

Zoning Board of Appeals
MINUTES
Wednesday, November 13, 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, November 13, 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. 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/84463368626 | US Toll-free: 888 475 4499 |
| Meeting ID: 844 6336 8626 | Meeting ID: 844 6336 8626 |

2. 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.
3. The meeting will be replayed via Xfinity Channel 8 or high definition Channel 1072. It may also be accessed via the Government Access Channel video on demand archives on the Town of Barnstable’s website: <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

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 Dewey calls the meeting to order at 7:03 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 | |
| Tavano, Rodney | | X |
| Webb, Aaron | X | |

Also present is 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

None

Cardi's Furniture, as tenants, have applied for a Variance pursuant to Section 240-125 B (C) Variances for Signs in the B and HB Districts. The Applicant seeks to install an additional 67.5-square foot building sign facing Iyannough Road and a 6-square foot free standing street sign from Nightingale Lane, both signs exceed the allowable size and number. The subject property is located at 621 Iyannough Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 004. It is located in the Highway Business (HB) and Business (B) Zoning Districts. Continued from October 9, 2024.

Chair Dewey assigns himself, Herb Bodensiek, Mark Hansen, Aaron Webb, and Paul Pinard.

Attorney David Lawler is representing and is joined by Ron Cardi, the owner. Attorney Lawler says this is a unique lot and the way the structure sits on the lot creates a hardship for the business. He shows the Board an image (document entitled "Fm Att Lawler - property map") and explains that the building actually is split between 2 lots. A third of the building sits on Nightingale Lane, but there is no access through that road because it's closer to an alley than a road. The building faces directly into the businesses next door. The south side of the building is land locked and the north side abuts Route 132. There is a single curb cut with an in-and-out Y divider. The way the sign is located, it faces internally into the lot and creates difficulty and safety issues for drivers on Route 132. He believes there aren't any other buildings nearby that are situated on the lot that way, facing another building, and that far back from the roadway. He shows the Board photos (document entitled "Cardi's photos"). Currently there is an empty white sign that faces Route 132, which is where they are proposing their sign. An image from across the street shows that trees in the neighboring lot have grown to cover the sign from that angle. The other sign they're proposing is probably directional but they included it in their application just in case. Attorney Lawler thinks this proposal would protect the health and safety of drivers and is in keeping with the area.

Back to the Board for questions. Mark Hansen asks if the lot can be accessed via westbound traffic on Route 132. Not legally, Attorney Lawler responds. Mark Hansen asks if there are any directional signs on Route 28. Attorney Lawler answers no, because there is no direct access from Route 28, but there is a curb cut on Nightingale. Chair Dewey says the way this was noticed, the applicant wasn't asking for a variance from sign code and only cited the Board's power to grant a variance. He asks for clarification on what part of the ordinance they want relief from—Section 240-65 C or 240-65 A? Attorney Lawler is not sure the section but it's for a variance in the B or HB district. The group discusses whether this lot or the structure is unique. Attorney Lawler says the lot is unique because it's surrounded by massive dual lots on two sides, the back is not a normal street, and it's cushioned on Route 132 with a limited curb cut. Herb Bodensiek notes that Google Street View shows that previously Bed Bath & Beyond did have two signs: one on Route 132 and one facing the adjacent lot. The group again discusses whether the structure's orientation on the lot is unique for the area. Chair Dewey believes all the businesses here are angled to the street the same way. He feels this should not be a variance—there needs to be a special permit provision.

Chair Dewey opens for public comment. He says the Board received a letter from Attorney John Kenney representing the Christmas Tree Shops plaza in support. Chair Dewey moves to close public comment. Aaron Webb seconds.

Vote:

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

Nay: None

Chair Dewey moves to close the public hearing. Aaron Webb seconds.

Vote:

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

Nay: None

The Board deliberates. Attorney Lawler asks to poll the Board before a vote. Aaron Webb, Herb Bodensiek, and Paul Pinard are leaning towards approving. Chair Dewey is not in favor. Mark Hansen is unsure. The group again discusses uniqueness and the intent of the bylaw. Attorney Lawler confers with his client privately and requests to withdraw the application without prejudice. Chair Dewey moves to withdraw without prejudice. Mark Hansen seconds.

Vote:

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

Nay: None

Abstain: Herb Bodensiek (briefly left the meeting)

Appeal No. 2024-032 Cardi's Furniture is withdrawn without prejudice.

New Business

7:01 PM

Appeal No. 2024-037

Cape Club Canine, Inc.

Cape Club Canine, Inc., as tenant, has filed for a Special Permit pursuant to Section 240-33 C (1) – Conditional Uses in the IND Industrial District. The Applicant requests to modify Conditional Use Special Permit No. 2008-062 to allow kenneling of dogs during the day and overnight. Specifically, the Applicant requests to delete Condition No. 4 of Special Permit No. 2008-062 pursuant to Section 240-33 C (1) and, by reference, Section 240-27 C (2), and, by further reference, Section 240-125 C. The subject property is located at 30 Perseverance Way, Unit 7, Hyannis, MA as shown on Assessor's Map 295 as Parcel 007-00G. It is located in the Industrial (IND) Zoning District.

Chair Dewey also reads Appeal No. 2024-038 into the record:

7:02 PM

Appeal No. 2024-038

Cape Club Canine, Inc.

Cape Club Canine, Inc., as tenant, has filed for a Special Permit pursuant to Section 240-33 C (1) – Conditional Uses in the IND Industrial District. The Applicant seeks a Conditional Use Special Permit to allow kenneling of dogs during the day and overnight pursuant to Section 240-33 C. (1), and by reference, Section 240-27 C. (2), and by further reference, Section 240-125 C. The subject property is located at 30 Perseverance Way, Unit 7, Hyannis, MA as shown on Assessor's Map 295 as Parcel 007-00G. It is located in the Industrial (IND) Zoning District.

Chair Dewey assigns himself, Herb Bodensiek, Mark Hansen, Paul Pinard, and Aaron Webb.

Attorney Dan Creedon is representing and is joined by the applicants, Yurii and Kamaya Huzychak. He explains that the proposal is to modify Special Permit 2008-062. He provides background: his client purchased the business assets from the prior owner in December 2023. At that time, Coders Place had been operating there for 5 years. Prior to that, it was Whiskers Pet Grooming—that tenant was granted a special permit to add kenneling (roughly 60 dogs) to her license. The special permit included a condition of no overnight keeping of dogs. He is proposing to remove that condition. He suggests that the findings from the prior special permit are still applicable, and this is an appropriate location, there are no complaints from neighbors, there are no residences nearby, and there are no other overnight businesses nearby to be bothered. He notes that the prior owner was using Units 6 and 7 but currently the operation is limited to Unit 7. There is no construction proposed here so he suggests the Board could remove that condition.

Back to the Board for questions. The Board wonders if there is any concern about fire or health for overnight businesses. Attorney Creedon says they went through Site Plan Review in August and were approved by all departments. The Board discusses whether they need to add any conditions for safety. Chair Dewey asks if someone will be there all night. The applicant says they plan to have cameras and alarms, depending on what is required. The total capacity overnight for dogs is 6. Attorney Creedon explains that if the Board is inclined to approve the special permit modification, he would withdraw Appeal No. 2024-038.

Chair Dewey opens for public comment. There is none. Chair Dewey moves to close public comment. Mark Hansen seconds.

Vote:

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

Nay: None

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

Vote:

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

Nay: None

The Board deliberates. They discuss whether to add a condition that any overnight dogs should be kept inside. They discuss who will be overseeing permits and whether they need to condition about industry standards but decide it's not necessary because Site Plan Review was sufficient and there is a condition that requires them to obtain all necessary permits and licenses.

Chair Dewey makes a motion to grant the appeal based on the following findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit: *Section 240-33 C. allows for a Conditional Use 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.

Mark Hansen seconds.

Vote:

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

Nay: None

The Board adds the following Condition No. 4: Dogs will be kept inside overnight and when there's no staff on property.

Vote:

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

Nay: None

Special Permit No. 2024-037 Cape Club Canine, Inc. is granted with conditions.

7:02 PM

Appeal No. 2024-038

Cape Club Canine, Inc.

Cape Club Canine, Inc., as tenant, has filed for a Special Permit pursuant to Section 240-33 C (1) – Conditional Uses in the IND Industrial District. The Applicant seeks a Conditional Use Special Permit to allow kenneling of dogs during the day and overnight pursuant to Section 240-33 C. (1), and by reference, Section 240-27 C. (2), and by further reference, Section 240-125 C. The subject property is located at 30 Perseverance Way, Unit 7, Hyannis, MA as shown on Assessor's Map 295 as Parcel 007-00G. It is located in the Industrial (IND) Zoning District.

Attorney Creedon requests to withdraw without prejudice. Chair Dewey moves to withdraw the appeal without prejudice. Paul Pinard seconds.

Vote:

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

Nay: None

Appeal No. 2024-038 Cape Club Canine, Inc. is withdrawn without prejudice.

7:03 PM

Appeal No. 2024-039

25 Falmouth Rd, LLC

25 Falmouth Road LLC has filed an Appeal of an Administrative Official's Decision in accordance with M.G.L. Chapter 40A Sections 7, 8, and 15 and Section 240-88 of the Barnstable Zoning Ordinance. The Appellant is appealing the Decision of the Building Commissioner in issuing Building Permit BLDC 22-227, dated September 17, 2024. The permit was initially denied pending the receipt of a narrative to explain the expansion of the mechanical bays on the property. The Appellant's position is that the permit fails to take into account evidence and documentation from the town records and files, which conflict with the determination to issue the Building Permit. The subject property is located at 95 Falmouth Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 073. It is located in the Highway Business (HB) and Residence B (RB) Zoning Districts.

Chair Dewey also reads Appeal No. 2024-040 into the record:

7:04 PM

Appeal No. 2024-040

25 Falmouth Rd, LLC

25 Falmouth Road LLC has filed an Appeal of an Administrative Official's Decision in accordance with M.G.L. Chapter 40A Sections 7, 8, and 15 and Section 240-88 of the Barnstable Zoning Ordinance. The Appellant is appealing the Decision of the Building Commissioner in a letter dated September 4, 2024. The Appellant believes that the determination fails to take into account evidence and documentation from the town records and files, which conflict with the determination and do not address the concerns raised as set forth in the Appellant's enforcement letters and correspondence. The subject property is located at 95 Falmouth Road and 123 Falmouth Road, Hyannis, MA as shown on Assessor's Map 311, Parcels 073 and 078. Lots are located in the Highway Business (HB) and Residence B (RB) Zoning Districts.

The Board received a request from Attorney Mike Ford to continue both appeals to January 8, 2025.

Attorney Mike Ford is representing the applicant and explains that yesterday, Attorney Nickerson filed a legal memo on behalf of his client on the issue of aggrievement. Section 3 of the Board's Rules & Regulations says the Board can continue items with late submissions, so he is seeking a continuance to allow time to file a responsive memo to Attorney Nickerson's memo. Attorney Nickerson is present and has no objection but asks to reserve the right to respond to any memo Attorney Ford submits prior to the meeting. Chair Dewey moves to continue both appeals to January 8, 2025. Mark Hansen seconds.

Vote:

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

Nay: None

Appeal No. 2024-039 25 Falmouth Rd, LLC and Appeal No. 2024-040 25 Falmouth Rd, LLC are continued to January 8, 2025 at 7:01.

Correspondence

- Cape Cod Commission Subcommittee Hearing Notice on Quaker Road Monopole scheduled for Monday October 28, 2024
- Cape Cod Commission Hearing Notice on Quaker Road Monopole scheduled for Thursday, October 31, 2024.
- Cape Cod Commission Committee on Planning and Regulations Hearing Notice for Thursday, October 31, 2024 at 1:00 p.m.
- Cape Cod Commission Meeting Notice for Thursday, October 31, 2024 at 3:00 p.m.
- Cape Cod Commission Hearing Notice for the Long Pond Rd Monopole project for Tuesday, November 12, 2024 at 5:00 p.m.
- Cape Cod Commission Hearing Notice for Sandwich Community Health Center for Thursday November 21, 2024 at 5:00 p.m.
- Cape Cod Commission Hearing Notice for Evergreen Pickleball on Monday December 2, 2024 at 5:00 p.m.

Matters Not Reasonably Anticipated by the Chair

Chair Dewey thanks Councilors Clark and Ludtke for attending.

Upcoming Hearings

December 11, 2024 (remote), January 8, 2025 (in person), January 22, 2025 (remote)

Chair Dewey says there is a new board member, Rodney Tavano, who wasn't present tonight. There should also be another new member soon once approved by Town Council.

Adjournment

Chair Dewey moves to adjourn. Herb Bodensiek seconds.

Vote:

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

Nay: None

Documents Used at this Meeting

- Appeal No. 2024-032 Cardi's Furniture application packet
- Document entitled "Fm Att Lawler - property map"
- Document entitled "Cardi's photos"
- Appeal No. 2024-037 Cape Club Canine, Inc. application packet
- Appeal No. 2024-038 Cape Club Canine, Inc. application packet
- Staff Report dated October 17, 2024 for 2024-037 Cape Club Canine, Inc.
- Request from Attorney Mike Ford to continue Appeals No. 2024-039 and -040 25 Falmouth Rd LLC
- Correspondence: Cape Cod Commission Subcommittee Hearing Notice on Quaker Road Monopole scheduled for Monday October 28, 2024
- Correspondence: Cape Cod Commission Hearing Notice on Quaker Road Monopole scheduled for Thursday, October 31, 2024.
- Correspondence: Cape Cod Commission Committee on Planning and Regulations Hearing Notice for Thursday, October 31, 2024 at 1:00 p.m.
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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>

APPROVED