



Town of Barnstable Zoning Board of Appeals



Board Members:

Alex Rodolakis – Chair David Hirsch – Vice Chair Herbert Bodensiek – Clerk
Jacob Dewey – Regular Member Paul Pinard – Regular Member
Todd Walantis – Associate Member Mark Hansen – Associate Member Robert Twiss – Associate Member
David Bogan – Town Council Liaison

Staff Support

Elizabeth Jenkins – Director - elizabeth.jenkins@town.barnstable.ma.us
Anna Brigham – Principal Planner – anna.brigham@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, May 27, 2020

Alex Rodolakis reads the following:

In accordance with the Governor’s Order Implementing a Phased Reopening of Workplaces and Imposing Workplace Safety Measures to address COVID-19 (COVID-19 Order No. 33) this meeting will be closed to the public to avoid group congregation. Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be accessed via the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/>

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:

<https://zoom.us/j/96268062645>
Meeting ID: 962 6806 2645

Or by calling:
888 475 4499 US Toll-free
Meeting ID: 962 6806 2645

3. Applicants, their representatives and individuals required or entitled to appear before the Zoning Board of Appeals may appear remotely and are not permitted to be physically present at the meeting, and may participate through the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to Anna Brigham: anna.brigham@town.barnstable.ma.us so that they may be displayed for remote public access viewing.

Access to meeting material is available by calling 508-862-4682 or emailing anna.brigham@town.barnstable.ma.us
Meeting material will also be available at <https://www.townofbarnstable.us/boardscommittees/ZoningBoard/> prior to the meeting.

Topics to be discussed:

As a quorum has been met, Alex calls the hearing to order remotely at 7:00 PM

Call to Order

Introduction of Board Members – **All members present confirm their presence verbally:**

Alex Rodolakis - Chair	Present
David Hirsch – Vice Chair	Present
Herbert Bodensiek – Clerk	Absent
Jacob Dewey – Regular Member	Present
Paul Pinard – Regular Member	Present
Todd Walantis – Associate Member	Absent

Mark Hansen – Associate Member	Absent
Robert Twiss – Associate Member	Present
Vacant	

Also present were Anna Brigham – Principal Planner and Carol Puckett – Administrative Assistant

Alex reads the following with no response:

Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Minutes

November 13, 2019, December 11, 2019, January 8, 2020, January 22, 2020, February 12, 2020, March 11, 2020

Alex decides to table the minutes to the next hearing.

Old Business

None

New Business

7:00 PM

Appeal No. 2020-020

Kalkus

Timothy J. and Marcia J. Kalkus have applied for a Special Permit pursuant to Section 240-47.1 – Family Apartments. The Applicants are proposing to convert an existing detached accessory structure into a Family Apartment. The subject property is located at 99 Old Farm Road, Centerville, MA as shown on Assessor’s Map 231 as Parcel 026. It is located in the Residence D-1 (RD-1) Zoning District.

Members assigned tonight: Alex Rodolakis, David Hirsch, Jake Dewey, Paul Pinard, Bob Twiss

Representative: Matthew Teague – President of Reef Realty.

Matt Teague is present and representing the applicants. He is here to request a Special Permit for a family apartment since the existing structure in which it is to be placed is detached. He reads the criteria for a Special Permit. He states that there are two buildings presently on the lot and the proposed family apartment is to be in the second structure, formerly a garage. The family apartment will be under 50%. There will only be one occupant, who is an uncle, and one bedroom. Mr. Teague then gives a summary of the property’s conveyance. He also states that there is a draft affidavit provided to certify the occupant/owner relationship. He states that there will not be much construction as the structure is currently habitable, has utilities, a heating system and will only need to pull a building permit for the cooking facilities (kitchen).

Alex asks for public comment. No one speaks.

Board deliberates. Jake Dewey asks if the current building complies with the current setback requirements. Mr. Teague isn’t sure but thinks so and notes that there are plans to renovate the other structure sometime this summer. He states that he wants to get the family apartment issue addressed now and would address that if need be. He states that the existing building is right next to the lot line and that the structure has a building permit issued to it sometime in 2014 and will send that information to the board members if needed. Jake has concerns because 240-47.1.A(3) is in regards to the setbacks and that it says:

“The apartment must comply with all applicable zoning requirements for the zoning district in which it is located”. Matt Teague states that they are here under 240-47.1.B and that this is a pre-existing nonconforming structure. Jake asks if they have to comply with setbacks in 240-47.1.A. Anna Brigham says no. Matt Teague believes it is because it is a pre-existing nonconforming structure. Jake asks Anna Brigham to comment. Ms. Brigham states that it is a pre-existing nonconforming structure and is allowed. Jake states that the way the code states, it should meet current setback requirements? Ms. Brigham states that this is a special permit so that they do not have to comply to that. Mr. Teague states that the reason they are here is to cement the rights to have that family apartment and the only mechanism available is via a family apartment bylaw. They want to make sure that is done properly when they come to renovate the main house to insure that there not in a situation where they haven’t addressed this issue.

Alex makes findings:

Timothy J. and Marcia* J. Kalkus have applied for a Special Permit pursuant to Section 240-47.1 – Family Apartments. The Applicants are proposing to convert an existing detached accessory structure into a Family Apartment. The subject property is located at 99 Old Farm Road, Centerville, MA as shown on Assessor’s Map 231 as Parcel 026. It is located in the Residence D-1 (RD-1) Zoning District.

***Maria**

Proposal & Relief Requested

The Applicants are proposing to create a family apartment in an existing 440 square foot accessory detached structure on site. The detached family apartment requires a Special Permit pursuant to Section 240-47.1, Subsection B. The subject property is located at 99 Old Farm Road, Centerville, MA.

Section 240-47.1 B. By special permit. The Zoning Board of Appeals may allow by special permit if:

- (1) A family apartment unit greater than 50% of the square footage of the dwelling.
- (2) A family apartment unit with more than two bedrooms.
- (3) Occupancy of a family apartment unit by greater than two adult family members.
- (4) A family apartment unit within a detached structure, with a finding that the single-family nature of the property and of the accessory nature of the detached structure are preserved

Section 240-47.1 C. Conditions and procedural requirements. Prior to the creation of a family apartment, the owner of the property shall make application for a building permit with the Building Commissioner providing any and all information deemed necessary to assure compliance with this section, including, but not limited to, scaled plans of any proposed remodeling or addition to accommodate the apartment, signed and recorded affidavits reciting the names and family relationship among the parties, and a signed family apartment accessory use restriction document

(1) Certificate of occupancy. Prior to occupancy of the family apartment, a certificate of occupancy shall be obtained from the Building Commissioner. No certificate of occupancy shall be issued until the Building Commissioner has made a final inspection of the apartment unit and the single-family dwelling for regulatory compliance and a copy of the family apartment accessory use restriction document recorded at the Barnstable Registry of Deeds is submitted to the Building Division.

(2) Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that there shall be no rental of the principal dwelling or family apartment unit to any non-family members, shall be signed and submitted to the Building Division.

(3) At no time shall the single-family dwelling or the family apartment be sublet or subleased by either the owner or family member(s). The single-family dwelling and family apartment shall only be occupied by those persons listed on the recorded affidavit, which affidavit shall be amended when a change in the family member occupying either unit occurs.

(4) When the family apartment is vacated, or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use as an apartment shall be terminated. All necessary permit(s) must be obtained to remove either the cooking or bathing facilities (tub or shower) from the family apartment, and the water and gas service of the utilities removed, capped and placed behind a finished wall surface; or a building permit must be obtained to incorporate the floor plan of the apartment unit back into the principal structure.

Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

- 1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. *Section 240-47.1. B. allows a Special Permit for a Family Apartment in a detached structure.*
- 2. Site Plan Review is not required for single-family residential dwellings.
- 3. 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. *The structure already exists and can be used as one bedroom and only needs a kitchen.*

The Board is also asked to find that:

- 4. The proposed family apartment would not be substantially more detrimental to the neighborhood than the existing dwelling.
- 5. The single-family nature of the property and of the accessory nature of the detached structure are preserved.

Roll Call Vote:

Member	AYE	NAY	ABSTAINED
Alex Rodolakis - Chair	X		
David Hirsch – Vice Chair	X		

Herbert Bodensiek – Clerk			
Jacob Dewey – Regular Member	X		
Paul Pinard – Regular Member	X		
Todd Walantis – Associate Member			
Mark Hansen – Associate Member			
Robert Twiss – Associate Member	X		
Vacant			

Alex makes a motion to grant with the following conditions from staff report dated May 13, 2020:

Conditions

1. Special Permit No. 2020-020 is granted to Timothy J. and Marla J. Kalkus to establish a family apartment in the existing detached accessory structure at 99 Old Farm Road, Centerville, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled “Existing Conditions Site Plan” by J.M. O’Reilly and Associates, Inc. dated March 12, 2020.
3. The proposed development shall represent full build-out of the lot. Further development of the lot or construction of additional accessory structures is prohibited without prior approval from the Board.
4. The Applicant must comply with the restrictions in Section 240-47.1 Family Apartments C. Conditions and Procedural Requirements 1-4 of the Ordinance as follows:
 1. Certificate of occupancy. Prior to occupancy of the family apartment, a certificate of occupancy shall be obtained from the Building Commissioner. No certificate of occupancy shall be issued until the Building Commissioner has made a final inspection of the apartment unit and the single-family dwelling for regulatory compliance and a copy of the family apartment accessory use restriction document recorded at the Barnstable Registry of Deeds is submitted to the Building Division.
 2. Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that there shall be no rental of the principal dwelling or family apartment unit to any non-family members, shall be signed and submitted to the Building Division.
 3. At no time shall the single-family dwelling or the family apartment be sublet or subleased by either the owner or family member(s). The single-family dwelling and family apartment shall only be occupied by those persons listed on the recorded affidavit, which affidavit shall be amended when a change in the family member occupying either unit occurs.
 4. When the family apartment is vacated, or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use as an apartment shall be terminated. All necessary permit(s) must be obtained to remove either the cooking or bathing facilities (tub or shower) from the family apartment, and the water and gas service of the utilities removed, capped and placed behind a finished wall surface; or a building permit must be obtained to incorporate the floor plan of the apartment unit back into the principal structure.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
6. The 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 the issuance of a building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

Jake asks about Condition #3 if they are going to work on the other structures. Matt Teague clarifies that he won’t be doing work on the main house and may renovate as of right. Right now, they just wanted to make sure that they can use the detached structure as a family apartment. They may have to come back for the renovation but wanted to get the administrative part of the family apartment issue at this done.

Roll Call Vote:

Member	AYE	NAY	ABSTAINED
Alex Rodolakis - Chair	X		
David Hirsch – Vice Chair	X		
Herbert Bodensiek – Clerk			
Jacob Dewey – Regular Member	X		
Paul Pinard – Regular Member	X		
Todd Walantis – Associate Member			
Mark Hansen – Associate Member			
Robert Twiss – Associate Member	X		
Vacant			

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:01 PM

Appeal No. 2020-

Thaler

Joan E. Thaler, Trustee of the Joan E. Thaler Revocable Trust, has petitioned for a Modification of Variance No. 1956-26 or a new Variance in order to demolish and rebuild a smaller, detached garage. Variance No. 1956-26 was granted in order to construct a 2-car garage and shed approximately 3 feet from the southwesterly side yard setback. The proposed garage will be placed approximately, at its closest, 5.4 feet where ten (10) feet side yard setback is required in the zoning district in which it is located. The subject property is located at 139 Point of Pines Avenue, Centerville, MA as shown on Assessor's Map 230 as Parcel 073. It is located in the Residence D-1 Zoning District.

Members assigned tonight: Alex Rodolakis, David Hirsch, Jake Dewey, Paul Pinard, Bob Twiss

Representative: Marian Rose, Esq., from Law Offices of Singer & Singer. Also with her is Chris Wood, the builder.

Attorney Rose gives summary of relief being sought and states that they are seeking modification or a variance to build in the side yard setback. She notes that the same topographical features that existed when the original variance was granted, still remain today. She goes over the criteria for a variance. She points out the structure on the overhead map and explains the unique conditions. As for literal enforcement, they think they can show that if they relocate the garage, it would be a financial hardship. Attorney Rose shows photos from the rear corner of the site which shows the drops in elevation and explains the site plan. She explains the three-prong test as it applies to this request. She also notes that there are underground utilities on site. Chris Wood notes that in that picture where the existing dwelling comes down, at the end of that is where the septic comes out from the basement to the leaching field, etc., The location of garage cannot be moved because of the utilities and the placement of existing trees. Chris Wood notes that the existing garage has a block foundation and is cracked. Structurally, it needs to be torn down and rebuilt properly. Attorney Rose notes that she has not received any opposition from abutters and has included, in her memo to the board, an email written by an abutter at 149 Point of Pines in support. Attorney Rose therefore asks the board to grant the relief being requested. She also has seen the suggested conditions in the staff report and agrees to all of them with exception of Condition #4. She states that this will not be a dwelling space and if there are any mechanicals, they will be happy to screen them.

Alex feels that this request would be better for a variance modification rather than a new variance. Attorney Rose concurs.

Jake Dewey asks about the septic system noting that, in the original variance, there were cesspools. Attorney Rose defers the question to the builder, Chris Wood. Mr. Wood states that there are no cesspools and that everything is up-to-date. Jake asks if all the drainage is surface drainage. Chris Wood says it is surface drainage and the new structure would be on level land. Jake clarifies that the height of the new structure will be conforming and that the added space in the garage will be for storage.

Alex asks for public comment. No one speaks.

Jake Dewey makes findings:

Variance Modification Findings

The statutory requirement of MGL Chapter 40A, Section 10 for granting a variance is a three-prong test. The Board is required to find that each of the following three requirements has been met in order to consider granting the variance:

- 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; Also, the predecessors determined that unique topographical features of the structures that exist there and that the new structure will be smaller
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and we determined that utilities and septic are existing and there would be nowhere else to move the garage
- 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. it abuts on a convergence on driveways and no abutters are opposed

An application for a variance that has met all three requirements "does not confer ... any legal right to a variance." The Board still has the discretionary power to grant or not to grant the variance.

Alex would add that they are just replacing the existing structure

Roll Call Vote:

Member	AYE	NAY	ABSTAINED
Alex Rodolakis - Chair	X		
David Hirsch - Vice Chair	X		

Herbert Bodensiek – Clerk			
Jacob Dewey – Regular Member	X		
Paul Pinard – Regular Member	X		
Todd Walantis – Associate Member			
Mark Hansen – Associate Member			
Robert Twiss – Associate Member	X		
Vacant			

Jake makes a motion to grant with the following conditions from the staff report dated May 13th and noting that in Condition #4, there is currently no proposed mechanical equipment however, should there be, it will be screened, etc.

1. Variance No. 2020-021 is granted to Joan E. Thaler, Trustee of the Joan E. Thaler Revocable Trust to remove the garage built pursuant to Variance No. 1956-26 and replace with a smaller less nonconforming garage at 139 Point of Pines Avenue, Centerville, MA.
2. The site development shall be constructed in substantial conformance with the site plan entitled "Site Plan" dated March 13, 2020 prepared for Patriot Builders by Bass River Engineering.
3. The proposed development shall represent full build-out of the lot. Further development of the lot or construction of additional accessory structures is prohibited without prior approval from the Board.
4. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
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 building permit. The rights authorized by this Variance must be exercised within one year, unless extended.

MODIFICATION OF VARIANCE GRANTED

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

June 10, 2020, June 24, 2020

Adjournment

Motion is made by Alex Rodolakis and seconded by Paul Pinard to adjourn

Roll Call Vote:

Member	AYE	NAY	ABSTAINED
Alex Rodolakis - Chair	X		
David Hirsch – Vice Chair	X		
Herbert Bodensiek – Clerk			
Jacob Dewey – Regular Member	X		
Paul Pinard – Regular Member	X		
Todd Walantis – Associate Member			
Mark Hansen – Associate Member			
Robert Twiss – Associate Member	X		
Vacant			