

Zoning Board of Appeals MINUTES Wednesday, April 10, 2024 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, April 10, 2024, at the time indicated:

Call to Order

Acting Chair Herb Bodensiek calls the meeting to order with an introduction of Board Members.

Member	Present	Absent
Dewey, Jacob – Chair		X
Bodensiek, Herbert – Vice Chair	X	
Pinard, Paul – Clerk		X
Alves, Manny	X	
Hansen, Mark	X (late)	
Hurwitz, Larry	X	
Johnson, Denise		X
Webb, Aaron	X	

Also present is Jim Kupfer, Assistant Director, Planning & Development; Anna Brigham, Principal Planner; and Genna Ziino, Administrative Assistant.

Notice of Recording

This meeting of the Zoning Board of Appeals is being recorded and broadcast on the Town of Barnstable’s Government Access Channel. In accordance with MGL Chapter 30A §20, I must inquire whether anyone is recording this meeting and if so, to please make their presence known.

Minutes

February 28, 2024 – Genna Ziino adds that Paul Pinard noted a typo on age 3. Aaron Webb moves to approve the minutes as amended. Larry Hurwitz seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Old Business

7:00 PM

Appeal No. 2023-034

Bayridge Realty, LLC

Bayridge Realty, LLC has applied for a Comprehensive Permit pursuant to MGL Ch. 40B §20, 21, 22, and 23. The Applicant proposes to construct 14 housing units (24 bedrooms) within 4 detached buildings and associated parking and site improvements on 3.95 acres for rental purposes in accordance with MGL Ch. 40B, 760 CMR. The unit mix shall consist of 6 one-bedroom units, 6 two-bedroom units, and 2 three-bedroom units. 4 of the units will be restricted as affordable for low- or moderate-income persons. The subject property is located at 900 Old Stage Road, Centerville, MA as shown on Assessor’s Map 192 as Parcel 001. It is located in the Residence C (RC) Zoning District. Continued from November 8, 2023 and January 10, 2024, February 7, 2024, and March 13, 2024. Members assigned: Herbert Bodensiek, Paul Pinard, Aaron Webb, Mark Hansen, and Manny Alves.

Larry Hurwitz Mullins in for Paul Pinard, who is absent.

Attorney Peter Freeman is representing the applicant, and is joined by engineer Matt Eddy and traffic engineer Randy Hart. Attorney Freeman says they have not made changes since the November presentation. He says the Board had previously questioned the waiver requested for the saltwater estuary through the Board of Health. In response, they submitted an email from Tom McKean of the Health Department and Tom Lee of the Board of Health (dated March 8) that agreed with the analysis that the septic system they’re proposing meets the standards that the bylaw requires.

Mark Hansen asks if the septic system has to be installed and proved to perform prior to any building. Matt Eddy says it's like any other project, and is approved based on plans but is guaranteed by the vendor to meet requirements. The group discusses the septic system and concerns about prior dumping, and asks what happens if they find contaminated soil during the 21E. Attorney Freeman says there's a set of protocols from the state when hazmat is found, and it's monitored by DEP. They discuss parking and lighting, both of which meet requirements. Jim Kupfer, Assistant Director, Planning & Development explains that staff had a site visit, met with Mass Housing, and reviewed with all applicable departments, and the initial letter highlighted all the deficiencies in terms of local zoning. They asked the applicant to meet as many local standards as they could. They've made all the requested adjustments. Manny Alves asks for the record who has been at the table for conversations about this and what's the position of the town. Mr. Kupfer answers that staff's initial notice is a letter from the state that they've received an application for site eligibility. When that occurred, Planning & Development coordinated with the water districts, fire districts, and DPW for the site walk. They met on site to discuss logistics and the rough conceptual design. From there, there was a request from Planning to review the request and offer comments. That letter was sent back to Mr. Busby and ultimately it was deemed eligible. Then the applicant applied for this comprehensive permit and prior to coming to ZBA, they came before informal site plan review to review deficiencies or strict requests from any departments. This results in a site plan review letter. They then presented to this Board. From that time, based on comments from Board and public, they reached out to board of health for guidance. The board of health provided feedback and then Planning put language in the staff report for potential findings and conditions for consideration. Jim Kupfer says they've sought to address the balance of the issues. The group discusses the 40B process and where the town stands. Any community in the state that doesn't have 10% affordable housing must accept 40Bs. Barnstable is at 6.78% and is about 770 units away from reaching 10%.

Herb Bodensiek opens public comment. He believes the Board read all public comment at the previous meeting and there is none new. Herb Bodensiek moves to close public comment. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

The Board deliberates. They discuss concerns about density and the potential of hazardous materials and the 21E. Genna Ziino informs the Chairman that there were new public comments received that need to be read into the record. Aaron Webb moves to reopen public comment. Herb Bodensiek says the Board received letters 2 and 3 from Remmers in opposition, public comment from Way and Remmers in opposition, and public comment from Vigneau in opposition. Herb Bodensiek moves to close public comment. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

The Board discusses the need for housing, especially housing that is not concentrated in Hyannis. They discuss concerns about density again and the concerns of abutters. Mark Hansen believes the applicants have entertained the concerns of the town through this process. Members of the public who arrived late request to make public comment. Manny Alves moves to reopen public comment. Mark Hansen seconds.

Mary Lynch of 28 Patriot Way speaks in opposition. She lives across the street and asks the Board to consider water quality concerns and concerns about rentals.

Jeanne Remmers of 97 Outpost Lane speaks in opposition and requests the Board reread her letters. She has concerns over traffic, hazardous materials that were buried, and density.

Attorney Freeman responds that they are proposing 2-story buildings, not a large project. Regarding concerns about renting, Mass Housing gave approval for a rental project and that is the law. The town's housing plan also calls for and blesses rental housing. Matt Eddy says the density of this project is 3.5 units per acre, which is not very dense.

Herb Bodensiek moves to close public comment. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

Herb Bodensiek asks about screening and fencing. Matt Eddy says the owner would be willing to install a 6-ft. screening fence. The group discusses that modern planning recommends against sprawl, and suggests clustering development to leave more open space—that’s what they based their plan on. They discuss whether 2-acre zoning is sustainable.

Herb Bodensiek moves to close the public hearing. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

The Board deliberates. They discuss density again. Manny Alves says there is a state law that mandates this; the town is not in compliance with the required level of affordable housing. The Board can choose to deny this, and it will be reversed by the state. He feels Mr. Kupfer’s comments showed that the applicant has made efforts to address concerns.

The Board makes findings:

Aaron Webb, Manny Alves, and Herb Bodensiek read through the findings from Staff Report dated October 31, 2023 and revised April 10, 2024. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

Aaron Webb moves to accept the conditions from Staff Report dated October 31, 2023 and revised April 10, 2024. Jim Kupfer recommends adding a condition no. 12-A: “Add a 6-foot solid wood privacy fence from the right of way of Old Stage Road to the Eversource easement along the eastern property line.” Herb Bodensiek moves to accept the conditions as amended. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

Comprehensive Permit No. 2023-034 Bayridge Realty, LLC is granted with conditions.

7:01 PM

Appeal No. 2024-002

TFG Hyannis Hospitality, LLC

TFG Hyannis Hospitality, LLC has filed an Appeal of an Administrative Official’s Decision in accordance with 240-125.B.(1). The Appellant seeks to overturn the Building Commissioner’s determination dated December 12, 2023 that the project is outside of the Ground Mounted Solar Photovoltaic Overlay District and that the proposed solar arrays are ground mounted solar arrays not permitted at the property. The subject property is located at 35 Scudder Avenue, Hyannis, MA as shown on Assessor’s Map 289 as Parcel 110. The property is located in the Residence B (RB) Zoning District. Continued from March 13, 2024.

This item is taken out of order and is heard before Appeal No. 2023-034. Mark Hansen is running late so the Chairman assigns all members present: himself, Aaron Webb, Larry Hurwitz, and Manny Alves. Larry Hurwitz discloses that he is a former solar developer.

Attorney Liza Cox is representing the applicant and explains that they’ve been working with the Building Commissioner and he decided to rescind the December 12 decision that they’re appealing, so they are now requesting to withdraw this. Herb Bodensiek moves to withdraw without prejudice. Manny Alves seconds. Mark Hansen arrives at this point.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb

Nay: None

Appeal No. 2024-002 TFG Hyannis Hospitality, LLC is withdrawn without prejudice.

New Business

7:02 PM

Appeal No. 2024-009

Bunn & Creedon

Brian M. Bunn and Jennifer A. Creedon have petitioned for a Variance pursuant to Section 240-14 E. Bulk Regulations in the RC-1 and RF Residential Districts, and Section 240-126 Variance Provisions. The Petitioners seek a variance to the front and side yard setback requirement to build an accessory structure (pool house) in the northwest corner of their lot adjacent to their existing inground pool and existing walkway and hardscape patio areas and retaining walls. The Petitioners propose to reduce the front yard setback to 12.8 feet where 30 feet is required, and the side yard setback to 7.7 feet where 15 feet is required. The subject property is located at 157 Popponessett Road, Cotuit, MA as shown on Assessor's Map 019 as Parcel 079. It is located in the Residence F (RF) Zoning District.

The Chairman assigns himself, Manny Alves, Aaron Webb, Mark Hansen, and Larry Hurwitz.

Attorney Dan Creedon is representing the applicant and explains that the property is improved with a single-family house and an inground pool. He believes the site plan shows that a structure to be used as a pool house can only be built where they've suggested. There is a 3-foot grade change held with a retaining wall that limits the applicant from moving the proposed structure back further. The location of the pool is a depression in the ground and precludes the applicant from meeting the front yard setback. If they were to comply with setbacks, they would be faced with a significant financial hardship to relocate the pool and regrade the yard. Alternatively, to build a building that met setbacks and considered the grade change, it would render a building only 6 feet long. To find some other location on the lot, it could not be used as a pool house as it would not be in close proximity of the pool. Across the street, which is the area that would be impacted the most, there are no houses. It's vernal pool wetlands owned by the Conservation Commission. The house most impacted at 139 Popponessett Road is located 200 ft. back from the street. The neighbors have no opposition. Attorney Creedon submits a new letter of public comment in support.

The applicant, Brian Bunn addresses the Board. He says they walked through their plans with all neighbors, and there were no concerns. The structure will be for storage of pool equipment, along with a sink and a couch.

Back to the Board for questions. The Board feels that this is not an insignificant ask and believes there is room for redesign that would meet requirements. The Board discusses the size of the structure and whether that much storage space is necessary.

Herb Bodensiek opens for public comment. He acknowledges the new letter submitted by Attorney Creedon, from Frank Inzirillo dated April 9, 2024 in support. Aaron Webb moves to close public comment. Herb Bodensiek seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

Attorney Creedon says to reduce this to a point where it would comply would render it a 6-ft wide building. Manny Alves says there's a middle ground. Attorney Creedon asks what changes the Board would like to see for a redesign. They answer that the size is a concern, and they would like letters of support from other neighbors. Attorney Creedon says they will look at eliminating the bulkhead so it would only be a front yard variance and reducing the size of the storage space. The Board discusses different ways this could be sized down and moved to meet setbacks.

Attorney Creedon requests to continue this for 4 weeks to come back with a redesign and letters of support. Herb Bodensiek moves to continue to May 22, 2024, as Mark Hansen and Aaron Webb are not available May 8. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

Appeal No. 2024-009 Bunn & Creedon is continued to May 22, 2024.

7:03 PM

Appeal No. 2024-010

Trabucco

Michael Trabucco has filed an Appeal of an Administrative Official's Decision in accordance with 240-11 E. Bulk Regulations. The Appellant seeks to overturn the Denial of Request for Enforcement dated March 7, 2024. In the Denial of Request for Enforcement Letter, the Building Commissioner stated that the property in question benefits from a preexisting, nonconforming status and is subject to the single-lot exemption outlined in M.G.L. Chapter 40A Section 6 and therefore is considered buildable. The subject

property is located at 361 Straightway, Hyannis, MA as shown on Assessor's Map 269 as Parcel 233. It is located in the Residence B (RB) Zoning District.

Attorney James Connors is representing the applicant. He has brought a memo countering Attorney Beaudreau's explanation of the lot being buildable, which he gives to the Board. He explains that there are two points of contention, one being that a merger (vs. a nonmerger) had occurred. He cites a case from 2020 that discounted the holding in Kneer, which was cited by Attorney Beaudreau. He believes the title was nominal, wife vs. husband and wife. There is also an issue with the septic, which had a perc test in 2008—they do not believe there have been any perc tests since. Another objector who lives below this one, Mr. Jackson, has contended that there is constant settling of his property that he has to fill every year. He shares a photo. He suggests this is a nonconforming lot, not a buildable lot.

Back to the Board for questions. The Board takes issue with the late submission of the memo and supporting case. The Board discusses the transfers of sale and whether they were appropriate. Manny Alves clarifies that when they bought that property, the case law he submitted didn't exist. The Board asks for Mr. Trabucco's address. He answers that it is 15 Oakview Terrace. Manny Alves clarifies that the wife owned the lot in question as the sole owner, and the contiguous lot the husband and wife held together as tenancy by the entirety. Attorney Connors believes the wife had options to preserve her rights and she didn't, and so lost the protection of grandfather clauses. Manny Alves thinks the situation here is mismatched with the case Attorney Connors presented.

Building Commissioner Brian Florence addresses the Board. He explains that this is a question of whether this was a case of checkerboarding. In this case, the lots were bought separately and sold separately. He adds that the settling issue is moot. There are soil engineers and septic engineers looking at this who will determine if there is a sinkhole. He informs the Board that this is an improper appeal: the applicants didn't state the reasons in their application as they are required to do, and he also was never notified about the appeal as he should have been. This left him without time to build a case. On top of that, today they presented evidence that he has never seen. Attorney Beaudreau provided a zoning narrative that made sense in its explanation that this is a buildable lot.

Attorney Beaudreau addresses the Board representing Ken Tamasian, the owner of the lot. He believes it is not a nominal distinction between being single or married.

Herb Bodensiek opens for public comment. Lisa Jackson of 19 Oakview Terrace speaks in opposition with concerns of the close proximity, the visual aspect, lack of privacy, and inconsistency of the ordinance.

Mr. Trabucco of 15 Oakview Terrace speaks in opposition with concerns of contamination due to the 20-foot drop in elevation. He thinks all abutters are against this house being built.

Agnes Trabucco of 15 Oakview Terrace, the applicant's wife, explains that they didn't realize they had missed any steps during the appeal process and it was not intentional.

Herb Bodensiek moves to close public comment. Manny Alves seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

Attorney Connors says they have a battle of 2 cases. Suggest review of legal documentation he submitted.

Attorney Beaudreau says there is a deed restriction for one bedroom. He informs the Board that his client will have to remove a bocce court that was built onto his property—all 3 neighbors encroached onto the property as if it was their own. Manny Alves asks if Attorney Beaudreau has a reaction to the case law submitted by Attorney Connors. He responds that it's clear in all case law that husband and wife is one unit and one of the spouses is a separate unit.

Herb Bodensiek moves to close the public hearing. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

The Board deliberates. They discuss that these lots seem to be proven to have been held separately and sold separately.

Herb Bodensiek makes findings:

The Board affirms the Building Commissioner's findings that 361 Straightway, Hyannis meets the criteria of a pre-existing, nonconforming lot and is therefore buildable. Mark Hansen seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

Manny Alves moves to vote to uphold the determination. Aaron Webb seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

In Appeal No. 2024-010 Trabucco, the Building Commissioner's decision is upheld.

7:04 PM

Appeal No. 2024-011

773 South Main Street 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 also applied for a Special Permit in accordance with 240-125 Zoning Board of Appeals. The Applicant proposes to construct an approximately 12 foot by 20.5 foot in-ground pool approximately 3 feet from the westerly property line where 15 feet is required. 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 District.

Attorney Eliza Cox is representing and is joined by the applicant, Tina Hasseotis. Also present is Matt Eddy, engineer, and Dylan Hoyt from Shoreline Pools. Attorney Cox walks the Board through a presentation on the proposal. The property is subject to three prior zoning decisions (1989-67, 2019-005, 2023-11). When this was last before the Board, there were concerns about noise from the pool equipment. The pool is proposed at 12 ft. by 20.5 ft.—it is small and shallow, unsuitable for rigorous activities. It's in the same location as last time it was before the Board. They have updated the plan to include where the pool equipment will be going, which is a concrete pad surrounded by a 6-ft. fence and a hedge. It will be located on the road side of the accessory structure. 16 sq. ft. of new hardscape is proposed for a total of 283 sq. ft. of new hardscape, but the applicant is proposing to remove some existing hardscape resulting in a net decrease of 39 sq. ft. of hardscape. This proposal was approved by the Conservation Commission, who asked the applicant to naturalize the lawn area. The pool is proposed 3 feet from the westerly property line, which is double the existing setback. No setback relief is needed because of the DCPC Provision, Section 240-131.5A. Because they meet that requirement, they can use the existing lot line in lieu of the requirements. Condition No. 4 of the modified ZBA decision is why they're here before the Board.

Mark Hansen says the prior issues were that the lot is very built out, and there's a neighbor opposed.

Herb Bodensiek opens public comment. Attorney Mike Gill is representing the direct abutters, the McMahon and Carlson family. He explains that his clients' property is used by 3 families, and they are not absentee owners. The Board concluded last time that this was not appropriate, and the only change since that is moving the pool equipment. He finds issues with noise, privacy, lot coverage, setbacks, and fidelity to former decisions. The lot is at 69.4% lot coverage, and they are proposing to add a new structure.

Matt Eddy says moving the pool equipment is significant—it's 15 ft. off the property line and screened. Even still, the levels are only 45 decibels, which is like a dishwasher sound.

The Board discusses whether the lot is too built out. It's noted that the structure in question is the abutters' secondary structure, not their main house. The space isn't 3 ft. from their house, and it will be diagonal and below grade. This area has many pools, and the applicant has addressed the concerns from last time. As it is, the area is currently a play area, so this proposal is not dissimilar. Manny Alves has personal experience with a pool in close proximity and is troubled that this will have longevity but is not sure it's a substantial detriment.

Patricia Carlson, the owner of the trust that owns the abutting house addresses the Board. She explains that the accessory structure is lived in full-time for 6 months of the year. They were never approached before this came up.

Attorney Cox says her team has come up with a few ideas if Attorney Gills is willing to meet and discuss.

Herb Bodensiek moves to continue this to May 22, 2024. Aaron Webb seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

Appeal No. 2024-001 773 South Main Street, LLC is continued to May 22, 2024.

Correspondence

None

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

April 24, 2024, May 8, 2024, May 22, 2024

Adjournment

Mark Hansen moves to adjourn. Manny Alves seconds.

Vote:

Aye: Herb Bodensiek, Manny Alves, Larry Hurwitz, Aaron Webb, Mark Hansen

Nay: None

Documents Used at this Meeting

- February 28, 2024 minutes
- Appeal No. 2023-034 Bayridge Realty, LLC application packet
- Public comments 2 and 3 from Remmers in opposition
- Public comment from Way and Remmer in opposition
- Public comment from Vigneau in opposition
- Staff Report dated October 31, 2023 and revised April 10, 2024 for 2023-034
- Appeal No. 2024-009 Bunn & Creedon application packet
- Public comment from Frank Inzirillo in support
- Appeal No. 2024-010 Trabucco application packet
- Attorney James Connors' memo
- Attorney James Connors' photo
- Appeal No. 2024-011 773 South Main Street LLC application packet

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>