellings in terms of size and setbacks. Proposed construction is noted on the site plans done by Sullivan Engineering. The demolition of the home is due to the age, condition and contents of home. There is a lot of mold and other material. The applicant’s proposal meets all the performance criteria set forth. We do not meet the set back requirement RC district on that southerly lot line. We are proposing... the dwelling sits 4.9 on the southerly line; we will be pulling back 8.4 feet but do need special permit from ZBA. The following is submitted: a) that we satisfy the issue for the special permit based on the following: 1) the application falls specifically accepted in ordinance for the granting of the special permit Section 240-91H3; 2) the proposed setbacks must be equal to or greater then the yard setback of the existing building (as briefly mentioned) we are pulling house from 4.9’ to 8.4’. Attorney Schools would suggest to ZBA that the new dwelling will be no more detrimental to the neighborhood as the old dwelling. What they are doing is improving the structural integrity as well as removing harmful mold with the demolition of the dwelling but they are retaining the architectural style of that being a salt box which was an integral part of that of

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Eel River Road as determined by the Historical Commission on July 24, 2021. The building height is proposed is what is put forth. Therefore Attorney Scholls is asking for the board to grant the special permit.

Chair Rodolakis asked if anyone from the board had any questions. Mr. Hanson: Is there something about the topography that would shift the house to a slightly more (inaudible – there appears to be something wrong with Mr. Hanson’s mike every time he speaks). Mr. Cappellucci identified himself for the record. Our neighbors to the north (just next door) she has a nice patio...she just put a nice pergola over it so we have been very sensitive to not moving it back and obstructing her view of the Bay. We really had to push back both the builder and the architect because she has a really nice view. **Chair Rodolakis** asked how high to the peak of the roof is the house? Ron Welsh – Welsh Construction - It was noted that it’s around 27’. Don’t have exact number for you. Attic space is a pull down.

Chair Rodolakis asked for Public Comment. Hearing none – public comment was closed.

Chair Rodolakis – back to board for deliberation. **Chair Rodolakis** noted he had no issues with this at all.

Chair Rodolakis – recognized Mr. Alves to read findings.

FINDINGS FOR Appeal No. 2021-008

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 complete 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. The Board stated there is an improvement of the nonconforming setback as well as the removal of harmful materials.
4. The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building. The proposed side yard setbacks are equal to the existing setbacks. The Board found the nonconforming setback is becoming more conforming.
5. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 16%.
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 proposed FAR is 27%.
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 is 20 feet 3 ½ inches to the top of the plate and the proposed dwelling is 2 ½ stories.
8. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

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The following vote was taken to approve findings.

Member	7:00PM Appeal No. 2020-042	Absent
Alves E.	In favor	
Bodensiek H.	Not included in this	vote
Dewey J.		x
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.		x
Rodolakis A.	In favor	
Walantis T.		x
Webb, Aaron	Not included on this	vote

Decision

Based on the findings of fact, a motion was duly made and seconded to grant Special Permit No. 2021-008 subject to the following conditions:

1. Special Permit No. 2021-008 is granted to David F. and Colleen F. Cappellucci for the demolition of an existing dwelling and construction of a 6,509 gross floor area dwelling at 31 Eel River Road, Osterville, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled “Site Plan Proposed Improvements at 31 Eel River Road, Barnstable (Osterville) Mass” prepared for David and Colleen Cappellucci drawn and stamped by Sullivan Engineering dated February 12, 2021.
3. The total lot coverage of all structures on the lot shall not exceed 16% and the floor-area ratio shall not exceed 27%.
4. The proposed redevelopment shall represent full build-out of the lot. Further expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
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/Land Court and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of the building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

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Roll Call taken for acceptance of conditions as read.

Member	7:00PM Appeal No. 2020-042	Absent
Alves E.	In favor	
Bodensiek H.	Not included in this	vote
Dewey J.		x
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.		x
Rodolakis A.	In favor	
Walantis T.		x
Webb, Aaron	Not included in this	vote

New Business

POINT OF INFORMATION – **Chair Rodolakis** asked board if there was a reason why both of the Home Depot appeals could be done at the same time. Hearing none, Chair Rodolakis read the appeals into the record.

Appeal No. 2021-010 The Home Depot The Home Depot has applied for a Special Permit in accordance with Section 240-93 B. – Expansion of a Preexisting Nonconforming Use. The Applicant seeks to alter the preexisting, nonconforming parking field to install landscape islands and in lot trees, thereby lessening the existing nonconformity. The subject property is located at 65 Independence Drive, Hyannis, MA as shown on Assessors Map 295 as Parcel 015-X01. It is located in the Business (B), Industrial (IND) and Highway Business (HB) Zoning Districts.

Appeal No. 2021-011 The Home Depot The Home Depot has petitioned for a variance in accordance with Sections 240-65 (A) and 240-65 (C) – Signs in the B and HB, Number of Signs and Additional Square Footage. The Applicant seeks to replace three existing main business signs for two businesses with two (2) main business signs, and three (3) department signs for one business. The subject property is located at 65 Independence Drive, Hyannis, MA as shown on Assessors Map 295 as Parcel 015-X01. It is located in the Business (B), Industrial (IND) and Highway Business (HB) Zoning Districts.

Chair Rodolakis recognized Attorney Singer representing Home Depot. Attorney Singer noted that two separate votes will be needed to be taken but he had no problem putting the appeals together. Both architect and engineer are here. Home Depot is redeveloping its store to take in the space that was formerly A.C. Moore to relocate its Garden Center, lumber change, to structure the loading and staging area to circulation in the parking field. All of that is permitted by right under zoning. We have been through site plan review and that does not require relief from the board. For special permit reasons what is required is that the front parking field (in front of the business (in front of former A.C. Moore, in front of Home Depot) and then that part of the parking that is out in near Attucks Lane which is not in front of the building but kind of sticking out there..that is preexisting nonconforming as to analog

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vegetation. At the moment there is only 3.6% existing where 10% is required. When we were going through site plan review the question asked was can we try to improve on that number while still providing efficient parking for the business. What has been designed is to add several landscape islands as part of the reconfiguration traffic flow which would increase the in lot percentage to this part of the property to 6.4%. It's close to doubling what is there, it's still nonconforming but not substantially more than what is there. ZBA members have all the plans. Sheet 5 of 10, that is sheet that shows most clearly the landscape islands Attorney Singer is talking about. This request is under 249-3B and 40A6 to alter the preexisting nonconforming conditions which you are authorized to do. If you find that the proposal will not be substantially more detrimental to the neighbor. We respectfully submit the proposal will not be more detrimental for a number of reasons. A) The former use of the property will stay the same, b) the realign circulation pattern in the parking fields will improve pedestrian and vehicular safety and access to this part of the shopping center, c) the new landscape islands and vegetation will break up the massing of the asphalt parking lot which is wide open...this will provide more modern treatment to the parking lot and will be an ascetic improvement; d) there will also be landscaping in the Attucks Lane buffer to make it ascetically more pleasing than what is there today. With this request there will be no anticipated change to artificial light, noise, litter or odor and we believe it will not cause any nuisance in traffic. In fact the whole purpose of this is to improve lesser congestions and remove hazards. For all of those reasons listed we would respectfully for the first part request that the board making findings that the request to install landscape islands to decrease the nonconformity is not substantially detrimental to the neighborhood and grant that special permit.

Attorney Singer continued: Correspondingly, the variance request, we have asked for sign relief..this is a unique site. When you look at the building between the former A.C. Moore and Home Depot, we have outlined on the plans and the summary there are three main business signs right now which total approximately 380 square feet of area of non conforming space. What we propose is actually a slight reduction in overall signage but it is a reallocation of signage to provide two business signs and have department signs change. However there would be a slight decrease of 373 square feet of signage on the building. In this case it requires relief for both size (even though it is decreasing it is still more than allowed) and the number of signs. There are on the front of the building facing Independence and the side faces Attucks...there are four distinct entries. Those entries are spaced almost two football fields end to end. The four doors go into a different section. Then there is the Garden Center, the Lumber area and the tool rental center. We are trying to eliminate confusion and properly address the face of the building. We are trying to help direct people. ZBA is authorized to grant variances; you have to find that the standards are met. We did apply for that relief under the Zoning By-law and Chapter 40A. We would respectfully submit when you look at the situation on the site (did refer to Furlong Case in Salem) Attorney Singer cited the case. Attorney Singer also cited the odd shape of the building with its turns and corners. The signage remains in character with the neighborhood. Attorney Singer indicated that with safety in mind the signage will direct the patrons to the correct entrances. Lighting will comply with Barnstable regulations. There will be no change in artificial light, noise, odor or litter. We believe it will not create any nuisance, hazard or condition or harm to the neighborhood to the contrary it would

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present a benefit. Attorney Singer wrapped up by noting that if anyone has any questions, please feel free to ask and they will be addressed.

Chair Rodolakis noted he wanted to address the special permit first which is Appeal **No. 2021-010**. He asked if anyone of the board had any questions. **Mr. Alves** – A.) How many parking spots will be eliminated with respect to the landscaping; B). Were there any sort of minimum parking spot commitments made? The numbers that are presented satisfy the demand. There are some reserved available (this was something like what was done down at the Ethan Allen Store at the other end of the property.) Brian Yergatian, PE, Leed AP..indicated that, “we are proposing land bank parking –there is no straight forward answer. Strictly looking at the new landscape islands we would be proposing within the existing parking field, we would be losing 11 parking spaces. There are more trees proposed but some of them are already going into raised islands already there. **Mr. Alves** that would still keep us with ample parking. As you are expanding the fore space for the property, I would expect there would be additional parking and it’s a reduction in them...are there any concerns with that? Attorney Singer: It’s not a net increase. Yes the Home Depot is getting bigger but A.C. Moore has disappeared. A.C. Moore had had a parking allotment as well. In effect the Home Depot now has more parking as well. **Chair Rodolakis** asked about what was going to be done on the A.C. Moore building. Attorney Singer noted that the interior and walls are coming down but part of the roof is going to stay. If you look at the Garden Center will be open to the air. **Point of Information (for purposes of discussion)**: The Garden Center will relocate to the area of the A.C. Moore building. The Garden Center will have fencing in the rear. It’s really demolishing the building but the roof is staying. **Mr. Bodensiek**: the access through the Festival Mall to Attucks ...will that be maintained after the project. Attorney Singer: “Yes, there is no proposal to change that.”

Chair Rodolakis: “Any public comment?” Hearing none – public comment is closed.

Chair Rodolakis: “Bring this back to board for final destination. It was **Chair Rodolakis**’ opinion that it would be an improvement. He always found a bit of congestion at the exits going in and out of Home Depot. Feels it’s an improvement as well for the traffic and pedestrians.

Findings of Fact

At the hearing on March 10, 2021, the Board unanimously made the following findings of fact in Special Permit Application No. 2021-010, a request to alter the preexisting, nonconforming parking field to install landscape islands and in-lot trees, thereby lessening the existing nonconformity:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. The existing use is pre-existing nonconforming and any expansion/alteration is allowed under Section 240-93.
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. The Board found it was an improvement to the site and safety.
3. A Site Plan has been reviewed and found approvable with conditions (See letter dated December 31, 2020).
4. The proposed repairs, alterations and/or expansion are not substantially more detrimental to

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the surrounding neighborhood.

Mr. Alves moved to accept the findings and seconded by Mr. Hirsch.

Member	7:00PM Appeal No. 2021-010	Absent
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.		x
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.		x
Rodolakis A.	In favor	
Walantis T.		x
Webb, Aaron	Not included in this	vote

Decision – Conditions

Based on the findings of fact, a motion was duly made and seconded to grant Special Permit No. 2021-010 subject to the following conditions:

1. Special Permit No. 2021-010 is granted to The Home Depot for the alteration to the parking field to install landscape islands and trees at 65 Independence Drive, Hyannis, MA.
2. The improvements shall be in substantial conformance with the plan entitled “The Home Depot Expansion, 65 Independence Drive, Hyannis Mass” by BSC Group, dated September 4, 2020 and revised January 15, 2021.
3. The Applicant is required to attain all required permits, approvals, and licenses for the proposed new expansion/alteration.
4. Site Plan Review conditions of approval in the letter dated December 31, 2020 are hereby incorporated into this Decision.
5. 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 issuance building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Mr. Hanson moved to accept the Conditions as read with Mr. Hirsch seconding the motion.

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Member	7:00PM Appeal No. 2021-010	Absent
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.		x
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.		x
Rodolakis A.	In favor	
Walantis T.		x
Webb, Aaron	Not included in this	vote

Chair Rodolakis – with respect to the sign variance **Appeal No. 2021-011. Mr. Hanson:** Has a concern. There could be a safety issue with contractors picking up product etc. It gets very congested there. **Chair Rodolakis** – cited the Super Stop and Shop had signage concerns with the Pharmacy etc. We’ve done something like this before.

Chair Rodolakis: public comment. Hearing none public comment is closed.

Chair Rodolakis- brought discussion back to the board for final deliberation. Hearing no further comments from board. **Chair Rodolakis** made the following findings.

Findings of Fact

1. Owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located. The Board found that after the presentation, the shape of the lot and the shape of the building are unique.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner.
3. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance. The Board found the proposed signage will improve safety by directing customers to the appropriate areas.

The Board voted to accept the findings as follows:

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Member	7:00PM Appeal No. 2021-011	Absent
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.		x
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.		x
Rodolakis A.	In favor	
Walantis T.		x
Webb, Aaron	Not included in this	vote

Decision on conditions

The Board voted to grant the requested Variance to the sign regulations with conditions as follows:

1. Variance No. 2021-011 is granted to The Home Depot at 65 Independence Drive, Hyannis for two (2) main business signs, and three (3) department signs for one business.
2. The signs shall be in substantial conformance with the sign specifications by GF dated February 5, 2021.
3. The Applicant is required to obtain sign permits from the Building Division prior to installation.
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 variance must be exercised within one year, unless extended.

A motion was made by Chair Rodolakis and seconded by Mr. Hirsch to accept the conditions.

Member	7:00PM Appeal No. 2021-011	Absent
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.		x
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.		x
Rodolakis A.	In favor	
Walantis T.		x
Webb, Aaron	Not included in this	vote

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Attorney Singer has read and accepts the conditions.

POINT OF INFORMATION: Question was raised as to how long this project would take. Attorney Singer introduced Don Karakis (spelling) Greenberg Associates.... Project Architect our intent is to try to begin by the end of summer, beginning of fall. This one will be a little more difficult to say when it will be completed because you will have an open store going on while project is going on. Has potential of falling into the next year. Let’s say maybe safely a year later. 2022.

Correspondence – none

Matters not reasonably anticipated by chair

Chair Rodolakis –welcomed Aaron Webb to the committee. Recognizing his efforts to serve the town.

Upcoming Hearings

March 24th. (2) items on agenda, April 14th at this time it looks like we may have maybe 3 or 4 items,

It was moved and seconded to adjourn. Roll call for adjournment

Member	Adjournment	Absent
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.		x
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.		x
Rodolakis A.		
Walantis T.		x
Webb, Aaron	In favor	

Respectfully Submitted

Elizabeth B. Silva
Temporary Scribe