

Zoning Board of Appeals
MINUTES
Wednesday, February 26, 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 26, 2025, 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/87200317826	US Toll-free: 888 475 4499
Meeting ID: 872 0031 7826	Meeting ID: 872 0031 7826

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	
Natalie Pittinger		X

Also present is Anna Brigham, Principal Planner, James Kupfer, Director of Planning and Development, and Attorney Kate Connolly.

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

Old Business

7:00 PM

Appeal No. 2024-050

McNamara/Holistic Health Group

Tim McNamara d/b/a Holistic Health Group has applied for a Special Permit pursuant to Section 240-30 Medical Marijuana Overlay District. The Applicant proposes to operate a medical marijuana treatment center, licensed through a Host Community Agreement with the Town Council, with the purpose of conducting patient dispensary sales. The subject property is located at 120 Airport Road, Hyannis, MA as shown on Assessor's Map 294 as Parcel 014. It is located in the Industrial (IND) Zoning District. **Continued from January 22, 2025. Members assigned: Dewey, Bodensiek, Pinard, Hansen, Webb.**

Tim McNamara was in attendance for this item.

Tim referenced the meeting on January 22, 2025 in which this item was continued. Several details were requested for this project. Tim addressed the board's concerns from the last meeting:

1. The buffer zone and what would happen if a conflicting use per the ordinance were located within the buffer zone. The answer from Town Council was the project would be deemed a pre-existing non-conforming use but it would not affect the operation of the marijuana treatment center.
2. With respect to pedestrians: the ordinance does call upon certain alternate modes of transportation. A summary was provided with the various modes of transportation that may be used to arrive at the area.
3. Parking: 37 spaces. The requirement is based off for every 200 sq feet a parking space needs to be provided.
4. The site is accessible to pedestrians with a safe passage to the entrance.
5. Cape Cod RTA has two routes presently that run along that road at this time and the DART program. The two routes would be accessible to this location. Two parking spaces reserved for programs such as Lyft or DART.
6. Hours of operation: 8am-9pm.
7. Security Plan: No contact back from the Chief. The state also requires that the applicants reach out to the local police department. These plans have been shared with a detective and lieutenant detective and have referenced the facility in Middleborough so that the police department has both paper and how it looks in practice.

Tim requested that the board consider that the board condition the special permit upon state licensure or that chief of police speaks to the security plan at some point prior to operations.

Chair Dewey asked for an update on Planning Board not recommending this to Town Council. Planning and Development Director James Kupfer clarified that this item before Zoning is for medical marijuana and the item that was before Planning Board was a different matter consisting of a citizen's petition for recreational marijuana that was not site specific but did outline a district which does include the medical marijuana overlay district. That citizen's

petition was not recommended by the Planning Board. Chair Dewey asked if Town Council were to approve the citizen's petition, would that open this facility to be eligible to not require a host community agreement and to be recreational. Director Kupfer answered that not necessarily the host community agreement aspect but potentially as the site is located within the petitioned outline district, but they would have to go through the process for that. Mr. McNamara clarified that they are specifically looking to service registered patients under the medical marijuana program of Massachusetts.

Chair Dewey referenced the ordinance that it is a written requirement that the Chief of Police review the Security Plan and asked for Director Kupfer's recommendation on how to proceed with that as it does not seem that they can condition that requirement. Director Kupfer is happy to work with Mr. McNamara and the Chief of Police as the ordinance is quite specific in that it states the Chief of Police must review the security plan.

Chair Dewey asked about elevations for the signage as this is another requirement outline in the ordinance. Mr. McNamara referenced the site plans showing the location of the sign. Mark Hansen asked if it only the two signs, one on the building and one at the entrance to the lot. Mr. McNamara confirmed. Chair Dewey asked if the sign will be lighted or not lighted. Mr. McNamara answered there would be ground lighting and follow sign code. Paul asked if the signage conforms to the Town's code. Chair Dewey answered that it will have to. The requirements of the ordinance state architectural drawings of the building and signage must be submitted.

Public Comment: Two new letters of support were received since the previous meeting.

Peter Cahill, resident of Centerville residing at 83 Knotty Pine Lane, commented in support of this proposal.

Town Councilor, Betty Lutdke commented that it is disturbing that the applicant is unable to get what he needs to fulfill this as the applicant has been very diligent. She thanked Director Kupfer for stepping forward to help with this. She would like to be kept informed on the progress.

Chair Dewey moved to continue appeal number 2024-050 to March 12, 2025 at 7:01pm. Mark Hansen seconds.

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

New Business

7:00 PM

Appeal No. 2025-001

Alicia L. Fix, Trustee

Alicia L. Fix, Trustee of the 333 Seapuit Road Realty Trust, has applied for a Special Permit pursuant to Section 240-94 B. Nonconforming Use, Expansion. The Applicant proposes to alter a preexisting nonconforming use by transferring the 470 square foot apartment unit located in the former principal dwelling to a proposed 874 square foot golf cart barn. The subject property is located at 359 Seapuit Road, Osterville, MA as shown on Assessor's Map 095 as Parcel 009. It is located in the Residence F-1 (RF-1) Zoning District.

Chair Dewsey assigns himself, Herb Bodensiek, Mark Hansen, and Aaron Webb.

Attorney Michael Schulz is in attendance for this item. The applicant has applied for a special permit for to alter a pre-existing non-conforming use by transferring it from the former principal dwelling to the golf cart barn. Attorney Schulz gave background to the purchase of the property which contains just under 2 acres of land and is situated in the RF1 district, the AP district, and the Resource Protection Overlay district. The subject of the three dwelling units as a pre-existing non-conforming use has been brought up and documented to the Building Commissioner, Brian Florence. The structures are consistent with the rest of the neighborhood in terms of size and setbacks. As shown on the site plans prepared by Sullivan Engineering and Patrick Ahearn Architects dated December 19, 2024, they are seeing to transfer that use. Attorney Schulz detailed that this special permit is accepted under the ordinance for the grant of a special permit that Section 9424 of the ordinance 24094B along with Section 125 in general laws 408 section 6 does allow the board to grant a special permit. Attorney Schulz submitted that this would not be more detrimental to the neighborhood than the existing use, there is no increase in dwelling units, it will remain as an apartment unit, it will remain incidental and subordinate to the principal unit, and there is no objection from the building commissioner. The setbacks will remain the same and the proposed use will remain the same. John O'Day and Alicia Fix were introduced.

Mark Hansen clarified that golf cart barn is a new build. The existing unit or bedroom will be removed from the principal dwelling and the use transferred to the sub 900 square foot golf barn. Attorney Schulz confirmed.

John walked the board through the site plan pointing out that the structures meet the setbacks. John noted that the existing number of bedrooms is seven and will remain seven across the three structures on the property. Septic permits for seven bedrooms.

Paul Pinard asked to clarify the specific issue as to why the applicants are applying for a special permit. Attorney Schulz clarified that when the property was purchased the principal unit has an apartment unit that was attached to it and now the principal dwelling will not have that apartment unit, and they are seeking to transfer that unit to the golf cart barn.

Public Comment: None

Chair Dewey makes a motion to close the public comment. Mark Hansen seconds.

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

Chair Dewey makes a motion to close the public hearing. Paul Pinard seconds.

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

Board Discussion: Manny Alves expressed concern that although the use is pre-existing non-conforming, the new structure should be subject to applicable zoning. Aaron Webb circled back to Manny's point and asked where this is not conforming to zoning. Attorney Schulz clarified that this falls under the use. They are in full compliance with zoning as they are seeking a transfer of use through a special permit in which they are determining if this would be substantially more detrimental to the neighborhood than what is already existing. It comes under the Town of Barnstable by law as an expansion. Mark Hansen asked to clarify that if not for the transfer of use of the dwelling unit, would this be allowable by right. Attorney Schulz confirmed.

Findings read into the record:

Mark Hansen moves-

1. The application falls within a category specifically accepted in the ordinance for grant of a special permit fins that Section 240-94B allows for a special permit.
2. After evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the zoning ordinance and would not present a substantial detriment to the public good or the neighborhood affected as it meets all setback requirements and lot coverage requirements as presented.
3. The site plan has been reviewed and found approvable with conditions. In this case, site plan review is not required.
4. Any proposed expansion of the use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties.
5. The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming.
6. The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming.
7. At the discretion of the Zoning Board of Appeals, improvements may be required in order to reduce the impact on the neighborhood and surrounding properties including but not limited to the following:
 - (a) Greater conformance of signage to the requirements of Article VII;
 - (b) The addition of off-street parking and loading facilities;
 - (c) Improved pedestrian safety, traffic circulation and reduction in the number and/or width of curb cuts;

(d) Increase of open space or vegetated buffers and screening along adjoining lots and roadways. The applicant shall demonstrate maximum possible compliance with with § 240-53, Landscape Requirements for Parking Lots, Subsection F, if applicable.

Herb Bodensiek seconds.

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

Conditions:

Marken Hansen referenced findings. Conditions 1 through 4 and asked to add a 5 for a full build out.

Attorney Schulz felt it is distinguishable. Chair Dewey also felt that the fifth condition should be required as he does not want further expansion without the requirement of coming back to the board for approval. Attorney Schulz asked to define the expansion as the golf cart barn itself for size, scope, and usage. The board was amenable to Attorney Schulz's suggestion.

Proposed fifth condition: This shall constitute as a full build out of the proposed golf cart barn as shown on plans submitted to the Town and dated December 19, 2024. Any other expansion of that use would have to come back before the board.

Vote on Conditions:

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

7:01 PM

Appeal No. 2023-010

Arista Hyannis LLC - REMANDED

Arista Hyannis LLC has applied for a Special Permit in accordance with Section 240-25(B)(22) and 240-25(C)(10) Drive-Through for a proposed restaurant. The Applicant proposes to remodel the former bank building and change the use to a food service establishment with a drive-through. The subject property is located at 715 West Main Street, Hyannis, MA as shown on Assessor's Map 249 as Parcel 155. It is located in the Highway Business (HB) District. The Land Court, in an order issued on January 28, 2025 following an appeal of the Board's previous denial of the special permit has ordered the matter remanded to the Zoning Board of Appeals for further deliberation in accordance with the terms of the order. The board will consider the matter in accordance with the terms of the court's order after judgment with no further public comment.

Members assigned were Dewey, Bodensiek, Hansen, Alves, and Johnson who is no longer a member of the board.

Attorney Kate Connolly noted that since this item was remanded back for deliberations, the member that voted on this item must be the members who continue deliberations. She confirmed that four members which constitutes a quorum are present.

Chair Dewey referenced the judgement which was entered in favor of Arista and against the Zoning Board of Appeals. The judge ordered and decreed that the Zoning Board of Appeals decision and notice in Special Permit case number 2023-010 filed in the town clerk of Barnstable on January 26, 2024, is vacated. The case is remanded to the ZBA for further proceedings in accordance with the court's findings and conclusions. Order of the judges and decrees that without limiting the foregoing numbered orders, the board on remand may not consider the impacts of risk as a proposed drive-through on:

a traffic generation

b. the circulation of traffic within the site

c. Pedestrian or vehicular traffic within the site on or along West Main Street, Pine Street or the intersections of those street.

Orders the judges and decrees that this Court shall retain jurisdiction over this matter. By order of Judge Michael Davey.

Chair Dewey asked if Attorney Connolly if she has any questions for the board or if she would like to give direction to the board. Chair Connolly noted that the judge has not given a lot of discretion in this matter. The Board chose not to appeal and chose to comply with the Court's order. One issue is that the zoning was changed in this district for restaurants to have drive throughs as of right. The Court has ordered the Board to reconsider this matter but not to consider any of issues with respect to the drive-through. Unless there is something else the Board can come up with as a finding that shows a substantial detriment to the public good then the Court has ordered the Board to issue the special permit. A staff report was provided for consideration of conditions.

Manny Alves asked to clarify that the judge ordered the Board to issue the permit. Attorney Connolly confirmed and referenced paragraph 3 of the Court's decision. Manny feels strongly that the order did not say anywhere that the ordinance of the town of Barnstable is any way invalid or unlawful. The ordinance 240 25 C says that in addition to the standard special pe

Chair Dewey stated that the fact that the drive-through abuts a residential area rather than rmit guidelines this board has to vote and make a finding that the use will not substantially adversely affect multiple items including health, safety, comfort, and convenience of the community. Ninety-one people either made comment at the meeting or submitted letters in opposition of this application. It was made clear the restaurant could be built as of right. Manny Alves feels he cannot vote in favor as this would adversely affect the comfort and convenience of the community. It a separate finding above and beyond the 125C standards.

Attorney Connolly responded to Manny's comments that the Court did not invalidate the ordinance. The Court did not agree with the Town. The court found even with the concerns of the Board had about traffic that that was not a substantial detriment to the public good. Chair Dewey asked Manny Alves to identify the items that impacts the comfort and convenience of the public only related to the drive through and not the restaurant itself or traffic.

Manny Alves identified the age of the population where there is a concern in the community and that is of the high school students directly across the street. The population of drivers that will be accessing this drive-through will be mostly comprised of kids from the high school. Given the standards of the ordinance as written did not meet the threshold. Chair Dewey asked to clarify that Manny's point is that these are inexperienced drivers, and that Manny does not believe that that falls into the category of traffic. Manny confirmed.

Mark Hansen commented that the drive through window incentivizes kids to drive through that intersection not as a traffic flow issue but as a safety concern. He asked if that intersection is being reviewed for high traffic incidents or safety incidents. Director Kupfer noted that that intersection is not one being reviewed in the road safety audit. This intersection has been analyzed for safety concerns for quite some time and is listed on the capital improvement plan as a priority of the town though not the top priority at this time. Mark Hansen reiterated his concern that perhaps not traffic but the incentivization to get into a car to go through the drive though. Attorney Connolly clarified that traffic and pedestrian safety concerns is included in traffic.

Paul Pinard asked what would happened if the Board votes to deny this application again. Attorney Connolly advised that this is a very limited remand. She cannot say exactly what the penalty would be, but the court retained jurisdiction. than on the other side of the restaurant which abuts the highway district may be detrimental to the comfort and convenience of the public. Mark asked if the increased noise volume could be considered a nuisance to the neighborhood. Chair Dewey noted yes, the LED sign, the lights, the cars idling, the car headlights, etc would all need to be considered. Attorney Connolly commented that many of those issues just mentioned the court found were not an issue and the board cannot consider. The only new issue the Board has proposed is the volume of the speakers.

Findings read into the record:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-25 (B)(22) and 240-25 (C)(10) Drive-Through for a proposed restaurant allows for a Special Permit.
2. A site plan has been reviewed and found approvable in accordance with Article IX herein subject only to the issuance of a special permit (see letter dated April 11, 2023).
3. Land Court Orders, Adjudges, and Decrees, that without limiting the foregoing numbered orders, the Board on remand may not consider the impacts of Arista's proposed drive-through on (a) traffic generation, (b)

the circulation of traffic within 715 West Main Street (including, but not limited to, the amount of “queuing” within the site), (c) parking within the site, and/or (d) pedestrian or vehicular traffic on or along West Main Street, Pine Street, or the intersection of those streets.

4. The Board continues to find that after an evaluation of all the evidence presented, the proposal would represent a substantial detriment to the public good or the neighborhood affected due to the requested drive-through. The Board disagreed with the Court’s finding and continues to raise concerns over traffic volume, turning movements, parking impacts, and how each interact with the neighborhood and its unique location given its proximity to the High School campus directly across the street.
5. The Board finds that the Land Court has ordered a REMAND to limit what the Zoning Board of Appeals could consider to grant this permit on remand.

Mark Hansen makes a motion to accept the Findings. Board Member Herbert Bodensiek seconds the motion.

AYE UNDER PROTEST: Jacob Dewey, Herbert Bodensiek, Mark Hansen, and Manny Alves

Conditions:

1. The proposed development shall represent full build-out of the lot. Further alteration or expansion of the structure or construction of accessory structures is prohibited without prior approval from the Board.
2. All mechanical equipment associated with the structure (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
3. The hours of operation of the Drive-through shall be the same as the hours of operation of the indoor restaurant and shall at no time exceed 10:00 pm.
4. All light and noise related to the drive through shall not trespass beyond the property line. Any impacts from light and noise on the abutting properties from the drive through shall be mitigated immediately.

Vote on conditions:

AYE UNDER PROTEST: Jacob Dewey, Herbert Bodensiek, Mark Hansen, and Manny Alves

Correspondence

- Cape Cod Commission meeting notice for Eastham DCPC, Thursday, February 27, 2025 at 3:00 p.m.
- Cape Cod Commission meeting notice for Wilkens Housing Phase II, Thursday, February 27, 2025 at 3:00 p.m.
- Cape Cod Commission meeting notice for Wilkens Housing Phase II Wednesday, February 19, 2025 at 5:00 p.m.
- Park City Wind LLC Final Order for construction of substation.
- Cape Cod Commission meeting Notice for Wilkins Housing Phase II, Monday February 24, 2025 at 5:00 pm.
- Cape Cod Commission DRI Decision for Starightway and Hyannisport Water Facilities

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

March 12, 2025 (in person), March 26, 2025 (remote), April 9, 2025 (in person)

Adjournment

Chair Dewey moves to adjourn. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Mark Hansen, Paul Pinard, Larry Hurwitz, Manny Alves, Rodeny Tavano

Nay: None

Documents Used at this Meeting

- Appeal No. 2025- 001 Alicia L Fix Application Packet

- Document entitled Atty Schulz Memo
- Staff Report 2025-001 Fix
- Appeal No. 2024-050 McNamara Application Packet Plans
- Document entitled Security Plan Overview
- Document titled Site Ingress Egress All Forms of Transportation
- Staff Report 2024-050 McNamara
- Decision 2023-010
- Staff Report 2023-010 Arista
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Respectfully submitted,
Erica Brown, Administrative Assistant

Further detail may be obtained by viewing the video via Channel 18 on demand at <http://www.town.barnstable.ma.us>