



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
Anna Brigham – Principal Planner – anna.brigham@town.barnstable.ma.us
Genna Ziino – Administrative Assistant – genevey.ziino@town.barnstable.ma.us

MINUTES

Wednesday, March 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, March 12, 2025, at the time indicated:

Call to Order

Introduction of Board Members

Roll Call Attendance

Mark Hansen
Natalie Pittenger
Herb Bodensiek
Jake Dewey
Larry Hurwitz
Rodney Tavano

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

Minutes from February 12, 2025

Chair Jacob Dewey entertains a motion to approve, moved by Mark Hansen, seconded by Natalie Pittenger, All vote aye

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 and February 26, 2025. Members assigned: Dewey, Bodensiek, Pinard, Hansen, Webb.*

Larry Hurwitz can vote on this.

Tim McNamara in attendance. He gives a history. Chief of police contacted. Received security documentation. State regulations concerning medical marijuana treatment center. Comments from Chief – has responded to these. Most answers are in the regulations.

Mark Hansen, any questions that maybe could not be answered?

Tim McNamara, state requires keep in contact with them, if incident. Diversion, if product ends up and is a discrepancy. Chief, security plan listed only registered agents and background check for red flag offenses. Employees permitted in back of the house. Have to be a registered guest. Law enforcement can come without being a registered guest. Has given them a tour Middleboro – and greenways project/disposal and expiration of product information. Like the Middleboro location Middleboro manufactures – this is just retail.

Larry Hurwitz, do we have a copy of the Chief's comments?

Tim McNamara, this was an email exchange. Email shown with responses on screen - Review of questions. Law enforcement and security information. There are exterior cameras.

Chair Jake Dewey, did Chief find adequate? Confirmation of this?

Natalie Pittenger, instant access for film etc. – does provide immediate access?

Tim McNamara, yes.

Mark Hansen, all questions covered by statute?

Tim McNamara, Chief fulfilled her questions to the Board, not required to make adjudication.

Chair Jake Dewey, Chief has to provide a written comment to the Board – that's what ordinance states.

Tim McNamara, parking areas available is more than adequate. Within the guidelines.

Details of the buffer – straight line analysis. 510 to 520 ft. front door in center. Impassable barrier definition read/from ordinance/regulations. Barnstable ordinance – 2012 law definition reviewed. 2024 new definition require that the buffer apply to a school, in particular.

Natalie Pittenger, entrance to Ninja bldg. – how wide is the building?

Tim McNamara, not sure about the analysis of which door to which door. Straight line analysis.

Chair Jake Dewey, context map? - Context map shown and reviewed.

Tim McNamara, church near. Believed that this was the only conflicted building. It was decided to reduce buffer to 500. Spoke to all neighbors.

Chair Jake Dewey, project site.

Tim McNamara, Bldg. Commissioner confirmed details for this to come to ZBA as a special permit in the approval for site plan.

One piece of correspondence received.

Public comment

Town Councilor Betty Ludtke in attendance. Resident of Hyannis. Citizens petition for recreational dispensary and medical dispensary. In support of the medical dispensary, this is medicinal. The siting is good. In area where there are not a lot of children congregating.

Motion made by Mark Hansen to close public comment, seconded by Herb Bodensiek?

All vote aye

Mark Hansen – put requirements in our conditions, with Chief's information.

Motion made by Chair Jake Dewey to close public hearing, seconded by Herb Bodensiek,

All vote aye

Findings read into record:

Mark Hansen moves –

- 1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-94 B. allows for 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. 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 December 10, 2024.

Further Section 240-30 F. (2) requires the Board to find that:

(a) The medical marijuana treatment center complies with all requirements of this section, including but not limited to Subsections E and F in their entirety.

(b) The medical marijuana treatment center is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by other medical marijuana treatment centers, it has been established by the Massachusetts Cannabis Control Commission that supplemental service is needed.

(c) The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, cyclists and public transportation users.

(d) Traffic generated by client trips, employee trips, and deliveries to and from the medical marijuana treatment center shall not create a substantial adverse impact on nearby residential uses.

(e) Where necessary to shield adjacent uses, the Zoning Board of Appeals may require buffering by fencing, vegetation or other screening methods.

(3) Prohibition on transfer. The special permit shall be issued to the owner of the Medical marijuana treatment center and shall not transfer with a change in ownership of the business and/or property.

(4) Limitation of approval. A special permit authorizing the establishment of a medical marijuana treatment center shall be valid only for the registered entity to which the special permit was issued, and only for the site on which the medical marijuana treatment center has been authorized by special permit. If the registration for a medical marijuana treatment center has been revoked, transferred to another controlling entity, or relocated to a different site within the Medical Marijuana Overlay District, a new special permit shall be required prior to issuance of a certificate of occupancy.

(5) Revocation/nonrenewal.

(a) In accordance with 935 CMR 501.103(4), Expiration and Renewal of Licensure, all materials submitted pursuant to the MTC compliance with that section shall also be submitted to the Zoning Board of Appeals record file. The Board reserves the right to hold a public hearing based on a review of the materials showing inconsistencies with special permit conditions and/or the requirements and standards of this section.

(b) In accordance with 935 CMR 501.105(18), Requirements on the Expiration, Revocation, or Voiding of Certificate of Licensure of MTC, should Cannabis Control Commission take action under this section, the special permit shall be null and void.

Herb Bodensiek seconds. All vote aye.

Conditions

Mark Hansen – reference Findings– Special Permit Conditions 1 thru 5 and add Condition No. 6 stating that written confirmation for adequacy of the security plan be submitted by the Town in writing permit, seconded by Herb Bodensiek,

All vote aye

Chair Jacob Dewey – ordinance sufficient – be maintained at a similar level as long as in existence. Maintained – buffer.

Tim McNamara application d/b/a Holistic, Corporation is the holder of the medical license. Clarify. How should reflect?

Anna Brigham, decision should be under? Holistic Health Group Inc. Change this in the conditions.

Vote on conditions

All vote aye

New Business

7:01 PM

Appeal No. 2025-002

Hyannis LSOF Investment LLC

Hyannis LSOF Investment LLC have petitioned for a Variance pursuant to Section 240-63 A., E., & H. Signs in the Residential Districts, and Section 240-65 A., C., D., F. and G Signs in the B, HB Districts. The Petitioner seeks a variance for additional signage related to hotel and resort in order to add six (6) additional signs. Specifically, at LandShark Bar & Grill proposed signage 31.5 square feet, Margaritaville Spa proposed signage 11.1 square feet, Compass Rose Ballroom and Spa proposed 14.3 square feet, at Fin City Arcade proposed 22.2 square feet, at Fins Up Water Park proposed 27.8 square feet, and at Fins Up Water Park freestanding signs 25.5 square feet. The subject property is located at 1225 Iyannough Road/Rte 132, Hyannis, MA, as shown on Assessor's Map 273 as Parcels 023 and 122. It is located in the Business (B), Highway Business (HB) and Residence C-1 (RC-1) Zoning Districts.

Attorney Alex Rodolakis in attendance. Has additional hand out for distribution to Board. Add 6 signs and 212 sq. ft. of signage. Former Cape Codder Resort, now Margaritaville. 253 thousand sq. ft. facility on two parcels of land. Aerial map handout referenced. Two signs there right now. Rte 132. Seeking to add signage. Shows where existing signs are. Sign A, for Landshark bar and grill to Rte 132 Sign B, will have the Spa sign, building signs, Sign C, Spa and Compass Ballroom. Sign F, road sign, showing where the waterpark is.

Sign – directional signs where waterpark is. Add 6 signs. Only one road sign, the rest are on the building itself. In two zoning districts. Shape of the lot is unique, corner of two major roads. Total sq. footage 212 sq. ft. Limiting the signage limits the exposure for people to see. Need for information, year round facility with many year round amenities. Good for general public to be able to access. Relief is limited. 270 thousand sq. ft. Granting a variance for this unique property.

Herb Bodensiek, confirms one free standing sign to be added. The previous business had many signs.

Attorney Rodolakis, one on Bearses Way. Owner, prior ownership signs – we are putting new ones where the previous were, except the free standing.

Mark Hansen, confirms not framed signs? Calculation done? How far over if take out directional signage?

Attorney Rodolakis, did recalculate signs. Two cannot be seen from the road, Finn and Arcade.

Larry Hurwitz, lighted signs? Owner, yes, Landshark sign is illuminated, 3 signs in total out of 9. Some have landscaping spot lights.

Attorney Rodolakis, no flashing signs, illuminated steady.

Chair Jacob Dewey, variance request, should go to Town Council zoning per SCRODD allows these things, a lot of lots being bisected.

Attorney Rodolakis, it's the size of the lot and on major roads, won't find another within these zoning districts, old school business districts. Residential side has no signage. The shape of the lot is unique.

Chair Jacob Dewey clarifies that previous signs were permanent or not? Variance may not be the right avenue.

Discussion per amount of signage and variances being issued.

Chair Jacob Dewey asks for any public comment. None.

Motion to close the public hearing, moved by Herb Bodensiek,

All vote aye

Attorney Rodolakis, explains, different dining venues here and this is a resort, this is unique. It's nine different things here. Biggest single use structure in the town. Mall is different. This is one owner, one tenant – resort. Have demonstrated all three factors.

Herb Bodensiek, does see as pre existing use.

Mark Hansen is the shape the detriment with this property?

Discussion re variance and it being substantially unique

Larry Hurwitz, Exhibit 4, lighting – Margaritaville Sign. Confirms the lighting is from the building. Owner, yes.

Mark Hansen, opportunity to bring something forward to Town Council – rather than do a variance.

Attorney Rodolakis, has to be a case to satisfy – multiple venues operating here. Having to get multiple licenses from town and the state.

Mark Hansen, massive connecting structure. Discussion re access and shape of the lot.

Herb Bodensiek, this is a special case.

Larry Hurwitz, majority of signs on the building.

Attorney Rodolakis, yes and one free standing sign. Met with Bldg. Dept., do need the variance for the signage.

Chair Jacob Dewey, some of the signs we could ask to not be there, less signage possibly?

Larry Hurwitz, LED signs can be bright. Should have some requirements on that.

**Chair Jacob Dewey closes public hearing, seconded by Mark Hansen,
All vote aye**

Chair Jacob Dewey entertains a motion for the Findings, Mark Hansen reads Findings into record:

Variance No. 2025-002, pursuant to Section 240-63 A., E., & H. Signs in the Residential Districts, and Section 240-65 A., C., D., F. and G Signs in the B, HB Districts for additional signage related to hotel and resort in order to add six (6) additional signs. Specifically, at LandShark Bar & Grill proposed signage 31.5 square feet, Margaritaville Spa proposed signage 11.1 square feet, Compass Rose Ballroom and Spa proposed 14.3 square feet, at Fin City Arcade proposed 22.2 square feet, at Fins Up Water Park proposed 27.8 square feet, and at Fins Up Water Park freestanding signs 25.5 square feet at 1225 Iyannough Road/Rte 132, Hyannis, MA.

- 1. Owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located. The Board found that the lot shape, size, and fronting on two major roadways make it unique. The Board also found that there are multiple uses, two entrances, a large structure, additional signage is necessary due to multiple venues.**
- 2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioners. The Board found that without additional signage, it would be a hardship for the business and for customer access within the property.**
- 3. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance. The Board found that the signage will not derogate from the purpose and intent of the Ordinance and will not impact the abutting residential properties.**

**Seconded by Herb Bodensiek,
All vote aye**

Conditions;

Read into record – Mark Hansen, with conditions as amended, as follows:

- 1. Variance No. 2025-002 is granted to Hyannis LSOF Investment LLC pursuant to Section 240-63 A., E., & H. Signs in the Residential Districts, and Section 240-65 A., C., D., F. and G Signs in the B, HB Districts for additional signage related to hotel and resort in order to add six (6) additional signs. Specifically, at LandShark Bar & Grill proposed signage 31.5 square feet, Margaritaville Spa proposed signage 11.1 square feet, Compass Rose Ballroom and Spa proposed 14.3 square feet, at Fin City Arcade proposed 22.2 square feet, at Fins Up Water Park proposed 27.8 square feet, and at Fins Up Water Park freestanding signs 25.5 square feet at 1225 Iyannough Road/Rte 132, Hyannis, MA.**
- 2. The proposed signage shall be constructed in substantial conformance with the plan entitled “Exhibit 3, 4, 5, 6, 7, 8 Margaritaville Resort” dated July 5, 2024 by Tyson Sign Company.**
- 3. None of the rear-facing signs can be internally illuminated without approval by the Board.**
- 4. No neon signs or signs made of lighting apparatuses or bulbs. All signage to be only internally illuminated, ground lit or backlit unless additional approval is granted by the Board.**
- 5. This Decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded Decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of a Sign Permit. The rights authorized by this Variance must be exercised within one year, unless extended.**

**Seconded by Herb Bodensiek,
All vote aye**

7:03 PM Appeal No. 2025-004 Rice

Greg and Caroline Rice have applied for a Special Permit in accordance with Section 240-47.2 C. (4) Accessory Dwelling Units (ADUs). The Applicants propose to construct an Accessory Dwelling Unit of 904 square feet adjacent to the existing single family dwelling of 1,806 square feet. The 1-bedroom Accessory Dwelling Unit exceeds the 900 square foot as-of-right limit. The subject property is located at 62 Wren Lane, Marstons Mills, MA as shown on Assessor's Map 029 as Parcel 023. It is located in the Residence F (RF). Board has received a request to withdraw.

Chair Jacob Dewey makes a motion to accept the withdrawal, seconded by Mark Hansen,

**Vote
All vote aye**

7:02 PM Appeal No. 2025-003 daSilva

Gabriel and Elizabeth daSilva have petitioned for a Variance pursuant to Section 240-11 E. Bulk Regulations in RB,RD-1, and RF-2 Residential Districts. The Petitioners seek a variance to the side yard setback to build an in-ground pool on the westerly side of their property. The Petitioners request a variance to locate the proposed in-ground pool 6.6 feet from the property line where 10 feet is required. The subject property is located at 139 Park Avenue, Centerville, MA, as shown on Assessor's Map 207 as Parcel 026. It is located in the Residence D-1 (RD-1) Zoning District.

Elizabeth daSilva in attendance. She explains the proposal for the variance. The structure of the house would have the pool to close. Safety issue. Don't want to move the existing maple tree.

Second point hardship – in order to relocate the pool would have to go to the side and build a retaining wall and level the land and destroy the maple tree.

Thirdly would not be to the detriment if moved – letter in support from the neighbor.

Natalie Pittenger, confirms pool goes directly behind the house.

Mark Hansen confirms the septic location and pool house location.

Elizabeth DaSilva, there was a preexisting garage there that was dilapidated, was pre existing non conforming. Town said can move and replace. Not actually a pool house now, just a shed.

Chair Jacob Dewey, how deep is pool?

Elizabeth DaSilva, 8 ft.

Mark Hansen, no guidance from the town for these types of variances. It's a question of hardship, generally pools are not hardships.

Chair Jacob Dewey, can pool be smaller and then could meet the set back?

Chair Jacob Dewey opens public comment. Correspondence - one letter received from Petter and Meredith O'Toole in support of this with no concerns.

No public comment.

Chair Jake Dewey closes public comment.

**Vote
All vote aye**

Discussion regarding a smaller pool and/or re location and other options.

Elizabeth daSilva requests to withdraw.

Chair Jacob Dewey makes a motion to withdraw, seconded by Mark Hansen,

**Vote
All vote aye**

Correspondence

None
Letter received from Anne Salas regarding solar project on 810 Wakeby Road.

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

March 26, 2025 (remote), April 9, 2025 (in person), April 23, 2025 (remote)
State law for March 26th date – Chair Jacob Dewey asks if any update for this - Anna Brigham replies, no word yet.

Adjournment

Chair Jacob Dewey makes motion to adjourn, seconded by Herb Bodensiek,

Vote

All vote aye

Respectfully submitted,
Karen Pina

The meeting ended at 9:22 p.m.

APPROVED