

# Zoning Board of Appeals MINUTES

## Wednesday, April 13, 2022 - 7:00 PM

The Zoning Board of Appeals Public Hearing will be held by remote participation methods.

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/97982314231">https://zoom.us/j/97982314231</a>	888 475 4499 US Toll-free
Meeting ID: 979 8231 4231	Meeting ID: : 979 8231 4231

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

Chair Jacob Dewey calls the meeting to order and takes roll call:

Member	Present	Absent
Dewey, Jacob – Chair	X	
Hirsch, David		X
Bodensiek, Herbert	X	
Hansen, Mark	X	
Pinard, Paul	X	
Walantis, Todd		X
Johnson, Denise	X	
Webb, Aaron		X

### 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

None.

### Staff Discussion

Local Initiative Program Applications Policy Adoption - Senior Planner Jim Kupfer provides a status update for an item that will likely come before the Board in the future. He refers to a memo the Board received entitled "Proposed Process for Local Initiative Program Comprehensive Permits Under Chapter 40B." Right now, staff is tasked with laying out procedure for if a Friendly 40B were to come to Barnstable. A Friendly 40B is a 40B that the town sees a benefit in endorsing. Staff has laid out a 2-tier process: minor and major projects. The process also includes the Planning Board and the Housing Committee, with the Town Manager as the final sign-off on an application before it goes before the ZBA. Jim Kupfer anticipates this being implemented through their Comprehensive Plan, and welcomes questions or comments from the Board via email or phone.

## Old Business

7:00PM

Appeal No. 2022-004

Coughlin

Patrick K. Coughlin and Kimberly Piculell Coughlin have applied for a Special Permit pursuant to Section 240-131.4D (2)(a) Change, Expansion or Alteration of Uses or Structures and Section 240-131. 4 E. Dimensional Relief for the front yard setback where 15 feet is required and 4.7 feet and 4.8 feet is provided. The Applicants seek to alter/expand the existing dwelling pursuant to the plans prepared by Sullivan Engineering & Consulting, Inc. and Atelier R Design. The existing dwelling contains 2,704 square feet and the proposed dwelling contains 3,264 square feet. The subject property is located at 186 Lake Elizabeth Drive, Centerville, MA as shown on Assessor's Map 226 Parcel 184. It is located in the Craigville Beach District – Craigville Village (CBD-CV) Zoning District in the District of Critical Planning Concern (DCPC). Continued from March 9, 2022.

The members assigned at a prior meeting were Jake Dewey, David Hirsch, Herb Bodensiek, Aaron Webb, and Mark Hansen. The Chairman notes that there are only four members available to sit on this, as David Hirsch and Aaron Webb are absent, and of the present members not assigned, only Denise Johnson heard the item originally (Paul Pinard was not present). As a result, Attorney Schulz requests to continue. Jake Dewey makes a motion to continue this item to April 27, 2022. Herb Bodensiek seconds.

### Vote:

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

Appeal No. 2022-004 Coughlin is continued to April 27, 2022.

7:01 PM

Appeal No. 2022-007

Tella

Srikanth and Brighid C. Tella have petitioned for a Variance from Section 240-91(H)(b)(1) Developed Lot Protection. The Petitioners seek a variance to construct a 16' x 32' pool at the property which would increase the lot coverage from 18.38% to 23.87%, exceeding the allowable limit of 20%. The subject property is located at 26 Hidden Lane, Osterville, MA as shown on Assessor's Map 140 Parcel 203. It is located in the Residence C (RC) Zoning District. Continued from March 23, 2022.

The applicant requested to continue this to April 27, 2022. Jake Dewey makes a motion to continue this item to April 27, 2022. Paul Pinard seconds.

### Vote:

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

Appeal No. 2022-007 Tella is continued to April 27, 2022.

## New Business

7:02PM

Appeal No. 2022-012

Anderson

Donald Anderson has applied for a modification of Special Permit No. 2009-039 pursuant to Section 240-91.H (2) Demolition and rebuilding by Special Permit. The Applicant seeks to construct an additional bedroom above the existing garage. This alteration requires a modification of Special Permit 2009-039 Condition No. 2 which reads: "The dwelling to be built is limited to that shown on the above plans. The dwelling shall not exceed three bedrooms as defined by the Board of Health and shall be connected to public water and Town sewers." The subject property is located at 100 Bay View Road, Barnstable, MA, as shown on Assessor's Map 319 as Parcel 030. It is located in the Residence B (RB) Zoning District.

Sitting on this will be Jake Dewey, Herb Bodensiek, Mark Hansen, Paul Pinard, and Denise Johnson.

Attorney Karla Chaffee is representing the applicants. She provides some background for the Board: in 2009 a Special Permit was issued. Condition No. 2 of that Special Permit was carried over from an earlier 2008 approval by the Conservation Commission that had requested the previous owner file a deed restriction to limit the number of bedrooms. The reasoning for that restriction is not known, because the house is on town sewer. Attorney Chaffee had submitted to the Board an email from the Health Director stating that there was no reason to restrict the number of bedrooms at this property. Attorney Chaffee has already had the deed restriction released, so the only restriction that's left is from the 2009 special permit. The applicant is asking the Board to procedurally reissue the special permit exactly the same minus the condition (and a slight floor area increase). If it were not for that condition, they would be able to make their changes as of right. They already received from Conservation a determination of negative applicability, and Old Kings Highway Historic District has approved the plans.

**Chair Dewey brings it back to the Board for questions.** Mark Hansen asks if DPW sewer capacity has been addressed. Attorney Chaffee's Wetland Consultant, Arlene Wilson, says while they don't have anything in writing, her understanding is that there is no concern.

**Chair Dewey opens public comment.** None. Jake Dewey makes a motion to close public comment. Denise Johnson seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

**The Board deliberates.** Attorney Chaffee urges the Board to consider leaving out conditions 3 and 4 of the Staff Report, because it holds this property to a higher standard than the zoning code. Jake Dewey clarifies that the request is only to modify condition 2 of the original 2009 special permit. Attorney Chaffee also requests that the FAR be updated from .22 to .26.

Chair Dewey makes a motion to modify Special Permit No. 2009-039 Condition No. 2 to allow the dwelling to be built with reference to the new plan and the dwelling will not exceed 4 bedrooms as defined by the Board of Health and will be connected to public water and town sewer. Additionally they will modify the body of the special permit that the FAR cannot exceed .26 where it currently states .22. Mark Hansen seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

**Appeal No. 2022-012 has modified Special Permit No. 2009-039.**

**7:03 PM**

**Appeal No. 2022-013**

**Scarpellini/Copeland Subaru**

Bryan Scarpellini/Copeland Subaru has petitioned for a Use Variance from Section 240-35 F. (2) (a) Groundwater Protection Overlay District and Section 240-11 A. Residence B (RB) Zoning District. The Petitioner seeks to combine properties at 172 and 180 Walton Avenue as well as 95 and 123 Falmouth Road, Hyannis, to create one site for Copeland Subaru of Hyannis. The Use Variance is requested to allow for vehicle display and sales at 172 and 180 Walton Avenue. The subject properties are located at 172 and 180 Walton Avenue, Hyannis, MA, as shown on Assessors Map 311, as Parcels 083, 084, 078, and 073. The properties are split zoned Highway Business (HB) and Residence B (RB) and are both located within the Ground Water Protection (GP) Overlay District.

Sitting on this will be Jake Dewey, Herb Bodensiek, Mark Hansen, Paul Pinard, and Denise Johnson.

Attorney John Kenney is representing the applicants. With him is Mr. Scarpellini, one of the principals of Copeland Subaru; Robby Trapp, a representative of the owner of the property; Dan Ojala, their engineer; and Patrick Nickerson, a new attorney at his office. Attorney Kenney explains that Parcels 95 and 123 have been used for car display, sales, and repair. His client is leasing the property and began using the lots at 172 and 180 Walton Ave for the storage and display of cars, and received a Cease and Desist from the town stating that the use was not allowed within the district. Only a small corner of the parcel at 180 Walton Ave is in the RB district, and they can go 30 feet beyond that line to cover the use at 180. However, the GP prohibits uses that are prohibited within the district. Lot 172 is bisected so leaves a small corner where they need relief. After their Cease and Desist, they went to Site Plan Review. Concerns were raised about interior lot lines, so it was recommended by Site Plan Review that his client prepare a site plan showing all four lots as one and then request zoning relief to add the lots at 172 and 180 to the uses at lots 95 and 123. Attorney Kenney explains that as a result of the way the HB was zoned and the way the nearby roads intersect, the position of the parcel renders a portion useless to the business purpose for which the majority of the land is zoned.

**Chair Dewey brings it back to the Board for questions.** Paul Pinard asks for clarification of what is on abutting properties 162 and 365. Attorney Kenney says they are single-family homes, and there is a 20-foot vegetated buffer between his clients' property—that will remain.

Jake Dewey asks what the businesses on 123 and 95 are. Mr. Scarpellini explains that the large building on 123 has two lifts and some office space, and the smaller building is an old shed that will be torn down. The third building to the back of the lot has lifts. Both 95 and 123 are also automotive repair. Jake Dewey asks about parking. Attorney Kenney explains that there are 212 display parking spaces, 36 employee spaces, 4 handicapped spaces, and 29 customer spaces. Mark Hanson asks Attorney Kenney to confirm that there would be nothing detrimental to the GP overlay. Attorney Kenney and Dan Ojala confirm that there is no

issue. Paul Pinard asks for clarification on what relief they are requesting. Attorney Kenney responds that they are requesting relief from the GP Overlay and from the RB Zoning District to allow the use to include vehicle display and sales.

**Chair Dewey opens for public comment.** None. Jake Dewey makes a motion to close public comment. Paul Pinard seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

**The Board deliberates.** Paul Pinard expresses concern about the GP Overlay. Attorney Kenney and Dan Ojala explain that there were no concerns at Site Plan Review, and this has gone through Site Plan Review twice.

**Paul Pinard makes findings for Appeal No. 2022-013:**

Bryan Scarpellini/Copeland Subaru has petitioned for a Use Variance from Section 240-35 F. (2) (a) Groundwater Protection Overlay District and Section 240-11 A. Residence B (RB) Zoning District. The Petitioner seeks to combine properties at 172 and 180 Walton Avenue as well as 95 and 123 Falmouth Road, Hyannis, to create one site for Copeland Subaru of Hyannis. The Use Variance is requested to allow for vehicle display and sales at 172 and 180 Walton Avenue. The subject properties are located at 172 and 180 Walton Avenue, Hyannis, MA, as shown on Assessors Map 311, as Parcels 083, 084, 078, and 073. The properties are split zoned Highway Business (HB) and Residence B (RB) and are both located within the Ground Water Protection (GP) Overlay District:

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.

Herb Bodensiek seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

In terms of conditions, Attorney Kenney has an issue with the proposed Condition No. 4 because this is not intended to represent full buildout of the lot. The Chairman has no problem with that, but is concerned that there is no condition about additional uses. The applicant is amenable. Paul Pinard reads that this appeal will be subject to conditions 1-5 as written in the Staff Report originally dated March 29, 2022, except to replace Condition No. 4 with a condition to restrict the use to only vehicle display and sales and car repair, and if there are any changes it must first come before the Board.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

**Appeal No. 2022-013 Scarpellini/Copeland Subaru is granted with conditions.**

**7:04 PM**

**Appeal No. 2022-014**

**Brown et al**

Robin A. Brown, Trustee of Robin A. Brown Living Trust and Marcia S. Brown, Trustee of Marcia S. Brown Living Trust, have applied for a Special Permit in accordance with Section 240-94 Nonconforming Use; alteration and expansion of a nonconforming use under 240-94 A. and 240-94 B. The Applicants are seeking to alter and expand a nonconforming use by transferring the cooking facilities (kitchen) from the existing boat house to the proposed pool house. The subject property is located at 250 Smoke Valley Road, Osterville, MA as shown on Assessors Map 097 as Parcel 002. It is located in the Residence F (RF) Zoning District.

Sitting on this will be Jake Dewey, Herb Bodensiek, Mark Hansen, Paul Pinard, and Denise Johnson.

Attorney Michael Schulz is representing the applicant. With him is Walter Yarosh, the architect; John O'Day of Sullivan Engineering; and Robin and Marcia Brown. He refers to a letter he submitted to the Board dated April 8, 2022 and provides

background: the subject property is a single-family dwelling on just under 6 acres of land. The property is improved with a boat house, a main house, and the foundation for a pool house. The existence of two dwellings on the property was determined a preexisting nonconforming use by the former Building Commissioner Tom Perry in 2012. The structures are consistent with the neighborhood in terms of size and setback. He gives permitting history: the Browns purchased the property in 2011 and it possessed two dwelling units, the main house and boat house. A comprehensive septic system was installed in 2014 to service the main house, the boat house, and the pool house. The boat house was demolished and rebuilt in 2017. The pool house foundation was installed in 2017. Due to the contractor filing for bankruptcy during construction, the pool house was put on hold. The applicants already received approval from the Conservation Commission on September 8, 2021 for the revised footprint, and are proposing to construct the pool house now. Because they are requesting to move the kitchen element from the boat house to the pool house, the Building Commissioner recommended going before the Board as an alteration or expansion of a preexisting nonconforming use.

**Chair Dewey brings it back to the Board for questions.** The Chairman asks Attorney Schulz to confirm that when the main house and boat house were built, they were conforming. Attorney Schulz confirms and adds that he previously submitted an email to the Board from Arlene Wilson that reflects the conversation with the former Building Commissioner about the legal preexisting nature of the boat house and the main house, that if the applicants wanted to build a pool house with a kitchen, they could remove the kitchen from the boat house.

**Chair Dewey opens for public comment.** The Chairman reads that the Board received four letters in support: Wade and Mary Stanier, Kathleen Buckley, John Callas, and Paul and Susan Condrin. Jake Dewey makes a motion to close public comment. Denise Johnson seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

**Mark Hansen makes findings for Appeal No. 2022-014:**

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-94 B. allows for 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. The Board found that there is no change to the current uses on site, just the location of one use.
3. A Site Plan has been reviewed and found approvable with conditions. Site Plan Review is not required.
4. Any proposed expansion of the use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties.
5. The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming.
6. The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

Mark Hansen reads that the appeal is subject to conditions 1-4 from Staff Report dated March 29, 2022. Attorney Schulz finds the conditions acceptable.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

**Appeal No. 2022-014 Brown et al is granted with conditions.**

**7:05 PM**

**Appeal No. 2022-015**

**Pinto**

Julie P. Pinto and Gregory J. Pinto, Trustees of the JDC Ocean Avenue Realty Trust, have applied for a modification of Special Permit No. 2021-024 in accordance with Section 240-131.4D (2) (a) Change, Expansion, Alteration of Structures by Special Permit and Section 240-131.4E Special Permit for Dimensional Relief under the Craigville Beach District Use Regulations. The Applicants

are seeking to modify Condition No. 1 to allow for the demolition and reconstruction of the garage pursuant to the plans previously submitted and approved by the Board. The property is located at 63 Ocean Avenue, Centerville (Craigville), MA as shown on Assessors Map 226 as parcel 149. It is located in the Craigville Beach District Craigville Village (CBDCV) District of Critical Planning Concern (DCPC).

Sitting on this will be Jake Dewey, Herb Bodensiek, Mark Hansen, Paul Pinard, and Denise Johnson.

Attorney Michael Schulz is representing the applicant. He explains that they were before the Board in 2021, where they received a special permit for the alteration/expansion of a garage. At the time, they were under the impression that they could alter the existing structure. They have since been faced with evidence that the structure is not in a condition to be preserved to be altered, so are seeking to demolish and reconstruct the identical garage pursuant to the same set of plans. To do so, they are seeking a modification of Condition No. 1 from Special Permit 2021-024 to reflect the complete rebuilding.

**Chair Dewey brings it back to the Board for questions.** Mark Hansen asks if Historic has been involved or approved. Attorney Schulz answers that they did go to Historic, and the garage was deemed outside of Historic.

**Chair Dewey opens for public comment.** The Chairman reads that a letter in support was received from Jim Lane. Jake Dewey makes a motion to close public comment. Denise Johnson seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

Chair Dewey makes a motion to modify Special Permit 2021-024 to modify Condition No. 1 to allow for the demolition and reconstruction of the garage pursuant to the plans previously submitted and approved by this Board. Mark Hansen seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

Appeal No. 2022-015 has modified Appeal No. 2021-014.

#### **Correspondence**

None.

#### **Matters Not Reasonably Anticipated by the Chair**

#### **Upcoming Hearings**

April 27, 2022, May 11, 2022, May 25, 2022

#### **Adjournment**

Chair Dewey makes a motion to adjourn. Paul Pinard seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson**

**Nay: None**

Respectfully submitted,  
Genna Ziino, Administrative Assistant

Further detail may be obtained by viewing the video via Channel 18 on demand at <http://www.town.barnstable.ma.us>