

**ZONING BOARD OF APPEALS**

**MINUTES**

18 OCT '21 AM 8:50  
BARNSTABLE TOWN CLERK

**Wednesday, September 22, 2021**

**Chair Jacob Dewey** opened the meeting at 7:05PM 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
<a href="https://zoom.us/j/94583493198">https://zoom.us/j/94583493198</a>	888-475-4499 U.S. Toll Free
Meeting ID: 945 8349 3198	Meeting I.D. 945 8349 3198

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 Jacob Dewey** took roll call of members present:

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

Also in attendance were David Bogan – Town Councilor, Kate Maldonado – Assistant Director of Planning & Development, and Rachael Toolas– Administrative Assistant

**NOTICE OF RECORDING**

Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

**Response:**

None

Chair Dewey motioned to accept the minutes from September 8, 2021, Member Hirsch seconds.

Member	Acceptance of Minutes	Absent
Alves E.		Absent
Bodensiek H.		Absent
Dewey J.	X	
Hansen M.	X	
Hirsch D.	X	
Pinard P.	X	
Walantis T.	X	
Webb, Aaron	X	

**OLD BUSINESS**

None

**NEW BUSINESS**

***Member Walantis reads for the record.***

7:00 PM                      Appeal No. 2021-040    Fedje, Trustees

Raymond and Betty Fedje, Trustee of the Fedje Revocable Living Trust, have applied for a Special Permit pursuant to 240-91.H (3) – Demolition and Rebuilding on a Nonconforming lot. The Applicants seek to demolish the existing 3-bedroom nonconforming dwelling and construct a 2,656 square foot 4-bedroom dwelling on a lot with 5,693 square feet of area. The proposed dwelling will have a front yard setback from Harbor View Road of 13.5 feet where 20 feet is required and a side yard setback of 6.6 feet where 10 feet is required thereby making the proposed dwelling less nonconforming. The subject property is located at 15 George Street, Barnstable, MA as shown on Assessor’s Map 319 as Parcel 065. It is located in the Residence B (RB) Zoning District.

*A letter was sent by Attorney Tardif requesting a continuance to October 13, 2021 @ 7pm.*

*Member Todd Walantis motions to approve the continuance, Member Hansen seconds*

**Vote:**

**AYE:** David Hirsch, Mark Hansen, Paul Pinard, Todd Walantis, Aaron Webb, Jacob Dewey

**NAY:** None

***Mark Hansen reads the following into record.***

7:10 PM                      Appeal No. 2021-042    The Whole Fish d/b/a The Knack

The Whole Fish d/b/a The Knack has applied for a Special Permit accordance with Sections 240-65 – Signs in the HB District, Section 240-93 Nonconforming buildings not used as single or two family dwellings, and Section 240-94 Nonconforming Use. The Applicant seeks to replace the preexisting nonconforming free standing (120 sq ft) and wall (50 sq ft) signs at the site of the former Cooke’s Restaurant and future location of The Whole Fish d/b/a The Knack. The replacement freestanding sign, which will be in the same location, will be reduced from 120 sq ft to 75 sq ft. The replacement wall signs will increase to 69 sq ft. Relief for the redevelopment is required for freestanding sign height, total square footage of signage, and number of signs. The subject property is located at 1120 Iyannough Rd (Rte 132), Hyannis, MA as shown on Assessors Map 294 as Parcel 075. It is located in the Highway Business (HB) Zoning District.

***Chair Dewey assigns members: Jacob Dewey, Todd Walantis, David Hirsch, Mark Hansen, and Paul Pinard***

**7:13 PM Attorney Andrew Singer discusses the renovations of the Knack Restaurant which was previously Cooke's Seafood. The owners of the Knack are seeking a special permit for the two signs that they would like to install. A freestanding sign and a wall sign by the vestibule entrance. The freestanding sign is on Rte. 132 would be replacing the previous owners sign which is over the property line and in the road layout. The Knack would like to put the free standing sign in the same location as the previous Cooke's sign. They are working with David Anthony regarding lease agreements, allowing the free standing sign to be in the road layout. The sign would be smaller in square footage than the previous owners.**

**Photos and site plan – shared**

**Member Pinard wanted clarification of the location of the sign in the existing road layout. Attorney Singer responds that the sign could be moved back from the road right away, but the existing sign is currently in the layout with utilities. The utilities are available to be used. It would make sense to keep the sign in the same area.**

**Member Hansen had questions regarding the aesthetics of the sign. It was difficult to see from the drawings what it would look like when it was finished. Attorney Singer wasn't able to specify exactly what the sign would be made of and colors, but it would match the building scheme. Zoning regulation doesn't specify aesthetics.**

**Chair Dewey opens for Public Comment. No public comment is made.**

**Chair Dewey motions to close the public comments**

**Vote:**

**Aye: Dewey, Hirsch, Pinard, Walantis, Hansen, Webb**

**NAY: None**

**Member Hirsch is in favor of the signage and sees this as a positive. The sign is going to be smaller and making it less non-conforming than the existing sign.**

**Member Hirsch makes appeal findings**

1. The application falls within a category specifically excepted in the ordinance for a grant of 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 with conditions. (see letters dated July 22, 2021 and August 5, 2021).
4. Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.
5. The Building and site design are consistent with Section 240-25.E, District-wide design and performance standards applicable within the Highway Business District.
6. In granting a special permit for the alteration of preexisting nonconforming site dimensions pursuant to Section 240-93.B., the Board finds that that the proposed alterations are not substantially more detrimental to the surrounding area.
7. ~~In granting a special permit that reduces the requirements of Article VI of the Zoning Ordinance (Off-Street Parking Regulations) pursuant to 240-57, the Board finds that lesser off-street parking is adequate given special circumstance~~

**Member Walantis and Chair Dewey question #7 findings related to Off-Street Parking doesn't apply to the special permit. Attorney Singer agrees. Finding #7 is to be withdrawn. Member Hirsch motions to accept the findings without #7, Member Hansen seconds.**

**Vote:**

**AYE: Jacob Dewey, David Hirsch, Paul Pinard, Todd Walantis, Mark Hansen**

**NAY: None**

*Member Hirsch makes a motion to accept the Special Permit 2021-042 based on findings with conditions Number 1-5 as stated in the staff report dated September 8, 2021.*

**Vote:**

**YAY:** Jacob Dewey, David Hirsch, Paul Pinard, Todd Walantis, Mark Hansen

**NAY:** None

## **GRANTED WITH CONDITIONS**

*Attorney Andrew Singer requests to withdraw variance application appeal no. 2021-043 without prejudice.*

*Member Walantis makes a motion to withdraw the application without prejudice, Member Hansen seconds*

*Chair Dewey reads into record.*

**7:26 PM**

**Appeal No. 2021-043**

**The Whole Fish d/b/a The Knack**

The Whole Fish d/b/a The Knack has petitioned for a variance in accordance with Sections 240-65 – Signs in the HB District. The Petitioner seeks to replace the preexisting nonconforming free standing (120 sq ft) and wall (50 sq ft) signs at the site of the former Cooke’s Restaurant and future location of The Whole Fish d/b/a The Knack. The replacement freestanding sign, which will be in the same location, will be reduced from 120 sq ft to 75 sq ft. The replacement wall signs will increase to 69 sq ft. Relief for the redevelopment is required for freestanding sign height, total square footage of signage, and number of signs. The subject property is located at 1120 Lyannough Rd (Rte 132), Hyannis, MA as shown on Assessors Map 294 as Parcel 075. It is located in the Highway Business (HB) Zoning District.

**Vote:**

**YAY:** David Hirsch, Paul Pinard, Todd Walantis, Mark Hansen, Aaron Webb, Jacob Dewey

**NAY:** None

## **APPLICATION WITHDRAWN WITHOUT PREJUDICE**

**7:28 PM Appeal No. 2021-044-Morrell, Appeal No. 2021-045-Fischer, Appeal No. 2021-046-Swartz, Appeal No. 2021-047-Bodensiek** are read into record individually and discussed as a group.

*Member Aaron Webb reads into the record.*

**7:28 PM**

**Appeal No. 2021-044**

**Morell**

Allen N. Morell, Trustee, Allen N. Morell Revocable Management Trust has petitioned for a Variance from Section 240-11.E – Bulk Regulations in the RD-1 District, minimum front yard setback. Due to the relocation of the road layout, the result will be a 25.4 foot front yard setback where 30 feet is required. The subject property is located at 35 Loomis Lane, Centerville, MA as shown on Assessor’s Map 230 as Parcel 101-001. It is located in the Residence D-1 (RD-1) Zoning District.

**Member Hansen reads into the record**

**7:29 PM**

**Appeal No. 2021-045**

**Fischer**

Eric J. and Simone S. Fischer have petitioned for a Variance from Section 240-11.E – Bulk Regulations in the RD-1 District, minimum lot area, and Section 240-36 minimum lot area in the Resource Protection Overlay District (RPOD). Due to the relocation of the road layout, the result will be a lot shape factor of 24.5 where 22 is required, and the proposed lot area will be 27,088 square feet where 87,120 is required in the Resource Protection Overlay District. The subject property is located at 45 Loomis Lane, Centerville, MA as shown on Assessor's Map 230 as Parcel 104. It is located in the Residence D-1 (RD-1) Zoning District.

**Member Paul Pinard reads into the record**

**7:30 PM**

**Appeal No. 2021-046**

**Swartz**

Dean C. and Maureen F. Swartz have petitioned for a Variance from Section 240-11.E – Bulk Regulations in the RD-1 District, minimum lot area, and Section 240-36 minimum lot area in the Resource Protection Overlay District (RPOD). Due to the relocation of the road layout, result will be a lot area of 25,394 square feet where 87,120 square feet is required. The subject property is located at 55 Loomis Lane, Centerville, MA as shown on Assessor's Map 230 as Parcel 105. It is located in the Residence D-1 (RD-1) Zoning District.

**Chair Dewey reads into the record.**

**7:31 PM**

**Appeal No. 2021-047**

**Bodensiek**

Herbert K. Bodensiek has petitioned for a Variance from Section 240-11.E. – Bulk Regulations in the RD-1 District, Section 240-36 minimum lot area in the Resource Protection Overlay District (RPOD), and Section 240-7 D Lot Shape Factor. Due to the relocation of the road layout, the result will be a lot area of 26,701 square feet where 87,120 square feet is required and a front yard setback of 27.6 feet where 30 feet is required. The subject property is located at 58 Loomis Lane, Centerville, MA as shown on Assessor's Map 230 as Parcel 111. It is located in the Residence D-1 (RD-1) Zoning District.

**Members Assigned: Aaron Webb, Paul Pinard, Jacob Dewey, David Hirsch, Mark Hansen**

*Attorney Schulz is representing all the applicants and presents information to the Board. The applicants, Bodensiek, Fischer, Swartz, and Morell are located at Loomis Lane and have executed an agreement to relocate Loomis Lane from the record Loomis Lane that crosses Bodensiek's property, to the existing paved road. The record road has never been used since the original layout in 1898. The neighbors want to file a subdivision plan with the Planning Board as the paved road layout currently exists. They need to obtain variances for the lots to accommodate the change in lot size and/or shape as it relates to the current road layout.*

*Attorney Schulz wants to clarify that Bodensiek does not need to seek a shape factor variance which was stated in the legal notice. Bodensiek's lot meets the shape factor before the proposed subdivision as well as after.*

*Attorney Schulz states that 45 Loomis Lane needs a shape factor lot variance Section 240.7 added to the appeal.*

*Public Comment will be opened for all appeals simultaneously. Assistant Director Kate Maldonado confirms this procedure as acceptable.*

*7:45 Chair Dewey opens for public comment. No public comment is made. Fischer's and Swartz's attorney is present for observation.*

*Chair Dewey motions to close public comment, Member Pinard seconds.*

**Vote:**

**AYE: Hirsch, Dewey, Walantis, Pinard, Hansen, Webb**

NAY: None

*Pinard would like clarification of the sketch plan where it indicates the record road. Attorney Schulz refers to the dotted line as the road of record that was never used. There will be no changes to the existing paved road. Once the subdivision plan is approved, easements will be granted over the existing pavement to the applicants.*

*Webb reads the appeal again and  
Member Webb makes findings  
Appeal Findings*

*Appeal No. 2021-044*

*Morell*

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;
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
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.

*Member Webb makes a motion to accept the findings, Member Pinard seconds.*

**Vote:**

**AYE:** Dewey, Hirsch, Pinard, Hansen, Webb

**NAY:** None

Chair Dewey moves to granted Variance 2021-044 with conditions 1-3 as stated in the staff report dated September 8, 2021,

**Vote:**

Roll call vote

**AYE:** Dewey, Hirsch, Pinard, Hansen, Webb

**NAY:** None

**GRANTED WITH CONDITIONS**

*7:55 PM Member Hansen reads amended appeal No. 2021-045*

*Fischer*

Eric J. and Simone S. Fischer ("Applicants"), have applied for a variance from Section 240-11 (Bulk Regulations) from minimum lot area and Section 240-36, (Minimum Lot Area in RPOD), and Section 240 -7 (Shape Factor). The portion of Loomis Lane on the plan recorded at Plan Book 31, Page 43 (Exhibit 2), which abuts Applicants' property and the property at 58 Loomis Lane (Bodensiek) has never been used for travel purposes. Instead, the traveled portion of Loomis Lane was located on Applicants' property and the property at 55 Loomis Lane (Swartz), and is shown as Lot 2 on the proposed subdivision plan attached as Exhibit 3. The purpose of the subdivision plan is to relocate a portion of Loomis Lane to coincide with the historic traveled portion, which is depicted on Exhibit 1. If the subdivision plan is approved by the Planning Board and relief is granted by the Board, the lot area of Applicants' property will decrease by 2,912 square feet. The shape factor will decrease

from 36.3 to 24.2 (22 or less required under the Zoning Ordinance). Lot 3 complied with the shape factor when it was created in 1983.

***Member Hansen makes appeal findings***

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;
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
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.

***Member Hansen motions to accept the findings, Member Hirsch seconds***

***Roll Call Vote***

***Aye: Dewey, Hirsch, Pinard, Hansen, Webb***

***Nay: None***

***Member Hansen moves to grant Variance No. 2021-045 subject to the following conditions 1-3 as stated in the staff report dated September 9, 2021.***

***Roll Call Vote:***

***AYE: Dewey, Hirsch, Pinard, Hansen, Webb***

***NAY: None***

## GRANTED WITH CONDITIONS

***Members Assigned: Hirsch, Hansen, Webb, Dewey, Pinard***

***Member Pinard reads the appeal record and makes appeal findings***      **Appeal No. 2021-046**      **Swartz**

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;
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
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.

***Member Pinard motions to accept the findings, Member Hansen seconds***

***Vote***

***AYE: Dewey, Hirsch, Pinard, Hansen, Webb***

***NAY: None***

***Board Member Pinard motions to grant Variance No. 2021-046 subject with conditions 1-3 as stated in the staff report dated September 9, 2021.***

**Vote:**

**AYE: Dewey, Hirsch, Pinard, Hansen, Webb**

**NAY: None**

**GRANTED WITH CONDITIONS**

**Attorney Schulz states the Bodensiek findings need to be amended to remove Section 240-7 D Lot Shape Factor. His property meets Shape Factor requirements.**

**Chair Dewey reads the record and makes appeal findings Appeal No. 2021-047**

**Bodensiek**

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;
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
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.

**Chair Dewey makes a motion to accept the findings, Member Pinard seconds.**

**Vote:**

**AYE: Dewey, Hirsch, Pinard, Hansen, Webb**

**NAY: None**

**Chair Dewey moves to grant Variance 2021-047 subject to the following conditions 1-3 as stated in the staff report dated September 9, 2021.**

**Vote :**

**AYE: Dewey, Hirsch, Pinard, Walantis, Hansen, Webb**

**NAY: None**

**GRANTED WITH CONDITIONS**

**List of Documents Used at the Meeting**

1. Proposed Signage for the Knack and Site Plan
2. Sketch plan of Loomis Lane, Centerville

**Correspondence**

None



**Matters Not Reasonably Anticipated by the Chair**

None

**Upcoming Meetings**

October 13, 2021

**Adjournment**

*8:10 PM Chair Dewey moves to adjourn the meeting, Member Pinard seconds.*

***Vote:***

***AYE: Dewey, Hirsch, Pinard, Walantis, Hansen, Webb***

***NAY: None***

Respectfully Submitted

Rachael Toolas,  
Administrative Assistant