



# Town of Barnstable Zoning Board of Appeals



## Board Members

Jacob Dewey – Chair   Herbert Bodensiek – Vice Chair   Paul Pinard – Clerk  
Emanuel Alves – Associate Member   Mark Hansen – Regular Member   Larry Hurwitz – Associate Member   Natalie Pittenger – Associate Member  
Rodney Tavano – Associate Member   Aaron Webb – Regular Member   Vacant – Associate Member  
Betty Ludtke – Town Council Liaison

## Staff Support

James Kupfer – Director – [James.Kupfer@town.barnstable.ma.us](mailto:James.Kupfer@town.barnstable.ma.us)  
Anna Brigham – Principal Planner – [anna.brigham@town.barnstable.ma.us](mailto:anna.brigham@town.barnstable.ma.us)  
Genna Ziino – Administrative Assistant – [genevey.ziino@town.barnstable.ma.us](mailto:genevey.ziino@town.barnstable.ma.us)

## MINUTES Wednesday, February 12, 2025 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, February 12, 2025, at the time indicated:

### Call to Order

Introduction of Board Members

### Attendance Roll Call:

Herb Bodensiek  
Larry Hurwitz  
Mark Hansen  
Aaron Webb  
Natalie Pittenger  
Manny Alves  
Jacob Dewey

### 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

Chair Jacob Dewey moves Agenda items out of order;

Appeal 2024-039

### Old Business

7:00 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. *Continued from November 13, 2024 and January 8, 2025. No Members assigned.*

7:01 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. *Continued from November 13, 2024 and January 8, 2025. No Members assigned.*

Attorney John Kenney and Attorney Patrick Nickerson in attendance. Attorney Michael Ford in attendance.

Attorney Kenney is requesting a continuance in order to have sufficient time to respond to Attorney Ford's response, which they just received last Friday. Requesting April 9<sup>th</sup> 2025 for a continuance date.

Attorney Kenney, they were told would have an opportunity to respond, 10 days, to review and respond.

**Motion made by Aaron Webb to approve request to continue to April 9<sup>th</sup>, 2025, seconded by Herb Bodensiek,**

**All vote aye for continuance of both items - Appeal No. 2024-039 & Appeal No. 2024-040.**

### **Executive Session**

**Appeal No. 2023-010 Arista/Wendy's LLC** - Executive Session for the purpose of discussing litigation strategy with respect to the case in the Land Court (24 Misc. 00088) by Arista/Wendy's LLC, for property at 715 West Main Street, Hyannis, appealing the denial of a special permit to construct a drive-through window at a Wendy's fast-food restaurant, if the Chair determines that an open session could be detrimental to the Board's litigation position.

Chair Jacob Dewey has made determination that an open session would be detrimental to the Zoning Board of Appeals (ZBA) litigation position;

**Chair Jacob Dewey makes a motion to enter into Executive Session, seconded by Mark Hansen,**

#### **Roll Call Vote:**

**Herb Bodensiek - aye**

**Larry Hurwitz - aye**

**Mark Hansen - aye**

**Aaron Webb - aye**

**Natalie Pittenger - aye**

**Manny Alves - aye**

**Jacob Dewey - aye**

**The Board exits the Hearing Room and enters into Executive Session - commences at 7:11 p.m.**

**The Board returns to open session at 8:15 p.m.**

**8:15 PM**

**Appeal No. 2024-044**

**Sundelin**

Richard Sundelin has applied for a Special Permit pursuant to Section 240-94 B. Nonconforming Use. The Applicant seeks relief to codify a preexisting, nonconforming use (auto repair) at the property. The subject property is located at 970 Main Street, West Barnstable, MA, as shown on Assessor's Map 156 as Parcel 026. It is located in the West Barnstable Village Business District (WBVBDD). *Continued from January 8, 2025. No Members assigned.*

Attorney David Lawler in attendance. He gives a history of the project. This Board had support the Bldg. Commissioner decision previously. Part of the Decision 2022, pre existing, non conforming use. What can be done to the property to make it useable, what should or should not be here. Make more attractive. The extent of being used as an autobody shop. Prior tenant had substantial problems with the use of the property. We will reduce number of vehicles. Previously alot of noise and chemicals that have happened previously. Vehicles now are composite, not a lot of metal in vehicles now. They will need to store some vehicles outside. His client has installed new chimney and new exhaust system. Layout plan, he refers to, proposed fencing, no vehicles in the right of way. Back parking lot has put down bluestone here, some complaints of dust, we are proposing to plant six large trees. Provide a buffer. Stockade fence proposed to install, will provide a barrier. Residential property, his client would agree to clean up the entire area/backyard and maintain. Some complaints have been about noise and smell. A neighbor has a goat farm here as well, those are smells and noises as well. Storage cage behind the building for materials and a dumpster. Will recycle materials. Hours of operation, prior was used on weekends and nights. Proposing hours would be from Monday to Friday from 8 a.m. to 6 p.m. and Saturday.

No removing past 6 p.m. and no clients coming in and out after that. Pictures shown of old vehicles previously used on the property and stored. Over the past 20 years there have been many vehicles on the property. There used to be a lot of work happening outside the bays. The new proposal will be indoors and only body work, to be done inside the bays.

Business of this sort would typically have storage of 50 vehicles, the applicant will be working with much less.

Chair Jacob Dewey, your looking to codify the existing, not expansion? You applied for codify, not expansion.

Attorney Lawler, technically it is an expansion, under paragraph 290.94 does speak to – clarifying opposition. Hearing in 2022. Found pre existing and prior use was an expansion, now new tenant is willing to be held at this proposal. By law would not be more detrimental to previous non conforming use, we are offering mitigation. Attempting to buffer neighbors to left and the rear.

Chair Jacob Dewey, what are we saying pre existing non conforming use is? What are you calling it? Body restoration, Auto repair?

Attorney Lawler, put restriction on it, no engine repairs, just strictly auto body restoration/repair. No fluid changes. Willing to go to water based paints, which this is not the norm of the industry, but environmentally better. Speaking with people this seems like a better way to proceed.

Chair Jacob Dewey, clarifies, pre existing is auto repair and proposed is autobody only?

Attorney Lawler, yes, looking for 35 parking spaces/areas.

Chair Jacob Dewey, right of way? Drainage plan? How are vehicles getting here?

Attorney Lawler, this is use, no drainage, only thing changed blue stone put in back, was dirt. Tow trucks, majority are driven in.

Herb Bodensiek, previously 50 cars?

Attorney Lawler, in past sometimes not many, but can be as much as 50.

Manny Alves confirms the district. There is a specific ordinance 240 20b4, it requires us to make certain findings, special permit standard and grant of. Requires findings to support.

Attorney Lawler, we may ask for continuance.

Mark Hansen, would like more explanation that this is a body shop. Drainage in particular, never seen a situation where this would not be at an auto body shop.

Alexander George, owner in attendance. When a car in accident, when comes to us we remove old and install new parts. Been using water based paint over 10 months, recycle solvent. Keep parts for the insurance company. Some cars there longer because hard to get the parts. No oil changes and no engine work.

Mark Hansen, 35 cars, stockade fence, how do cars move, turn around radius/bases? Pretty tight area.

Alexander George, have big space in center of parking lot.

Attorney Lawler, may have to move several cars. Back parking lot is strictly for storage of vehicles.

Mark Hansen, is fence staying in right of way? How are cars getting in and out?

Attorney Lawler, there will be a gate put in, right to the back of the building.

Discussion regarding the lot and how compact/tight it is for vehicles.

Chair Jacob Dewey, need 12 employee and customer, spots 29 – 12, getting down to less spaces. Aerial photos?

Attorney Lawler sent some pictures, but not compatible as received, there's not a lot of photographs.

Larry Hurwitz, Feb. 12<sup>th</sup> letter, from Lisa Hendrickson, how to address her 8 comments having to do with the septic, soil contamination, ground water?

Attorney Lawler, again a pre existing non conforming use. This business has been operating since 1940's and no one has shut them down. No indication that there has been any failures. His client still has the right to operate as is. But will we get violations? The use here as is has not stopped. Wanted to get something better here and his client would like to and is willing to clean up and put in trees. Cage parts and restricting hours.

Chair Jacob Dewey confirms that are asking for expansion.

Manny Alves, current conditions as exist, site plan?

Building Commissioner Brian Florence in attendance. Drainage has been reviewed, no requirement to add. This is pre existing, non conforming, this began with an enforcement issue with us and the issue was the hours of operation and days and amount. Upheld the decision and agreed that expanded. The previous owners have left. Has heard a lot less complaints. This closes the loop of what the issue was in 2021. Expansion – when special permit is done, confirm that hours and days and parking is whatever deemed. Right now can't determine what is being done. What did and did not exist. Won't be able to see from coming and going. Need some certainty for them and for the public as well. We agree that there is an expansion for the use.

Chair Jacob Dewey, auto sales as well?

Bldg. Commissioner Florence, yes, we have auto body and sales. Auto body is disassembly, not fluids.

Herb Bodenseik, cars on the site/operation hours?

Bldg. Commissioner Florence, will say that the volume does ebb and flow. Have been at least 50 at some points but less since previous people gone. Current people are cooperative and helpful to us.

Chair Jacob Dewey, was nonconforming.

Bldg. Commissioner Florence, it was conforming at the time, but nonconforming now because can't have that type of use now.

If going to have/operate special permit uses, have to comply with a through i in the ordinance.

Chair Jacob Dewey, can go back in zoning history?

Bldg. Commissioner Florence, you'll find not regulated if go in to the past.

Attorney Lawler, this Board has already ruled: appeal 2022-048, he reads from previous ZBA order.

#### **Public comment**

Anthony Lovell in attendance, what was permitted and when. Looking for older photos. Previous tenant used in such a fashion to allow to be increased, wouldn't be the terms of tenancy. Property values of abutters. There is a level of risk. Parking plan is practical and good questions.

Attorney Patrick Nickerson in attendance. Representing several clients. Video presented. Spring of 2019 increase of use. General hours of operation were 8 to 5 Monday through Friday, 8 to 12 on Saturday. Affidavit submitted with your materials as Exhibit B, presented in 2022 regarding the enforcement. Paragraph 14 and 15 detail the hours of operation. Were some deviations, occasionally. Spring of 2019 with Cape Quality Collision, then work was 7 days a week, many more employees, working day and night, storage, traffic, deliveries, refuse. The area for parking had expanded and effected the flow of traffic. Work outdoors without safeguards. Expanded without site plan approval. Bldg. Commissioner pre exist non conforming, cease and desist on Aug 25<sup>th</sup>, Exhibit A regarding observations. To do list: reduce the number of vehicles, remove trash debris, removed auto tools from behind building, remove asphalt, remove all outdoor operations. Non business hours, reduce employees to previous levels. All on site parking commercial eliminated. Make an application and submit to Site Plan Review for business. This notice was appealed after testimony and petition affidavit from Neil Atwood. This Board upheld. From October 22 to February 24, nothing done. Mostly. Boundary line survey done. No measurable progress done. New tenant arrived, Texiero Auto. Trash and debris was set on fire in the back. Picture of spills and oil, apron removed without site plan approval. Dumped in rear/rubble and a bury hole dug next to septic tank. Pictures shown. This was after October hearing. And concerns of outdoor auto body work, private wells being contaminated per outside activities. Feb. 2022. Over the past year their concerns of well contamination and hours of operation violations continue to occur. Gravel installed, pictures shown, also boats and trailer here. Rear views shown. Aug. 2024, boats, trailers, other items here. Car parts in the rear. Deliveries occurring next door because no place to park. Interior of garage bays shown, no storm water drainage or catch basins to deal with the runoff. More photos from Samantha Grey shown. Rear lot, September 2024. Some Google street views from 2008 shown. Pictures shown of 1968, 1989, 2008. Delivery vehicles come to neighbors because no place to park at business. Hours of operation, usually open at 7 p.m. Continue to see work being done outside. Washing and concern of groundwater persists. January a perimeter spill occurred. 6 employees at any given time. Sometimes after 10 p.m. still working.

Site plan shown next to photo of use. Many vehicles not on the property at all and extend off the property. No storm water management. Septic system not shown, access to the rear obstructed. Fence in the right of way. Zoning considerations also, in order to expand pre existing non conforming use, must find that an expansion would not be detrimental. Chapter 240, granting of special permit application, 240 20b4 believe this section does apply, language does say that a grant of any special permit within this district follow the criteria a through i. Specifically a, c, d, f, West Barnstable Village Business District. Request to deny as presented for the reasons stated.

Herb Bodenseik, neighbors don't agree, it does look better.

Attorney Patrick Nickerson, the scope of the work has not been done, some improvements, congestion, environmental issues still exist, hours of operation.

Attorney Kenny in attendance. The owner before was a lot worse. Look at the affidavit from the prior owner. Not expansion that took place in 2019. The photos are 15 cars, they are asking for 35 spots, they are crammed in here. Also electric vehicles that can catch fire. How would fire dept get in there? This is a significant expansion being asked, not what it was in 2019. These were violations, you had given them an order that was violated. The applicant doesn't care. Are there any calculations for septic, title 5? He buried debris next to sewer cover. How many employees? No room here, read the affidavit please and look at their site plan, this is a substantial increase. They are painting cars after 7 p.m. the noise is disturbing to the neighbors. This is more detrimental than what was previous as a Mom and Pop shop. Suppose to maintain use on their own property, they are not doing this. This is not allowed under the zoning ordinance. Not contained on their lot. Substantially more use. They are asking for double the number of employees.

Aaron Webb, times have changed. Defining the parameters is what we need. There is no defined answer to this. Historically times have changed. Attorneys should figure this out so that we can help define. So many hurdles for this.

Attorney Kenney, the business does have a right to grow, but they are asking for substantially, double the area.

Aaron Webb, understand pre existing, how do we go ahead and do this/common ground?

Chair Jacob Dewey, need to determine what was the pre existing and what would the expansion be.

Attorney Kenney – significant increase of activity here, no public water here.

Manny Alves, if improved, historical level, proposing something more. But they are improving what is there now. Parties have changed now. How is more detrimental?

Attorney Kenney current conditions is a violation, would want any special permit issued to reflect no cars, boats in backyard.

Patrick Watson, 976 Main Street in attendance. Right of way concerns. Can't access his property. Purchased property in 1989, appreciates the fence and buffer, identify how many cars on property. Right of way is different from the one proposed tonight. Not sure which is correct proposal for fence.

Herb Bodenseik, is this your sole access to your property?

Patrick Watson, yes. Would like the right of way to be a right of way.

Edward Jay in attendance, Civic Association. Would like to set a firm number of vehicles to be here. Hours of operation need to be adhered.

Suzanne Vetrion, abutter owns 7 G's liquor store. Water is fine, not contaminated here. Previous tenant was a challenge. This new tenant does respect right of way, have four tenants in her building, none of them complain about the activity at this business. It's a permitted use, just like our building is. Some of the complaints that people have are unjust. They are good neighbors. Let's give them some rules for them to follow.

Letter dated February 2, 2025, from Peter Sundelin read into record.

Roberta Goff, 104 Race Lane Marston Mills. Boarded horse at Olander barn. Expansion of use concerns. Detrimental to the environment.

Chair Jake Dewey, letters received:

West Barnstable Civic Association dated February 7, 2025.

Lisa Hendrickson dated February 12, 2025.

Attorney Lawler, disputing some of the photos previous shown by Attorney Patrick Nickerson. They will not be working with electric vehicles. Will address comments at the next meeting. Did discuss with Attorney John Kenney and is willing to meet and narrow issues. Would like to continue until then.

Chair Jacob Dewey, were septic flows calculated? It's on the site plan review letter. Fire Dept. Comments?

Attorney Lawler, will have at April 9<sup>th</sup> - Fire Dept. had questions at informal and eventually approved.

Chair Jacob Dewey, would like to see previous conditions and proposed conditions.

Attorney Lawler, his client/new has made substantial improvements.

Chair Jacob Dewey confirms, are you disputing Bldg. Commissioner's letter? This is the base line, so ask for expansion from there.

Attorney Lawler, yes.

Mark Hansen, on plan would be helpful - parking spaces in front of doors, realistic flow of traffic from there, show gates, loading unloading areas, employee parking.

Attorney Lawler, residential home does have one parking space, one not included in the 35.

Chair Jacob Dewey, put dates on photos please.

Herb Bodensiek, establish a baseline before discussing expansion of use.

**Chair Jacob Dewey entertains a motion to continue to April 9<sup>th</sup> 2025, moved by Aaron Webb, seconded by Herb Bodensiek, All vote aye**

#### **New Business**

None

#### **Correspondence**

- Cape Cod Commission meeting agenda for January 30, 2025 at 3:00 pm.
- Cape Cod Commission continued hearing notice for the Wilkens Housing Phase II project for Monday, February 10, 2025 at 5:00 pm.
- Planning Board Notification for Regulatory Agreement for Shoestring Properties, February 24, 2025 at 7:00 pm.

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

#### **Upcoming Hearings**

February 26, 2025 (remote), March 12, 2025 (in person), March 26, 2025 (remote)

#### **Adjournment**

**Motion made by Chair Jacob Dewey to adjourn, seconded by Herb Bodensiek, All vote aye**

Respectfully submitted,  
Karen Pina

The meeting ended at 10:15 p.m.