

**Zoning Board of Appeals
MINUTES
Wednesday, July 12, 2023 at 7:00 PM**

To all persons interested in or affected by the actions of the Zoning Board of Appeals, you are hereby notified, pursuant to Section 11 of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, and all amendments thereto, that a public hearing on the following appeals will be held on Wednesday, July 12, 2023, at the time indicated:

Call to Order

Chair Jacob Dewey calls the meeting to order at 7:00 PM with an introduction of Board Members:

Member	Present	Absent
Dewey, Jacob	X	
Bodensiek, Herbert		X
Pinard, Paul	X	
Hansen, Mark	X	
Johnson, Denise	X	
Webb, Aaron	X	
Larry Hurwitz	X	

Also in attendance is Anna Brigham, Principal Planner and Genna Ziino, Administrative Assistant.

Notice of Recording

The Chairman reads: 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.

Minutes

June 28, 2023– Denise Johnson makes a motion to approve. Mark Hansen seconds.

Vote:

Aye: Mark Hansen, Paul Pinard, Aaron Webb, Denise Johnson, Jake Dewey, Larry Hurwitz

Nay: None

Old Business

7:00 PM

Appeal No. 2023-011

773 South Main St., LLC

773 South Main Street, LLC has applied to modify Condition No. 4 of Appeal No. 2019-005 to allow an additional accessory structure on the property, and has applied for a Special Permit in accordance with 240-131.4(E) for relief from minimum yard setbacks, if the Board finds it necessary. The Applicant proposes to install an approximately 12 foot by 20.5 foot in ground pool approximately 3 feet from the westerly property line. The Applicant seeks to modify Condition No. 4 of Appeal No. 2019-005 to allow the proposed pool as an accessory structure. The subject property is located at 773 South Main Street, Centerville, MA as shown on Assessor’s Map 185 as Parcel 013. It is located in the Craigville Beach District (CBD) and the Centerville River North Bank (CRNB) Neighborhood Overlay Zoning Districts.

Sitting on this is Jake Dewey, Paul Pinard, Aaron Webb, Mark Hansen, and Denise Johnson.

Attorney Eliza Cox is representing the applicant. She is joined by Matt Eddy from Baxter Nye who is the project engineer, and Tina Haseotes, the beneficial owner of 773 South Main St. LLC. The subject property is developed with a single-family dwelling, a detached family apartment/garage, a pier, and hardscape.

Attorney Cox walks through two prior zoning decisions: 1989-067 was a special permit that allowed for the accessory structure to be expanded to allow for additional garage and storage space. For that decision, the Board stated their reasoning to be that the structure was constructed before zoning was adopted. 2019-005 modified the original decision and authorized the accessory structure to be used as a family apartment. Condition 4 of that decision prohibited additional accessory structures without prior ZBA approval, which is a typical condition.

Attorney Cox walks through the site plan. What's proposed is an approximately 12 ft. x 20.5 ft. saltwater swimming pool, with 16 feet of new hardscape to connect the pool to an existing walkway. The applicant is proposing to remove 262 sq. ft. of existing impervious surface, so there will be no increase in impervious square footage. This has already gone through the Conservation Commission and her client has elected to remove some additional lawn and create a naturalized vegetative area of over 206 square feet along the coastal bank.

Attorney Cox shows photos of the proposed pool location. The existing wall is 3.5 ft. high, and there's a grade change and privet hedge and arborvitae hedge providing privacy to the area. The pool is proposed at 3 feet from the westerly property line, which is double the setback of the existing accessory structure.

She believes no setback relief is needed per Section 240-131.5A, which is a grandfathering provision for pre-existing developed properties. This is a DCPC, not 40A, so any ordinances under 40A are irrelevant. She walks the Board through criteria and reasoning:

1. This section is for legally developed lots that were in existence as of November 6, 2009. The subject lot was created in 1931 and has been authorized prior by the ZBA.
2. The lot must have conformed to existing zoning when legally created. Zoning was adopted in 1929, so prior to the 1931 plan that created the lot. The lot fully complied at the time.
3. If yes to 1 and 2, then you can use the existing lot area, lot frontage, front, side, and rear yard setbacks in lieu of dimensional requirements in the zoning table. Here, the existing setback is 1.5 feet so the proposed pool setback is approximately double the amount at 3 feet.

She explains that she ran this reasoning by Commissioner Brian Florence and he agreed with the analysis that no relief is needed. So they are only here for relief from Condition No. 4 of 2019-005. In support of that, she summarizes that the proposed pool will not change building coverage, impervious coverage, or lot coverage. It will be well-screened from abutting lots and the roadway, due to topographical changes, mature vegetation, and plantings. It is consistent with the purpose and intent of the district. There will be no impact on historic or community character of the property or surrounding area. It does not impact scenic views or vistas to the water. There will be no adverse impact on natural resources or the coastal wetland resource system.

She addresses that she received a letter from Attorney Gill, who is representing a neighbor, at 6:15 p.m. so did not have time to thoroughly read it, but notes that much of the case law cited is under 40A and not applicable to the DCPC. There are also inaccurate statements on page 3: that the building coverage is increasing (it's not), and that a variance is required (it's not). Attorney Gill previously said before the Conservation Commission that the construction of this pool would adversely affect the hedge that runs between the properties. Attorney Cox raised this issue with Jennifer Crawford of Crawford Land Management, who is a landscape architect with a degree in horticulture. Ms. Crawford analyzed the root system of the hedge and concluded that it is nearly impossible for the construction to have any negative impact on the hedge. Attorney Cox submits a letter from Ms. Crawford.

Tina Haseotis, the applicant, addresses the Board. She states that she reached out to neighbors before this began in hopes of finding a compromise, but she never heard back. She says she is a quiet, private person and has never had a complaint from a neighbor.

Chair Dewey brings it back to the Board for questions. The Board asks on whose property the hedge and rock wall lies. The hedge is on the neighbor's property, and the rock wall is split between both. So in order to maintain privacy, the neighbor would have to maintain the hedge. Attorney Cox says her client is willing to maintain or put a fence there if that would help, and has attempted to compromise but the abutter is not interested in a conversation. Paul Pinard states that a special permit goes with the land, not the owner—so the decision must be made not about the type of owner but about the appropriateness of the property.

Chair Dewey says regarding the prior special permit, what year was the accessory structure built? Attorney Cox says it's shown in the 1931 Land Court plan. It was then expanded in 1989 per allowance by the ZBA. Chair Dewey is concerned that the structure can't be seen in the historical aerial GIS maps. The Board discusses the pool equipment and the noise/visual aspect associated with it, and options for placement. Attorney Cox says there is an elevation difference and a soundproof enclosure that will mitigate sound.

Chair Dewey opens for public comment. He says the Board received a public comment document from Attorney Gill tonight at the meeting, so they have not read it. Attorney Michael Gill addresses the Board representing Patricia Carlson and Margaret and Jack McManmon, the owners of the abutting property. His clients have used this property extensively and both dwellings are occupied year round. He says the hedge is below grade and noise travels. His clients do not want a pool 4.5 feet from where they sleep. He believes the 2019 condition that the property is recognized as fully built out should be honored. He does not think a pool represents undue hardship. He feels his citations of 40A are all pertinent here, and does not agree with the analysis confirmed by Commissioner Florence because this is a new structure. He asks the Board to find that this is a detriment to the community.

Attorney Cox responds that the abutter's property is for sale. With regards to the condition of the 2019 special permit that was referenced, this is not a new separate special permit; it's a modification of the prior permit. Additionally, the condition saying the lot is fully built out is a standard condition. It is not unusual for an applicant to decide to change their property soon after a prior change, and the Board sees these frequently. She would be happy to provide a letter from Commissioner Florence that a separate setback is not required. Regarding noise, this is a small pool (about the size of a parking space). Regarding equipment, she suggests her team talk to a pool consultant to see where the equipment could be located to best mitigate any nuisance. The Board discusses whether the applicant's accessory structure being empty is not in compliance. Attorney Cox believes her client is in compliance. Chair Dewey makes a motion to close public comment. Aaron Webb seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Aaron Webb, Mark Hansen, Denise Johnson

Nay: None

The Board deliberates. Chair Dewey says the options for allowing this are either modifying the special permit or agreeing with Attorney Cox's and Brian Florence's analysis that no relief is necessary. Larry Hurwitz discloses that he lives in the area but does not feel the need to recuse himself. He expresses concern over the noise and who will maintain the stone wall between the properties. Matt Eddy thinks each neighbor maintains the side of the wall that faces their property, but his client is open to managing maintenance. Paul Pinard thinks this is significantly detrimental to the neighborhood because of the potential for noise and lack of privacy. Aaron Webb disagrees—the setup is preexisting such that they can already reach out and touch each other's houses. The Board discusses the noise of pools. Mark Hansen thinks it is standard language to add a condition that a property is fully built out and must come back before the ZBA for additional structures. Chair Dewey says the 2019 special permit was debated and it was a fine line. The Chairman takes the temperature of the Board: Paul Pinard and Denise Johnson are leaning against, Aaron Webb and Mark Hansen are leaning for. He asks Attorney Cox if she would like the Board to vote. The Board takes a brief recess. Attorney Cox asks whether additional information from a pool consultant would affect the Board's feeling. Paul Pinard and Denise Johnson are concerned about the potential use long term and the privacy and noise issues.

Attorney Cox requests to withdraw the application without prejudice. Chair Dewey makes a motion to withdraw Appeal No. 2023-011 without prejudice. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Aaron Webb, Mark Hansen, Denise Johnson

Nay: None

Appeal No. 2023-011 is withdrawn without prejudice.

New Business

7:01 PM

Appeal No. 2023-013

Terry Simpson, Trustee of Blumist Trust

Terry L. Simpson has applied to modify Special Permit No. 2021-065 to allow for certain site alterations. The Applicant proposes to increase the size of the pool cabana by 250 square feet (from 1,542 square feet to 1,792 square feet), add 128 square feet to the rear deck, and modify a portion of the paved driveway to gravel. The subject property is located at 531 South Main Street, Centerville, MA as shown on Assessor's Map 206 as Parcel 069. It is located in the Craigville Beach District (CBD) and the Centerville River North Bank (CRNB) Overlay Zoning District.

Sitting on this is Jake Dewey, Paul Pinard, Aaron Webb, Mark Hansen, and Larry Hurwitz.

Attorney Ted Schilling is representing the applicant. He is joined by Ron Welch from Kendall & Welch and John O'Dea from Sullivan Engineering & Consulting. They are before the Board because they've made modifications to a plan that was previously approved. The original proposed structure didn't require relief, but the update includes a change to the footprint that is part of a larger project.

Chair Dewey opens for public comment. There is none. The Chairman moves to close public comment. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Aaron Webb, Mark Hansen, Larry Hurwitz

Nay: None

The Board deliberates. Aaron Webb points out that the southernmost 2 feet of the deck fall within the setback. The Board reviews the site plan and discusses that the applicant did not ask for setback relief in their application. Mr. Welch says it would not be

further relief because the deck is falling within the setback that the house is already in. But they can also shift the deck to be out of the setback. Chair Dewey asks if relief was granted for the setback in their prior decision. Mr. Welch answers yes, and adds that it will be encroaching less. They confirm that they do not need relief for lot coverage. They were granted relief for the proposed porch and not for the newly proposed deck. Mark Hansen suggests including shifting the deck out of the setback in the conditions.

Mark Hansen makes findings:

Terry L. Simpson has applied to modify Special Permit No. 2021-065 to allow for certain site alterations. The Applicant proposes to increase the size of the pool cabana by 250 square feet (from 1,542 square feet to 1,792 square feet), add 128 square feet to the rear deck, and modify a portion of the paved driveway to gravel. The subject property is located at 531 South Main Street, Centerville, MA as shown on Assessor's Map 206 as Parcel 069. It is located in the Craigville Beach District (CBD) and the Centerville River North Bank (CRNB) Overlay Zoning District.

1. Whether or not the application falls within the category specifically excepted by this chapter. The Board finds it does.
2. An evaluation of all the evidence presented at the public hearing by the petitioner and interested parties as it relates to the fulfillment of the spirit and intent of this chapter without substantial detriment to the public good or the neighborhood affected.
3. The proposed alteration/expansions are not substantially more detrimental to the environment, community and/or historic character of the neighborhood than the existing building or structure.
4. This proposal is consistent with the purpose and intent of the Craigville Beach District, which is to guide development pursuant to the Guidelines of Barnstable County Ordinance 09-10 to ensure that development and redevelopment meets the following standards:
5. Contributes to and respects the character and historic development patterns of the area and minimizes inconsistent redevelopment impacts to the historic and community character resources in this area.
6. Protects and preserves scenic views and vistas and ways to the water.
7. Protects and improves natural resources, including but not limited to the barrier beach and groundwater and coastal water quality and minimizes development and redevelopment impacts to the natural resources and ecosystems in this district.
8. Protects human life and property from the hazards of periodic flooding.
9. Preserves the natural flood control characteristics and the flood control function of the floodplain.
10. This proposal is consistent with the general performance standards and design guidelines Centerville River North Bank neighborhood as follows:
11. The subject structure is not within a FEMA designated flood zone.

Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Paul Pinard, Aaron Webb, Mark Hansen, Larry Hurwitz

Nay: None

Mark Hansen reads the conditions from the Staff Report dated June 27, 2023 and adds an additional condition. By request of the applicant's representatives, the Board allows language from the prior special permit conditions rather than "full buildout" in Condition No. 4.

1. Special Permit No. 2023-013 is granted to Terry L. Simpson, Trustee of the Blumist Trust, to modify Special Permit No. 2021-065 to allow for certain site alterations. The Applicant seeks to increase the size of the pool cabana by 250 square feet (from 1,542 square feet to 1,792 square feet), add 128 square feet to the rear deck, and modify a portion of the paved driveway to gravel at 531 South Main Street, Centerville, MA.
2. Special Permit No. 2021-065 has been modified to grant the alterations to the site as proposed. All other conditions shall remain in full force and effect.
3. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan Proposed Improvements of 531 South Main Street Barnstable (Centerville) Mass" by Sullivan Engineering & Consulting, Inc. dated October 15, 2021 with a last revision date of May 31, 2023.
4. 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.
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. Proposed deck must comply with all required setbacks.
7. 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 the issuance of a building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Denise Johnson leaves the meeting at this point.

Vote:

Aye: Jake Dewey, Paul Pinard, Aaron Webb, Mark Hansen, Larry Hurwitz

Nay: None

Special Permit No. 2023-013 is granted with conditions.

Correspondence

None.

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

July 26, 2023, August 9, 2023, August 23, 2023

Adjournment

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

Vote:

Aye: Jake Dewey, Paul Pinard, Aaron Webb, Mark Hansen, Larry Hurwitz

Nay:

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>

Documents Used

- June 28, 2023 minutes
- 2023-011 773 South Main St., LLC application packet
- Letter from Jennifer Crawford
- Public comment letter from Attorney Gill
- 2023-013 Simpson application packet
- Staff Report for 2023-013 Simpson dated June 27, 2023