

Zoning Board of Appeals MINUTES Wednesday, June 26, 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, June 26, 2024, at the time indicated:

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 live via Xfinity Channel 8 or high definition Channel 1072. It may also be accessed via the Government Access Channel live stream on the Town of Barnstable’s website: <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>
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
https://townofbarnstable-us.zoom.us/j/82814769605	US Toll-free 888 475 4499
Meeting ID: 828 1476 9605	Meeting ID: 828 1476 9605

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 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.

Call to Order

Chair Jake Dewey calls the meeting to order at 7:01 PM 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	
Hurwitz, Larry	X	
Johnson, Denise		X
Webb, Aaron	X	

Also present is 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

Chair Dewey says no minutes were included in the agenda for members so the Board will vote on the May 8, 2024 & May 22, 2024 minutes at the next meeting.

Old Business

7:01 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 Poponessett Road, Cotuit, MA as shown on Assessor's Map 019 as Parcel 079. It is located in the Residence F (RF) Zoning District. Continued from April 10, 2024 and May 22, 2024.

The Board received a request from Attorney Creedon to withdraw without prejudice. Chair Dewey moves to withdraw Appeal No. 2024-009 without prejudice. Herb Bodensiek seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Manny Alves, Mark Hansen, Aaron Webb

Nay: None

Variance No. 2024-009 Bunn & Creedon is withdrawn without prejudice.

New Business

7:02 PM

Appeal No. 2024-020

New Cingular Wireless PCS, LLC

New Cingular Wireless PCS, LLC has applied for a Special Permit pursuant to Section 240-108 Antennas Permitted by Special Permit in All Zoning Districts and 240-125 Zoning Board of Appeals. The Applicant is proposing to extend the existing cell tower by 15 feet and collocate its wireless facility at the site pursuant to the Federal Spectrum Act and the Town of Barnstable Zoning Ordinance. The subject property is located at 830 Wakeby Road, Marstons Mills, MA as shown on Assessor's Map 013 003. It is located in the Residence F (RF) Zoning District.

Attorney Mike Dolan is representing the applicants in place of Attorney Pare.

Chair Dewey assigns himself, Herb Bodensiek, Paul Pinard, Aaron Webb, and Manny Alves (Mark Hansen is having trouble accessing Laserfiche so is replaced with Manny Alves). Manny Alves discloses that more than 25 years ago he worked at the firm where Attorney Dolan is now a partner but he feels he can be impartial. Attorney Dolan has no problem with Manny Alves being assigned.

Attorney Dolan explains that AT&T holds FCC licenses to operate a wireless telecommunications network throughout the country and currently has a gap in coverage around Wakeby Road. His client researched where they could locate antennas to fill that gap. They found an existing 144-ft. tower, which can be extended by 15 ft. and will be able to provide the needed coverage. The Town's zoning bylaw allows for a special permit as relief—they are also applying for an eligible facilities request in the alternative. They are proposing to attach 9 antennas, ground equipment in the form of a walk-in cabinet within the existing, fenced compound. There will also be a 500-gallon propane tank for the generator, which will also be inside a fenced-in area but off the compound. The compound is 300 feet off the road, so there will be no visible impact. This proposal also avoids the need for a new structure.

Back to the Board for questions. Paul Pinard asks if there is already a propane tank at the location. Attorney Dolan confirms there is—it belongs to a different carrier. Chair Dewey is concerned that there is no Formal Site Plan Review letter. Attorney Dolan believes Formal Site Plan Review is not required because their eligible facilities request is a federal law that overrides the local law of 2 separate reliefs being required. The Chairman doesn't see that reflected in the materials: the Informal Site Plan Review letter states that formal is required. Jeff Dellicolli has been working on the project with Attorney Pare and knows the history of the SPR efforts. He says this falls under the eligible facilities act and as long as the existing structure extension doesn't exceed 20 ft. in height, it goes through a simplified process per the middle class tax relief spectrum act through the federal government. The Chairman reiterates that the informal SPR letter does not match that. Attorney Dolan's understanding from the town was that informal SPR along with a special permit was sufficient relief. He requests a continuance to clear the matter up with his team. Chair Dewey moves to continue Appeal No. 2024-020 to July 24, 2024. Aaron Webb seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Manny Alves

Nay: None

Appeal No. 2024-020 New Cingular Wireless PCS, LLC is continued to July 24, 2024.

7:03 PM

Appeal No. 2024-022

Marroquin

Israel Lopez Marroquin has applied for a Special Permit pursuant to Section 240-47.2 Accessory Dwelling Units (ADUs). The Applicant is proposing to construct a detached, 3-bedroom 1,200 square foot accessory dwelling unit. The subject property is located at 42 Woodbury Ave, Hyannis, MA as shown on Assessor's Map 307 as Parcel 073. It is located in the Residence B (RB) Zoning District.

The Chairman assigns himself, Herb Bodensiek, Paul Pinard, Mark Hansen, and Aaron Webb.

Israel Marroquin explains to the Board that presently, he is living on Nantucket and his nephew is living in the existing house. His intention is to build this ADU for his own family to avoid displacing his nephew's family. The existing house is a 5-bedroom house. He explains that there is a pool included in the plan, but that is only included in case he can ever afford it, although he can't at the moment. Paul Pinard says the application states 600 sq. ft. and asks for the justification for why he needs the ADU to be 1,200 sq. ft. Mr. Marroquin says it's for him and his wife and their two sons—3 bedrooms.

Chair Dewey opens for public comment. Jeff Brown of 46 Woodbury Ave speaks in opposition with concerns of increased use and safety on the shared driveway.

Michael Creed of 44 Woodbury asks what the address would be on the new building. The Chairman says DPW would work with the fire department to address it.

Chair Dewey says the Board received public comment from the Browns and the Mitchells in opposition.

Lisa Mitchell speaks in opposition with concerns over the shared driveway and whether the owner will actually live in the ADU or will just rent it out as well.

Linda Woodbury of 48 Woodbury speaks in opposition with concerns of safety on the shared driveway and increased use.

Chair Dewey moves to close public comment. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb

Nay: None

The Board deliberates. They discuss concerns over the size of the ADU. It will be allowing 8 bedrooms on this lot. The Board discusses whether this fits the spirit and intent of the ADU bylaw. As the Board seems to be leaning towards a denial, the Chairman explains to the applicant that he can withdraw without prejudice, or he can request a vote. Mr. Marroquin requests to withdraw without prejudice. Aaron Webb moves to withdraw Appeal No. 2024-022 Marroquin without prejudice. Mark Hansen seconds.

Vote:

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

Nay: Herb Bodensiek

Special Permit No. 2024-022 Marroquin is withdrawn without prejudice.

7:04 PM

Appeal No. 2024-023

297 Winter Street, LLC

297 Winter Street, LLC has applied to modify Special Permit No. 1968-135 to allow the proposed alteration of a dentist's office into a 1,035 square foot 3-bedroom apartment. The subject property is located at 297 Winter Street, Hyannis, MA as shown on Assessor's Map 310 as Parcel 208. It is located in the Residence B (RB) Zoning District.

Attorney Patrick Nickerson is representing the applicant and requests to present for both appeals concurrently. The Chairman reads Appeal No. 2024-024 into the record:

7:05 PM

Appeal No. 2024-024

297 Winter Street, LLC

297 Winter Street, LLC has petitioned to amend Variance Nos. 1966-045 and 1972-096 pursuant to Section 240-11(A) Principal Uses in the RB District. The Petitioners seek to amend the Variances to permit the proposed alteration of a dentist's office into a 1,035

square foot 3-bedroom apartment. The subject property is located at 297 Winter Street, Hyannis, MA as shown on Assessor's Map 310 as Parcel 208. It is located in the Residence B (RB) Zoning District.

The Chairman assigns himself, Larry Hurwitz, Mark Hansen, Paul Pinard, and Herb Bodensiek to both appeals.

Attorney Nickerson is representing the applicant and is joined by Attorney John Kenney and Steve Park, manager of 297 Winter Street, LLC. Attorney Nickerson explains that they are requesting modifications to old special permits and variances. He walks through plans and proposed changes. Aside from a proposed staircase and a proposed removal of a rear vestibule, all changes are to the interior. The proposal won't require more parking, won't expand the existing building's footprint, won't increase traffic, and will bring the property into greater conformance. Attorney John Kenney clarifies that regarding the variance, the modification they're requesting is to a condition requiring the location be a dentist office; they are requesting to modify that to allow it to be a two-family residence. It would be residential use, which is in keeping.

Back to the Board for questions. The group discusses whether this would be a multi-family dwelling or a two-family. Attorney Nickerson explains that one- and two-family are separate from 3+ family, which becomes multi-family. Attorney Nickerson explains that this did not go to Site Plan Review because the Building Department confirmed it wasn't required.

Chair Dewey opens for public comment. Steve Merlesena of 50 Oak Lane speaks in support of the project but discloses that he is the broker for this.

The Chairman says the Board received public comment from Merlesena in support and from Webb in support. The Chairman moves to close public comment. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Larry Hurwitz, Mark Hansen, Paul Pinard, Herb Bodensiek

Nay: None

Chair Dewey moves to close the public hearing. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Larry Hurwitz, Mark Hansen, Paul Pinard, Herb Bodensiek

Nay: None

Mark Hansen makes findings for Appeal No. 2024-023:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit: Section 240-125 allows for a modification 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. The single-family nature of the property and of the accessory nature of the detached structure are preserved.

Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Larry Hurwitz, Mark Hansen, Paul Pinard, Herb Bodensiek

Nay: None

Mark Hansen makes a motion to approve Appeal No. 2024-023 with Conditions 1-5 from the Staff Report dated June 11, 2024, with an added Condition No. 6: The existing one-bedroom apartment shall remain with minor interior modifications as shown on the plan dated March 20, 2024.

Vote:

Aye: Jake Dewey, Larry Hurwitz, Mark Hansen, Paul Pinard, Herb Bodensiek

Nay: None

Special Permit No. 2024-023 297 Winter Street, LLC is granted with conditions.

Chair Dewey makes a motion to approve Appeal No. 2024-024 with the following findings:

Variance No. 2024-024 is seeking to modify Variance No. 1966-045 and No. 1972-096 to allow the proposed alteration of the existing dentist office into a 3-bedroom apartment at 297 Winter Street, Hyannis, MA. All other conditions are in effect. He finds that the modifications are minor and the plan follows the spirit and intent of the bylaw. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Larry Hurwitz, Mark Hansen, Paul Pinard, Herb Bodensiek

Nay: None

Chair Dewey makes a motion to approve Appeal No. 2024-024 with Conditions 1-4 from the Staff Report dated June 11, 2024. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Larry Hurwitz, Mark Hansen, Paul Pinard, Herb Bodensiek

Nay: None

Variance No. 2024-024 297 Winter Street, LLC is granted with conditions.

Correspondence

Cape Cod Commission Meeting Notice for Brick Kiln Monopole Tuesday July 2, 2024

Cape Cod Commission Continued Hearing Notice for Upper Cape YMCA Wednesday July 10, 2024

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

July 10, 2024, July 24, 2024, August 14, 2024, August 28, 2024

Adjournment

Chair Dewey moves to adjourn. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb

Nay: None

Documents Used at this Meeting

- Request from Attorney Creedon to withdraw Appeal No. 2024-009 Bunn & Creedon
- Appeal No. 2024-020 New Cingular Wireless PCS, LLC application packet
- Appeal No. 2024-022 Marroquin application packet
- Public comment from the Mitchells in opposition
- Public comment from the Browns in opposition
- Appeal No. 2024-023 297 Winter Street, LLC application packet
- Appeal No. 2024-024 297 Winter Street, LLC application packet
- Public comment from Merlesena in support
- Public comment from Webb in support
- Staff Report dated June 11, 2024 for Appeal No. 2024-023
- Staff Report dated June 11, 2024 for Appeal No. 2024-024
- Correspondence: Cape Cod Commission Meeting Notice for Brick Kiln Monopole Tuesday July 2, 2024
- Correspondence: Cape Cod Commission Continued Hearing Notice for Upper Cape YMCA Wednesday July 10, 2024

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>