

# ZONING BOARD OF APPEALS

## MINUTES

Wednesday, December 8, 2021

19 JAN '22 12:08  
BARNSTABLE TOWN CLERK

Chair Jacob Dewey opened the meeting at 7:02 PM with following narrative:

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/91807722556">https://zoom.us/j/91807722556</a>	888 475 4499 US Toll-free
Meeting ID: 918 0772 2556	Meeting ID: 918 0772 2556

3. 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](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).

### Call to Order

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

### 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.

### No response

### Minutes

Paul Pinard motions to accept the November 17, 2021 minutes, Herb Bodensiek seconds

### Vote:

**AYE:** Jacob Dewey, David Hirsch, Herbert Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson

**NAY:** None

**Old Business**

None

**New Business**

Chair Dewey reads into record.

7: 05 PM

Appeal 2021-063

O'Neill and Dunbar Point LLC

J. Brian O'Neill, Miriam O'Neill and Dunbar Point LLC have petitioned for a Variance pursuant to Section 240-7 F(1) number of buildings per lot and Section 240-13 (E) Bulk Regulation. The Applicant seeks to relocate the property line between 689 and 697 Scudder Avenue which will result in the cottage to be part of 689 Scudder Avenue. The subject properties are 689 and 697 Scudder Avenue, Hyannis, MA on Assessors Map 287, Parcels 061 and 062. It is located in the Residence F-1 (RF-1) Zoning District.

*Chair Dewey recused himself from the hearing. David Hirsch sits as Chair for this hearing. Assigned members, Denise Johnson, Paul Pinard, David Hirsch, Mark Hansen and Herb Bodensiek*

*Attorney Jeff Johnson states the applicant is seeking a variance to take three dwelling units on two separate lots and move the lot line so that the cottage currently located at 697 Scudder Avenue would be associated with 689 Scudder Avenue. On the 1929 land court plan all three buildings were located on the same parcel. In 1948 the land was divided into separate parcels and known as 689 Scudder Avenue and 697 Scudder Avenue. In 1978 the owner sought a special permit to change a garage to an apartment cottage. The apartment has been continuously used as such. In 2018, the O'Neills bought 689 Scudder Avenue and in 2020 the O'Neills who own Dunbar Point LLC bought 697 Scudder Avenue. These are two undersized lots. The applicants would like to move the lot line of 689 Scudder so that the cottage would become part of their property. This request is not creating new buildable lots or any new buildings. It would remain the two main houses and one cottage. The changing of the lot line would improve the side yard setback. The cottage would be more conforming to the attached parcel if the lot line was moved. The applicant is not looking to change anything other than which house the cottage is associated with.*

*Herb Bodensiek asked for the 1978 special permit to be clarified. Attorney Johnson explained the apartment is used as a guest house and not as a rental. They are not seeking to change the use.*

*Member Hansen asked if one of the houses was on the marketed for sale? Yes. Looking at the topography of the two lots, they are of equal nonconformity. There doesn't appear to be an inability to sell the house with the cottage attached. Normally, the ZBA Board sees land swap issues whereby one property is swapping the same square footage with another property. In this situation, I see that by moving the lot line it is making one of the properties more nonconforming where right now they are equal in size. What is the hardship? I don't see this structure as an impediment to the sale. It is more a desire than a hardship.*

*Paul Pinard confirms just moving the lot line is what is before the board. What is the hardship?*

*Attorney Johnson's explanation of meeting the three prong test,*

*1<sup>st</sup> Criteria – Structure's uniqueness being close to the lot line, moving it will make it less nonconforming*

*2<sup>nd</sup> Criteria – Hardship wanting to sell the house without the cottage. The applicant would like to keep the cottage in his ownership on the other lot.*

*3<sup>rd</sup> Criteria – Not substantially more detrimental to the neighborhood*

*Open for public comment*

*Farley Lewis a year- round resident of 21 Waschuset Avenue, Hyannisport abuts the O'Neill's two properties. I think this variance request doesn't meet the three prong test. The trees and fence were planted prior to the meeting in anticipation that the lot line would be relocated and approved. Regarding the accessory structure, it shouldn't be a dwelling unit and not grandfathered in according to the special permit granted in 1978. I don't think there should be more buildout of the property.*

*Bryan O'Neill, applicant, commented that they had worked with neighbors on the historic presentation and made changes to the plans that went through historic revisions. He received approval from neighbors on the small addition to that building. There are other options they could have sought, but chose to go through the public hearing process, keeping with the current neighborhood with how it's subdivided and giving people the ability to air their comments. We have made a substantial investment to the neighborhood and have gone through the appropriate process.*

*Board Discussion: Bodensiek is finding it difficult to meet the three prong test. Hirsch says it would be a hardship for him he wants to keep the cottage and not able to. Hansen doesn't see the hardship. I don't want to downplay all of the applicant's efforts on this project but as a Board we have to meet the three prong test and I'm finding the argument for the test weak.*

Attorney Johnson states there are many other small lots in the neighborhood that are non-conforming.

Member Hansen agrees there may be other options for Mr. O'Neill, but going before the Board for a variance requires that specific requirements are met in order to grant the variance. I don't believe it meets the three prong test. There is continued discussion. Paul Pinard thinks there could be an argument for hardship in moving the lot line and the cost of re-establishing privacy boundaries by moving the shrubs.

**Denise Johnson motions to close public comment, seconded by Mark Hansen**

**Vote**

**AYE: Johnson, Hansen, Bodensiek, Pinard, Hirsch**

**NAY: None**

*Discussion: Bodensiek doesn't see that the three prong test is being met.*

**Paul Pinard makes findings Appeal No. 2021-063**

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; **finds due to topography and the movement of the shrubs it would require would create a hardship**
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and : **finds applicant wants to keep the cottage, if not granted he would have to go through the process of building a new one or go without one**
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: **finds it doesn't affect the neighborhood**

**Vote:**

**AYE: Johnson, Hirsch, Pinard**

**NAY: Hansen, Bodensiek**

**Need 4 votes in favor to pass**

**VARIANCE DENIED**

Chair Dewey reads into the record.

8:01 PM

Appeal 2021-057

O'Neill and Dunbar Point LLC

J. Brian O'Neill, Miriam O'Neill, and Dunbar Point LLC have applied for a Special Permit pursuant to Section 240-91 F Merged Lots. The Applicant seeks to relocate the property line between 689 and 697 Scudder Avenue which would result in the cottage to be part of 689 Scudder Avenue. The subject properties are 689 Scudder Ave and 697 Scudder Ave, Hyannis, MA on Assessors Map 287, Parcels 061 and 062. It is located in the Residence F-1 (RF-1) Zoning District.

*Attorney Johnson requests a continuance for January 12, 2022.*

*Jake Dewey motions to continue appeal 2021-057 to January 12, 2022, David Hirsch seconds.*

**Vote:**

**AYE: Dewey, Hirsch, Bodensiek, Pinard, Hansen, Johnson**

**NAY: None**

Chair Dewey reads into the record. Assigned Members – Hirsch, Pinard, Bodensiek, Dewey, Hansen

Pericles C. Ambulos & Mary L. Kuh-Ambulos have applied for a Special Permit pursuant to Section 240-131.4 (D)( 2). The Applicants seek to expand a pre-existing nonconforming structure by expanding and partially enclosing a pre-existing nonconforming deck. The subject property is located at 1068 Craigville Beach Road, Centerville, MA on Assessors Map 206, Parcel 133. It is located in the Craigville Beach District – Craigville Beach (CBD-CB) Zoning District.

*Attorney Marian Rose of Singer and Singer in Dennisport is representing Pericles Ambulos and Mary Kuh-Ambulos. The request is to minimally expand towards the back lot line and partially enclose the proposed deck. The lot is undersized. It is a sensitive area in the CBDCB district. It falls under the category of what is allowed with a special permit. It is a lawful preexisting nonconforming structure built in 1946. The alterations are not substantially more detrimental to the environment, community, or historical character of the neighborhood. Proposed work is in the rear and north side of the home and is 120' from Craigville Beach Road. The proposed project will unlikely be noticed by passersby because of the orientation and minimal size of the project and the distance from the street. The neighbor to the north, who is most affected has submitted support for the project. Conservation has approved the expansion with mitigation in the form of plantings. In regards to the CBDCB overlay district the project meets these requirements.*

*No Questions from the Board.*

*Open for public comment*

*A letter was received from of Tom and Carol Scott of 1072 Craigville Beach Road in support.*

*Jake Dewey makes a motion to close public hearing, David Hirsh seconds  
Vote*

*AYE: Jacob Dewey, David Hirsch, Herbert Bodensiek, Paul Plnard, Mark Hansen*

*NAY: None*

*Discussion: Bodensiek and Pinard think this project should be approved.*

**Member Mark Hansen makes Appeal No. 2021-061 Findings from Staff Report dated November 22, 2021.  
Motion is seconded by David Hirsch**

***Vote on Findings***

***AYE: Jacob Dewey, David Hirsch, Herbert Bodensiek, Paul Plnard, Mark Hansen***

***NAY: None***

**Mark Hansen moves to grant Special Permit No. 2021-061 subject to the following conditions:**

1. Special Permit No. 2021-061 is granted to Pericles C. Ambulos & Mary L. Kuh-Ambulos have applied for a Special Permit pursuant to Section 240-131.4 (D)( 2). The Applicants seek to expand a pre-existing nonconforming structure by expanding and partially enclosing a pre-existing nonconforming deck. The subject property is located at 1068 Craigville Beach Road, Centerville, MA, pursuant to Section 240-131.4 of the Craigville Beach District, District of Critical Planning Concern (DCPC).
2. The proposed alteration shall be constructed in substantial conformance with the site plan entitled "Site Plan of 1068 Craigville Beach Road, Centerville MA", prepared by Down Cape Engineering, Inc dated August 25, 2021 with the last revision date of October 22, 2021.
3. There shall be no further expansion of the structure, construction of accessory structures, or impervious surface coverage on the lot unless approved by the Zoning Board of Appeals.
4. The Applicant shall comply with decisions and conditions issued by the Board of Health and Conservation Commission.
5. 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 special permit must be exercised within two years, unless extended.

***Vote on Conditions***

***AYE: Jacob Dewey, David Hirsch, Herbert Bodensiek, Paul Plnard, Mark Hansen***

***NAY: None***

Chair Dewey reads into the record. Assigned Members- Hirsch, Dewey, Hansen, Pinard, Bodensiek

8:22 PM

Appeal 2021-062

Fedje

Raymond and Betty Fedje, Trustees of the Fedje Revocable Living Trust have applied for a Special Permit pursuant to Section 240-92 (B) Nonconforming Structure and 91 (H) Nonconforming Lot, with a Section 6 finding. Applicant seeks to demolish a three bedroom single family dwelling and a shed to be replaced by a two story, four bedroom, single family dwelling. The subject property is located at 15 George Street, Barnstable MA on Assessors Map 319, Parcel 065. It is located in Residence RB (RB) Zoning District.

Mark Hansen states for the record the applicants are known to him. It was from childhood in an area in which he lived. If the attorney doesn't have an issue he feels he can sit on this hearing without any preconceived ideas about the application. Attorney Tardif made no objection.

*Attorney Tardif is representing Raymond and Elizabeth Fedje owners of 15 George Street in Barnstable. In attendance as well are Elizabeth Apostola granddaughter of the Fedjes and Chris Childs of Patriot Builders, both are available for questions. The structure is an improved three bedroom single family dwelling built approximately in 1920. It has frontage on George Street and Harborview Road. It has a current floor area ratio of 31.4%. The house and lot are legally preexisting and nonconforming. The proposed plan is to remove the existing home and shed and replace it with a two story, four bedroom single family dwelling. The property is on town sewer. The proposed structure would be improving two side set backs on the north and south boundary to meet current zoning, improving distance to 13.5' off Harborview Road, building coverage will be reduced to 29%, the building height meets zoning bylaw and the structure is flood compliant. The only change would be the floor area ratio. The proposed home will have a floor area ratio of 46.6%. In order to make zoning improvements, the house needed a second floor. The Fedjes originally filed a different plan and withdrew. Abutters suggested some changes and a new plan is before the Board. The relief sought is a Section 6 Finding which is not a special permit, but stands alone. The proposed new structure is not substantially more detrimental to the neighborhood. Attorney Tardif sites case law.*

*Chair Dewey asked for clarification as to how the Floor Area Ratio was calculated in the revised plan dated 10/22/21 .The builder indicated there was living space in a garage area that was not previously calculated in the plan dated 8/3/21.*

**Open Public Comment**

*Janet and Terrence Brooks located at 15 Harborview Road, Barnstable live across the street from the Fedjes at Harborview Road. They are happy with the new plan and they support it. In addition, they were pleased to see the change of location for the driveway. Attorney Tardif addresses Fedje's property having frontage on both Harborview Road and George Street. The driveway will have access off George Street.*

*James Frank representing his father Dominic of 7 George Street. Is it confirmed that the boundary is 10' from his property line. He is a southern abutter. On the plan the screened in porch is 10' from the boundary.*

*Elizabeth Apostola – Fedje's granddaughter states her appreciation. A lot of time and consideration went into this project . Our family has been her for 60 years. We have watched the neighborhood change and renovations being made to homes adding two stories. The family thought it was time to make some changes to make room for the generation to come. We have taken care to hire an architect and builder for the project. We have delayed the project to take into consideration our neighbors input.*

**Jake Dewey makes a motion to close public comment, Member Pinard seconds.**

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

**NAY: None**

**Discussion:**

- *Paul Pinard asks for clarification why the legal ad includes a special permit along with the Section 6 Finding. Attorney Tardif explains he is only seeking a Section 6 Finding, but there was no application process available for the Section 6, therefore using the Special Permit paper work.*

- The proposed extension of the FAR is not going to be substantially more detrimental than the existing nonconforming structure to the neighborhood. It is important to recognize there is already nonconformance with the current FAR being calculated at 31.6 increasing to 46.6.
- Bodensiek discusses that the floor area ratio is very high. Hansen asked to describe the space that was not accounted for previously. Childs, explains it's in the back part of the house where there is a two story space that was not accounted for in the original calculation. There are many homes that have been built up in that area as well as being on sewer. Engineers have signed off on the calculations of the plans.
- Chair Dewey is comfortable with granting the Section 6 Finding. Hansen agrees.

**Herb Bodensiek makes Appeal Findings from Staff Report dated November 1, 2021**

**Motion is seconded by Mark Hansen**

**Vote on Findings**

**AYE: Jacob Dewey, David Hirsch, Herbert Bodensiek, Paul Plnard, Mark Hansen**

**NAY: None**

**Herb Bodensiek moves to grant Section 6 Finding Appeal No. 2021-062 subject to the following conditions:**

1. Special Permit No. 2021-062 is granted to Raymond and Betty Fedje, Trustees of the Fedje Revocable Living Trust to demolish an existing dwelling and construct a new, four-bedroom dwelling of 2,656 square feet with a front yard setback from Harborview Road of 13.5 feet, a front yard setback of 20.4 feet from George Street, and an easterly side yard setback of 11.6 feet and a westerly side yard setback of 10 feet. The subject property is located at 15 George Street, Barnstable, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan of 15 George Street, Barnstable, MA" prepared for Patriot Builders by Bass River Engineering, dated August 3, 2021 with a revision date of October 22, 2021.
3. The total lot coverage of all structures on the lot shall not exceed 29.9% and the floor-area ratio shall not exceed 46.6%.
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.

**Vote on Conditions**

**AYE: Jacob Dewey, David Hirsch, Herbert Bodensiek, Paul Plnard, Mark Hansen**

**NAY: None**

**GRANTED WITH CONDITIONS**

**Correspondence**

None

**Upcoming Hearings**

December 14, 2021, January 12, 2022, January 26, 2022

**Discussion**

- Chairman Dewey is seeking input from the Board on remote vs in-person meetings. Based on the increased numbers of Covid cases, in the area, the Board recommends staying remote. The Board will revisit the discussion of in-person meetings in February.

- In the minutes of June 23rd there seems to be an error with appeal 2021-031. Two appeal numbers are included under 2021-031
- CPCT Webinar classes are available for the board to participate in.

**Adjournment**

**9:15 PM**

***Chair Dewey motions to adjourn, seconded by Mark Hansen***

***Vote:***

***AYE: Jacob Dewey, Paul Pinard, David Hirsch, Herb Bodensiek, Mark Hansen***

***NAY: None***

Respectfully submitted,

Rachael Toolas  
Administrative Assistant-ZBA