

# ZONING BOARD OF APPEALS

## MINUTES

Wednesday, April 14, 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:

<b>Join Zoom Meeting Option</b>	<b>Telephone Number Option</b>
<a href="https://zoom.us/j/96076259052">https://zoom.us/j/96076259052</a>	888-475-4499 U.S. Toll Free
Meeting ID: 960 7625 9052	Meeting I.D. 960 7625 9052

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>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
Webb, Aaron	x	

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**Taping of meeting**

No one taping.

**MINUTES**

To be approved this evening – minutes of November 18, 2020 and January 13, 2021

**Mr. Hirsch** moved to approve minutes as submitted with **Mr. Dewey** seconding the motion.

<b>Member</b>	<b>Present via Zoom</b>	<b>Absent</b>
Alves E.		x
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.		x
Rodolakis A.	In favor	
Walantis T.		x
Webb, Aaron	In favor	

**Motion Carried – all in favor.**

**OLD BUSINESS**

None

**NEW BUSINESS**

**POINT OF INFORMATION:** Chair **Rodolakis** suggested that Appeal No. 2021-014 and 2021-015 be consolidated. Chair **Rodolakis** read both appeals at this point.

**Appeal No. 2021-014 Johnson**, Lot 1 Linda and Donald Johnson have petitioned for a Variance in accordance with Section 240-36 Resource Protection Overlay District, 240-128 Definitions. The Petitioners are proposing to divide one conforming lot containing two dwellings into two nonconforming lots with an existing dwelling on each. The subject property is located at 495 Willow Street, West Barnstable MA as shown on Assessor’s Map 130 as Parcel 003. It is located in the Residence F (RF) Zoning District and Resource Protection Overlay District (RPOD).

**Appeal No. 2021-015 Johnson**, Lot 2 Linda and Donald Johnson have petitioned for a Variance in accordance with Section 240-36 Resource Protection Overlay District, 240-128 Definitions, 240-007 D. Lot Shape Factor. The Petitioners are proposing to divide one conforming lot containing two dwellings into two nonconforming lots with an existing dwelling on each. The subject property is located at 495 Willow Street, West Barnstable MA as shown on Assessor’s

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Map 130 as Parcel 003. It is located in the Residence F (RF) Zoning District and Resource Protection Overlay District (RPOD).

**Chair Rodolakis** recognized Attorney Revere on behalf of the applicant. Attorney Revere agreed that the two appeals be combined. He noted that this is a very simple matter. The property is at the far end of Willow Street, it is a large lot. For reasons not completely clear had two separate dwellings built on it. The first dwelling was the cottage estimated by the Assessors was built in 1960. (It may even predate that). It has all the accoutrements of a cottage etc. In 1974 a building permit was issued for a 2<sup>nd</sup> home on the same property. He noted he had been through building permit files and didn't know if Ms. Brigham receive the information but the files do not give any information as to the existence of the 2<sup>nd</sup> dwelling shown on various plans for the septic and things like that. What this proposal is is dealing with a classic issue as has "vexed" people in zoning for a while is, "what do you do with two existing structures; it's a non-conforming use, two structures on one lot." What it has come down to is a two step process over the last five years: 1) go to ZBA and get a variance because the division creates a couple of new non-conformities; 2) after we get approval for variance we still have to get the Planning Board to sign off on the plan (and the Planning Board can't sign off on the plan unless there is a variance and vice-versa). After consulting with the town the decision is that, "You should first go to the ZBA (see if you can get a variance there). Then go to the Planning Board to see if they will sign off on the plan. The real issue here (no matter how you slice it is this area is resource protection overlay district which has a two acre minimum standard). It is also the RF district that has a one acre. We can meet those requirements. Due to the nature of the lot, the 2<sup>nd</sup> lot does not meet frontage requirements and it also does not meet shape factor. We have a 2.6 acre lot and in Attorney Revere's estimate is not a small piece of property with an early 1960's possibly 1950's cottage and then a 1974 2500 (rounded up slightly) square foot home. It's been in the Johnson family (the lot) for over seventy years. Here Attorney Revere went into the description of the shape factor of the lot. We are here this evening to do this going through Zoning and to break two separate lots. There are other ways Attorney Revere noted. He listed the facts of this appeal (sent to the ZBA members) I: a) Lot one will have the current house (2500 square foot property, it has a septic system and well that falls within the bounds of it b) It will a 1.45 acre parcel (that itself is  $\frac{3}{4}$  of the size of the resource protection overlay district). It meets all requirements of zoning, frontage, set back, etc. It doesn't meet the two acre requirement of the Resource Protection Overlay District. Requirement of shape factor of 20. The second lot is the cottage lot. This is the one that is at the junction of the square and the wing. The wing has a triangle at the end of it to make it harder to make shape. Dan Ojala drew a lot that has a panhandle foot that goes to the road, provides frontage on the road and also as you look at the plan you'll see that it has the so-called wing to the north. Looking at the lot he proposed is a 1.05 acre lot. It has a shape factor in excess of 22 and it does not meet the frontage requirements because we gave it frontage but it gave it sort of a foot along the road. What Dan also did was remove the

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Panhandle factor from the road and you got rid of the triangle you basically have a .83 acre lot which is a pretty big lot which has a shape factor of 21. Further discussion on shapes of the lots continued. The structures are really the unique circumstance here, that is two preexisting structures (both given building permits when they were issued)...the second one issued in 1974, the cottage was there; people were living in it. They both have the devices in a living unit and they have separate septic systems, separate wells. It generally affects this parcel, this structure and not zoning districts as a whole. The hardship here is the property can't be divided in any other way, shape or form. The property exists as two structures and its uniqueness is the structures and the inability to separate them except through getting a variance or a legal artifice of creating a condominium. It is Attorney Revere's opinion that it makes complete sense based on facts to grant a variance here. Attorney Revere welcomes questions from the board.

**ZBA Member Hanson** questions the hardship. Felt he was not understanding the hardship. Is it financial; why are we splitting these from the applicant's stand point? Attorney Revere, we are splitting because there are not a lot of lot buyers and the like that would buy a property that comes with two completely separate homes. The Johnsons have owned the property for a while; they are reaching the age of retirement. It is a property that may or may not remain in the family in the future. It may partially remain in the family or not. But as it stands, the real hardship is they are in a situation where they have two dwellings and it's a non-conforming use and its attempt to get rid of some of the non-conforming use and create it into a more conforming single family residence district but by doing it the nature of the lot creates the problem. It is **Mr. Hanson's** opinion that there is a market for this sort of property where you have a main dwelling. Asking again, is this a hardship for financial reasons where the applicant would like to sell one parcel or still live in another parcel. I question why grant the variance? Where is the hardship? Jeff Johnson, applicant noted that this is his mom's house. His dad had passed. Going back, his dad, uncle had built the cabin in the 50s. Grandmother built the house in the 70s. When father passed his mother was not likely going to sell the house. There's a lot of sentimental value in the cottage. What we would like to do is keep the cottage and sell the house. That is what the real driver is in this. The brokers we've dealt with have said it's easier to sell...I'm sure there are some buyers who would like two structures on a property; it's cleaner if we separate it as two different properties and we get to keep the cottage for sentimental reasons.

**Chair Rodolakis** asked what has been done as neighborhood outreach. Attorney Revere has not done so but did ask Mr. Johnson to make sure he spoke with various abutters. He deferred to Mr. Johnson. Mr. Johnson's brother lives on Cedar Street. Some of his best friends live in the nearby houses so we haven't received any negative responses. His parents have been there forever and have always gotten along with everyone. **Mr. Webb** asked if the Johnsons living in the front on Lot 1 and is Lot 2 being maintained by a separate tenant. Mr. Johnson indicated that his mother lives in the front house and the cabin up on the hill is used by all the children. **Mr. Webb** noted

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that it is not an income generating property. Mr. Johnson stated, “no.”

**Chair Rodolakis** closed board discussion. Opened it up for

Public Comment: Hearing none - **Chair Rodolakis** closed public comment.

**Chair Rodolakis** back to board for deliberation. He noted that he was in a two unit condo in Boston with an upstairs and downstairs and it was **Chair Rodolakis**'s opinion that it was probably the worst way to own real estate. In the past it has been my experience that we have allowed variances under these circumstances. **Chair Rodolakis** has no problem doing it regardless what they decide. These are his thoughts he reiterated. **Mr. Dewey** has a concern because ZBA has seen a lot of these detached family apartments and the applicant has stated that it is being used by the family. If we are looking at a preexisting nonconformity to him it has become a family apartment over the past ten years or seven years. So I have a little bit of an issue there and again I don't see a hardship here and I worry that we are opening up a Pandora's box to all these family apartments becoming ...some of our larger lots broken off as multiple lots. **Mr. Hanson** has some concern that again he's not really seeing the hardship and that was sort of my question in the beginning. He totally understands; he has been in a similar situation with a family house. I'm finding it a stretch....it just looks like it is being severed off...strictly to sell. **Mr. Hirsch** agrees with **Members Dewey** and **Hanson**. He is having a problem with it in setting a precedent. If we approve this, there is no reason that we shouldn't approve everybody. With a second dwelling on a lot. ..Especially where this is a non-conforming lot. **Mr. Hirsch** does not see the hardship involved here. Pretty soon, I heard, we are going to allow accessory dwelling whether it be part of the main house or a separate free standing house almost by right. If that happens, there could be one-hundred more of these and all of a sudden people will want to divide their lots and sell it off. It's a way to take the money out of the property. Mr. Bodensiek: My issue is with the lot size and the shape factor is a little “iffy” to. I don't see the hardship. **Chair Rodolakis** to Attorney Revere.....it sounds like the numbers will not work in your favor (referring to number of votes). I don't know if you want to withdraw without prejudice....if you want us to go forward with the vote. If you want to continue it, it's your decision. Attorney Revere will confer with his client via text while the board waits. Attorney Revere received his answer back and said he wants to think about withdrawing and I would like to ask to continue because I do think I can address the board's number of issues if we came back. I felt this was very straightforward but there is a long history of how this comes about. This is not something that was created illegal. It was created with permits for both properties. **Chair Rodolakis** moved to continue Appeal Nos. 2021-14 and 2021-15 both being Linda and Donald Johnson until May 12<sup>th</sup> meeting at 7:01 PM. **Members Hanson and Dewey** both seconded at once.

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<b>Member</b>	<b>Appeal Nos. 2021-14 Appeal No. 2021-15</b>	<b>Absent</b>
Alves E.		x
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.		x
Rodolakis A.	In favor	
Walantis T.		x
Webb, Aaron		

**All in favor for continuance of Appeal Nos. 2021-14 & 15 to the May 12<sup>th</sup> meeting.**

**Chair Rodolakis** was requested to read into the minutes the following appeal:

**Appeal No. 2021-016 McDonough** James McDonough of 111 Mockingbird Lane, Marstons Mills, MA has filed an appeal citing an appeal of an Administrative Official’s Decision. The Building Commissioner issued a decision dated January 29, 2021 denying Mr. McDonough’s request for enforcement to suspend uses at the property at 810 Wakeby Road, Marstons Mills. The appeal also cites Zoning Ordinance Section 240-10 Prohibited Uses, and states: “the nature of activity presently is not legal use, request is to end all “by right” activities immediately by enforcing Barnstable Zoning bylaw against prohibited uses.” The subject property is located at 810 Wakeby Road, Marstons Mills, MA as shown on Assessors Map 013 as Parcel 052. It is located in the Residence F (RF) Zoning District. **\*\*Re-Noticed for April 28th\*\***

**Appeal No. 2021-017 Johnson** David G. and Elizabeth T. Johnson have applied for a Special Permit in accordance to Section 240-46 Home Occupation. The Applicants are proposing to establish two Home Occupations: a design and décor business, including off-site and online sales of product; and a graphic design business. The subject property is located at 5 Putnam Avenue, Cotuit, MA as shown on Assessors Map 036 as Parcel 034. It is located in the Residence F (RF) Zoning District.

**Chair Rodolakis** recognized Ms. Johnson to speak. She is opening a new business. New business shouldn’t have any effect on her surroundings or her neighbors. There should be no retail business at her site. It’s either on-line or off-site. She is in RF Zone in Barnstable and has to get a special permit in order to get a business certification for a home occupied business.

**Chair Rodolakis** asked if she had seen the staff conditions regarding non transferables etc and Ms. Johnson stated she had.

**Chair Rodolakis** opened up discussion to the board. **Mr. Dewey** asked if all her deliveries and pickups will be UPS or Fedex. Ms. Johnson replied in the affirmative. One truck in and out.

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**Chair Rodolakis** closed board discussion and opened up **Public Comment**. Ms. Kornblum of 746 Main and she is speaking for Ms. Johnson. She is all for her business. No one else stepped up; therefore **Chair Rodolakis** closed public comment.

**Chair Rodolakis** brought back to board for deliberation. **Mr. Webb**: Didn't have anything to say other than he was in favor of it. He knows the property and where it exists. As long as she follows the conditions, there should be no problem. He doesn't think there will be any impact on the neighborhood.

**Chair Rodolakis read the findings.**

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. The proposed use is located within the Residence F District and is allowed by Special Permit under Section 240-46 C. Home Occupation.
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. The site plan has been reviewed by the Site Plan Review Committee and found to be of no significant detriment (see letter dated February 24, 2021).
4. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. The proposed use is located within the Residence F District and is allowed by Special Permit under Section 240-46 C. Home Occupation.
5. 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.
6. The site plan has been reviewed by the Site Plan Review Committee and found to be of no significant detriment (see letter dated February 24, 2021).

<b>Member</b>	<b>Appeal Nos. 2021-17</b>	<b>Absent</b>
Alves E.		x
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.		
Hirsch D.	In favor	
Pinard P.		x
Rodolakis A.	In favor	
Walantis T.		x
Webb, Aaron	In favor	

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**All in favor on findings**

**CONDITIONS**

Based on the findings of fact, a motion was duly made and seconded to grant Special Permit No. 2021-017 subject to the following conditions:

1. Special Permit No. 2021-017 is granted to David G. and Elizabeth T. Johnson to establish two Home Occupations: a design and décor business, including off-site and online sales of product; and a graphic design business at their residence located at 5 Putnam Avenue, Cotuit, MA.
2. The home occupation shall conform to all of the requirements of Section 240-46 B. (1) – (12) and Section 240-46 C. (1) - (7) of the Zoning Ordinance.
3. This permit is issued only to the applicants and is not transferable.
4. There shall be no customers on site.
5. All distribution of product will be done by the Applicants.
6. The Applicants must reside on the property.
7. All conditions set forth from Site Plan Review letter dated February 24, 2021 are incorporated in this Decision.
8. This permit is for a design and décor business, including off-site and online sales of product; and a graphic design business only.
9. Not more than one employee who is not a member of the Applicants family shall be permitted.
10. The Applicant is responsible for receiving sign permit(s) and any other applicable permits from town departments.
11. 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 of a building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

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<b>Member</b>	<b>Appeal Nos. 2021-17</b>	<b>Absent</b>
Alves E.		x
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.		
Hirsch D.	In favor	
Pinard P.		x

Rodolakis A.	In favor	
Walantis T.		x
Webb, Aaron	In favor	

**All in favor on Conditions based on staff memorandum dated March 25, 2021**

**CORRESPONDENCE**

None

**MATTERS NOT ANTICIPATED BY CHAIR**

None

**UPCOMING HEARINGS**

April 28<sup>th</sup> (it was noted this meeting has a full docket). May 12<sup>th</sup> and May 26<sup>th</sup>

**ADJOURNMENT**

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

**All in favor to adjourn.**

**Respectfully Submitted**

**Elizabeth B. Silva**  
**Temporary Scribe**