

ZONING BOARD OF APPEALS

MINUTES

Wednesday, February 10, 2021

Chair Rodolakis opened the meeting by making the following narration:

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 viewed 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:

Join Zoom Meeting Option	Telephone Number Option
https://zoom.us/j/96307091933	888-475-4499 U.S. Toll Free
Meeting ID: 963 0709 1933	Meeting I.D. 963 0709 1933

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 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.

Copies of the applications are available for review by calling (508) 862 4682 or emailing anna.brigham@town.barnstable.ma.us.

Chair Rodolakis took roll call.

Member	Present via Zoom	Present via Phone Call	Absent
Alves E.	x		
Bodensiek H.			x
Dewey J.	x		
Hansen M.	x		
Hirsch D.	x		
Pinard P.	x		
Rodolakis A.	x		
Walantis T.	x		

ZONING BOARD OF APPEALS – Continuation – February 10, 2021

Taping of meeting

No one was taping meeting this evening.

MINUTES

None this evening.

OLD BUSINESS

Chair Rodolakis: read the following: **Appeal No. 2020-040 Beauregard, as Appellant** is appealing the issuance of Building Permit #20-2073 issued on October 2, 2020 to David Parella for the construction of a new home at 101 Warren Street, Osterville, MA . The Appellant is claiming that 101 Warren Street, Osterville, MA, formerly 162 Washington Avenue, and 176 Washington Avenue, Osterville, MA, have merged and therefore are unbuildable as two distinct lots. The subject properties are located at 101 Warren Street (formally 162 Washington Avenue) and 176 Washington Avenue, Osterville, MA as shown on Assessor’s Map 139 as Parcel 086 and 085. It is located in the Residence R-1 (RF-1). Todd Beauregard, as Appellant, is appealing the issuance of Building Permit #20-2073 issued on October 2, 2020 to David Parella for the construction of a new home at 101 Warren Street, Osterville, MA . The Appellant is claiming that 101 Warren Street, Osterville, MA, formerly 162 Washington Avenue, and 176 Washington Avenue, Osterville, MA, have merged and therefore are unbuildable as two distinct lots. **Continued from January 27, 2021.**

Chair Rodolakis related the fact that Attorney Kenney had sent a letter a few days ago so he did file something to move this matter to be dismissed with prejudice. Roll Call Voice vote was taken.

Member	Appeal No. 2020-040	Absent
Alves E.	In favor	
Bodensiek H.		x
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.	In favor	
Rodolakis A.	In favor	
Walantis T.	In favor	

All in favor. This matter is dismissed.

Chair Rodolakis noted before reading this appeal that he would be recusing himself for this appeal and the rest of the meeting and turning the chair over to Acting Chair Hirsch for the rest of the evening.

Appeal No.: Trustee of 33 Oyster Place Realty Trust, is applying for a Special Permit in accordance with Section 240- 93(B) – Nonconforming Buildings or structures not used as Single or Two-Family Dwellings. The Applicant is proposing to alter the pre-existing, nonconforming pier by removing approximately 3,000 square feet of the solid fill pier and constructing an elevated wooden pier with associated ramps and floats for shared use with the Cotuit

ZONING BOARD OF APPEALS – Continuation – February 10, 2021

Fire District and the Barnstable Clean Water Coalition. The subject property is located at 33 Oyster Place Road, Cotuit, MA as shown on Assessor's Map 035 as Parcel 101. It is located in the Residence F (RF) and Dock and Pier Overlay Zoning Districts. **Continued from January 27, 2021.**

Acting Chair Hirsch began with introduction of Attorney Eliza Cox. Attorney Cox represents the applicant. She is with Nutter McClennen & Fish LLP. She introduced the members of her team. **Matthew J. MacKinnon** on behalf of MacKinnon family, Sara Turano-Flores – colleague from Nutter McClennen & Fish LLP, Seth Wilkinson/Wilkinson Ecological, John O'Day – Sullivan Engineering.

Showing a slide presentation, **Attorney Cox began**, "At last hearing we sought continuance...we did so because we were at the Conservation Commission. There have been two substantive hearings. We have another meeting on March 2nd. With Conservation Commission. Based on what information was garnished at last Conservation Commission meeting, client is in process of updating proposed site plan. Plans are not completed but will be submitted to ZBA because it will obviously change the plans that were submitted as part of the Zoning Plan. Attorney Cox noted that she will be seeking a continuance of this hearing following public comment so that we can submit the plan for ZBA's review. However we would like, given the amount of public interest and comments that has been received; we would like to move forward but request to limit the dialog to the greatest extent on the status of existing zoning. We would like to focus on what is shown on the presentation "The property contains a pre-existing non-conforming, dock/pier within meaning of the Zoning Ordinance." At the next hearing after submitting the revised plan, the focus of any of our testimony would be on the follow up from tonight's conservations and to address the special permit criteria based on the updated design.

Attorney Cox introduced Attorney Turano-Flores: She has been working with the MacKinnon Project Team primarily on the Conservation Commission portion. There have been two Conservation Commission hearings. Attorney Turano-Flores will be giving her overview of existing conditions, the proposed conditions as well as the history to better understand what we are asking for with this application. **(Please refer to Attorney Turano-Flores power point presentation for viewing by referring to video for a complete presentation from February 10, 2021 ZBA meeting. Contact Anna Brigham of Planning and Development at (508) 862-4785 to request copies).** Attorney Turano-Flores showed as part of her presentations, (Existing Conditions). The ZBA members should have also received a report from the Town Shellfish Biologist. There is no shellfish located in this area. After explaining what the Mackinnons planned on doing on the proposed conditions versus the existing conditions power point Attorney Turano-Flores is currently indicated that this portion is under reconsideration. One of benefits removing fill in this area is 3,000 sq ft of solid fill will be removed and 14 pilings will remain. We are coming back with fewer pilings on the next amended dock proposal. Attorney Turano-Flores reviewed historical iterations of area. Members of ZBA received copies of all with application it was noted. After much explaining of the different slides and iterations show, a Project Benefit slide was shown with the following benefits listed: a) eliminate 3,000 square feet of existing solid fill wharf; b) retreat landward, existing ces; c) restore salt marsh; d) restore intertidal area; e) improve water quality; f) promote navigation; g) public easement.

ZONING BOARD OF APPEALS – Continuation – February 10, 2021

Attorney Turano-Flores introduced **Seth Wilkinson/Wilkinson** Ecological to present his plan and speak about environmental issues. This was displayed on the screen. The main wetlands being protection side that are being restored are coastal beach and salt marsh. **(Please refer to Seth Wilkinson’s power point presentation for viewing by referring to video for a complete presentation from February 10, 2021 ZBA meeting. Contact Anna Brigham of Planning and Development at (508) 862-4785) to request copies).**

Attorney Cox: began by showing the original slide from the Power Point presentation as well as the slides entitled, “Pier and Dock Overlay District – Sec. 240-37;” “Barnstable Definitions of Dock and Pier - Section 240-128 of Zoning Ordinance and Barnstable Conservation Commission Regulations, Sec. 703-2”; “MacKinnon Wharf is a Dock/Pier within Overlay”; “No Abandonment”; “Procedural Summary reads, “Tonight: Testimony to document that the existing wharf is a “pier or dock” under the overlay and to Request: Continue tonight’s hearing: a) revise plan to reduce proposed length, b) return to Conservation Commission on March 2nd., c) return to ZBA following Conservation Commission with revised plan and to apply special permit criteria to proposed alterations.” Attorney Cox noted that the MacKinnon team is happy to answer any questions that the board might have. **(Please refer to Attorney Cox/s power point presentation for viewing by referring to video for a complete presentation from February 10, 2021 ZBA meeting. Contact Anna Brigham of Planning and Development at (508) 862-4785) to request copies).**

Applicant MacKinnon appeared via Zoom before the board. Asked permission to proceed and everyone said they could hear him fine. Applicant MacKinnon gave a brief background of how long he and his family have resided at this property and is well aware of the shoreline and as seen by the ZBA members – he has a very knowledgeable team describing what he is trying to accomplish for the dock/pier. Acting Chair Hirsch noted that this was the conclusion of the presentation for this appeal – did anyone from the board have any questions? Acting Chair Hirsch recognized Todd Walantis. Mr. Walantis was laboring the challenge in discussing in part and not as a whole. He understands the nature and scope of meeting public comment. Have a challenge entertaining the whole thing without seeing whole project in front of him. Acting Chair Hirsch recognized Paul Pinard. Mr. Pinard: Exactly which property is the proposed dock on now? Attorney Cox replied, “33 Oyster Place”. Acting Chair Hirsch, “And the access to the new (what you are calling it) remodel will be 33 Oyster Place?” “Correct”, replied Attorney Cox. Mr. Pinard, “When we started this I thought it was on shared property.” Attorney Cox, “for the purpose of the Conservation Commission, there is work being done on both properties. The existing pier and altered pier will be on 33 Oyster. Mr. Pinard is looking at 247 and it talks about expansion of existing docks and pier.....not clear on this. Attorney Cox:, “we are reducing size of pier. Existing pier is about 3300 sq. ft. the shape of pier will change but it will be substantially decreased. About a 69% decrease. We expect it will be a larger decrease with a revised plan. Mr. Pinard noted that he couldn’t proceed because they don’t have the right documents. Acting Chair Hirsch agreed with Mr. Pinard.

Acting Chair Hirsch recognized Mr. Dewey. Mr. Dewey raised POINT OF ORDER: asking if ZBA meeting was at the max of public in the Zoom Room because there are 50 people. Chris McKinley noted that

ZONING BOARD OF APPEALS – Continuation – February 10, 2021

that was incorrect. He had been taking names as people were participating. Mr. Dewey continued with questions on the appeal.....participating in this discussion of “stone mound” and what was shoring it up from 1952 also regarding study of quantity of boats docking at the existing pier vs. quantity of boats being allowed at the altered proposed pier. **Attorney Cox** noted that this design is still under consideration. Alterations, definition of docks/piers, evidence of erosion, square footage are discussed here as well as recommendation to discuss further with Town Attorney. Participating in this discussion was **Attorney Cox, Attorney Turano-Flores, Engineer, Acting Chair Hirsch, Messrs. Dewey, Hanson, Alves (members), Mr. Wilkinson, Elizabeth Jenkins (Dr. Planning and Development)**. (Please refer to **ZBA Meeting video, 2/10/21 – time frame 2hrs,50 min to 2 hrs 18 min** for complete discussion of these items.

Acting Chair Hirsch opened **Public Comment**: Mr. Dewey will be time keeper. Public Speakers: **Ms. Grove** (No comment at this time); **Mr. Gargiolo** (Splg) (Summary – what is important is the 1952 document and photos from 1952 to today that that dock was referred to as a dock (I’ll call it what it is – a soil erosion prevention structure). Clearly that’s what Ms. Florence Clausson intended from Chapter 91 permit from 1952. It is this board that enforces the zoning laws. This is not a Conservation Commission decision to rule; **Mr. Townes**: we oppose a new dock in this heavily congested area. We do not oppose the ecological work to be done. Recited Section 240-95 Paragraph A subparagraph 3 read the sentences under this subparagraph and it is his feeling that a marina is being proposed; **Leslie Lowe**: Did file public comment this afternoon. I will read it into this evening’s meeting. Opposed to this appeal and asked pertinent questions referring to property being leased at \$6K a month. Will lessees be able to access dock under their lease and how will it affect our use of the town dock; **Mr. Babcock**: noted he had submitted a written comment already. When you think about the history of this wharf going back to 1874 and use by Cotuit Oyster Company – should this wharf and history go to the Historical Committee? Does anyone know how this would be treated? The alteration of the bulkhead on one side of the structure has so little to do with the existing structure it is really hard for me to see that it could be an alteration as opposed to something quite new that happens to incorporate one small bit of the previous existing structure; **Mr. Barry**: He explained he was a Town Councilor when he submitted legislation during his tenure regarding docks/piers (because at that time he noted there was an influx of requests for docks/piers to go in. It is Mr. Barry’s opinion that in the event that ZBA does decide that this preexisting nonconforming use but it is not; it’s a chunk of land with a bunch of rocks around it; I would direct you to Section F of the dock ordinance which states, “the expansion of an existing dock or pier located within the dock /pier overlay district shall be deemed substantially detrimental and shall be prohibited. I would suggest you act on this now and let us get it done; **Mr. Troubuck**. It is his opinion that if ZBA approves this appeal, it will nullify the dock/pier overlay that was approved 20 years ago. ZBA will set precedence. If you deny it you will reaffirm the town’s commitment to protect the general public’s interest. **Mr. Sillman**: no comment at this time; **Ms. McMurray**: concerned with long term environmental impact, removal of solid fill and construction to pier, can a salt marsh environment survive; **Mr. Walters**: reserving comments on continuances. Please read Shellfish Officer Lewis report regarding her opinion of construction of dock in that area. **Ms. Haenle**: Concurs with Mr. Barry; **Mr.**

ZONING BOARD OF APPEALS – Continuation – February 10, 2021

Long: Opposes this proposal. Are docks/piers taxed; **Ms. Knies:** Have used this proposed dock for many years and listening to other speakers who are against it....she noted that she used it when the town dock/pier was loaded with people; **Mr. Kelley:** no one has mentioned the people who use moorings and how this would affect them and he disagrees that the town fireboat should not have to rely on a private citizen building a pier; **Ms. Fiore-Kelley** is an abutter. She is in opposition because mainly she has never seen a boat tied up to the proposed wharf. My family and I have a dock and we have been paying taxes on it for years. It has an assessment; **Ms. Wilson:** the issue of whether or not this is a dock has been pretty well covered. When the riff-raff went around this pier I believe it preceded the boating use. I believe ZBA should not take this as a preexisting, nonconforming structure. She has requested that ZBA deny this appeal. **Mr. Bunting:** will reserve comments for later. We are in opposition of this project and would like you to deny tonight; **Ms. Walter:** I submitted letter to ZBA this morning. I would like to read a portion of it into the record.....she did submit cases like this one. She cited the fact that Ms. Knies used her husband's name not MacKinnon. She is related to the applicant; **Mr. Rapp:** He chairs Shellfish Committee. He speaks in opposition to this project. It is Mr. Rapp's belief that Mr. MacKinnon once again is bringing this up and has tried to control the next ConCom hearing. He suggested to ZBA that they make a decision on what is exactly proposed. He further suggested to Acting Chair Hirsch that the applicant file its final case, illicit public comment on that application and let everyone speak yet again and then based on the dock/pier overlay district regulation that you have no choice but to determine that this would be detrimental to the conditions and not be allowed. I will reserve further decision until applicant makes up his mind as to what is being proposed; **Ms. Gardner:** problems with her communications. She will speak later. **Mr. Angelo:** (Shell fisherman) He seconds what Attorney Rapp stated. If this was to go through the shoreline restoration would be very comprehensive unlike anything I've ever seen. I see shoreline restoration all the time. I have never seen one I've approved of. The surrounding existing marsh grass is degrading. A shorter dock will affect the shellfish habitat. The existing town dock is reliant on this wharf. If we took away the riff-raff and materials, it would also have cost to the town and more money to fix the parking lot; **Ms. Walter:** is an abutter. She is in opposition for many of the reasons put forth. Kind of tired of hearing of all the benefits the town will have from this proposal. The only benefit is to Mr. MacKinnon to have a dock that he can put his boats on; **Mr. McCock:** I think this board should make a decision. You can tell there is an enormous amount of community opposition. We have had to attend numerous meetings at this stage and ZBA is the threshold. He thinks it's time for someone to stand up and say, "No."; **Mr. Lazor:** He is in strong opposition. Be careful to ZBA in listening to consultants from B. J. MacKinnon..all these paid consultants and make sure that public continue to get to speak; be careful in limiting their time. Any ZBA member could go down and take a look and see that there is no way a boat could dock at that structure. Stop this process based on all that ZBA has heard this evening. **Ms. Clark** (town Councilor), Liaison for Shellfish Committee: what has been made clear to her is that this is not a town initiative for application. This is a proposal for a private pier with possible offers to other parties including the Town of Barnstable, the Cotuit Fire Department and the Barnstable Clean Water Coalition in exchange for a pier in a "no pier zone" that Town Council adopted on October 30, 1997. **(All remarks can be viewed in full on video of 2/10/21 meeting- time frame: 2:17:31 to 1:17:33)**

ZONING BOARD OF APPEALS – Continuation – February 10, 2021

Acting Chair Hirsch: Opened discussion to board. Tonight we are going to vote on whether to grant a continuance to Attorney Eliza Cox and then I think we should have a vote on the disposition of this article. **Acting Chair Hirsch** asked if there was any further discussion from anyone. It became very clear to him that this structure was built as a pier for the sail propelled oyster vessel. In 1942 with the establishment of the riff-raff to protect the bulkhead it no longer possible for a boat of any size to land there. It is Acting Chair Hirsch’s contention that the owner at that period in time, Mrs. Clausson was the one who installed the riff-raff. At this point it ceased to be a dock/pier. It’s been more than a few years. My own personal feel is we have a moot point. **Mr. Walantis:** Is Attorney Cox asking for a continuance at this point. Attorney Cox replied, “they were”. Based on that he thinks that is what we should vote on. **Mr. Pinard:** His feeling there is a hindrance of a 10’ dinghy tied up to the dock trying to navigate in and out of there when there is a 13’ clearance. **Mr. Walantis** agrees with Mr. Pinard. We don’t have a complete plan. I disagree with it. **Mr. Pinard** noted that they initially had formerly submitted a plan. An application has been submitted with a set of plans and if the board so chooses it can rule on those plans and application. “On the contrary you are saying we can’t do that”, he asked of Mr. Walantis. **Acting Chair Hirsch** noted that Attorney Cox said she would present this in two parts. The first part tonight was for us to determine if there will be a 2nd part. If the board considers this a non preexisting structure tonight.....**Attorney Cox:** This is one of those proposals that has to go through multiple boards in town and that is ConCom and ZBA and she understands why it is typically ZBA to ConCom and back because plans do result in change. Conversation continued in regard to how this changed plan came about. The plan that is before the ZBA tonight has already been acknowledged by Attorney Cox that it would change. They are asking for a continuance based on comments made this evening and they knew this coming into the meeting. They would like opportunity to come back with changed plans (after hearing comments tonight) to continue this process forward. We agreed to listen to this in two part session. “Could we have a “straw vote” from members sitting on this board tonight as to whether they would consider this right now as a preexisting nonconforming pier or if they feel that at some point in time it no longer was used as a pier and the two year time limitation has expired?”, asked **Acting Chair Hirsch**. This is informal right now. The reason I’m suggesting this is so the petitioner can withdraw this without prejudice and resubmit it after they have a new plan: **INFORMAL STRAW VOTE**

Member	2020-042-Renotice Matthew J. MacKinnon	Absent
Alves E.	Does not think it is a preexisting/non-conforming dock/pier	
Bodensiek H.		X
Dewey J.	it is a preexisting/non-conforming dock/pier	
Hansen M.	Preexisting/nonconforming dock/pier	
Hirsch D.	Prior to 1942 it was a pier.	
Pinard P.	Does not think it is a preexisting/non-conforming dock/pier	
Rodolakis A.		X
Walantis T.	Does think it is a preexisting/non-conforming dock/pier based on the fact it is a straw vote. of it.	

ZONING BOARD OF APPEALS – Continuation – February 10, 2021

Formal Vote to accept a continuance of 2020-042 Matthew J. MacKinnon:. **Director Jenkins** noted that there needs to be a motion. Attorney Cox indicated if the board does not grant a continuance then on behalf of her client she will withdraw the request without prejudice.

It was noted that there should be discussion on the continuance request before making a formal motion and vote. **Mr. Walantis:** noted based on the way the meeting began he would have a lot of hesitation taking a vote because there were several people who opted not to speak because he didn't think we were as clear as we could have been on the nature of this meeting. was from the beginning there was just going to be some public comment and some of our discussion and I didn't expect to have a vote on this. Some of the public comment folks that opted not to speak didn't have their opportunity. I would feel them the opportunity to with clarity.. **Mr. Dewey:** asked if the public hearing was closed and Attorney Cox replied it was still open. He is in agreement with Mr. Walantis. **Mr. Walantis made a motion to grant the continuance with Mr. Dewey seconding the motion.** Date for Continuance on ConCom would be March 2nd. **Attorney Cox** would ask that it be continued to March 10th of the Zoning Board. Continuing with discussion Mr. Alves indicated that he felt that some of this was being controlled because there are two boards parallel to each other. If it were one board that had made a decision then that decision affects the next board in their decision making. Mr. Hanson: unknowingly we painted ourselves into a corner, regardless of how we feel, expansion or anything else and I don't see how we cannot.....I'll just leave it there.

BOARD VOTE ON CONTINUANCE MOTION: Motion made by Mr. Walantis and seconded by Mr. Dewey. See highlighted area for motion verbiage.

Member	2020-042-Renotice Matthew J. MacKinnon	Absent
Alves E.	In favor	
Bodensiek H.		X
Dewey J.	In favor	
Hansen M.	-----	
Hirsch D.	In favor	
Pinard P.	In favor	
Rodolakis A.		X
Walantis T.	In favor	

Acting Chair Hirsch confirmed with Attorney Cox that she has her continuance for March 10th.

NEW BUSINESS

Appeal No. 2021-005 500 Old Colony Place LLC, 105 Bassett Lane LLC Laham Management & Leasing, Inc. has petitioned for a Variance pursuant to Section 240-67 B. Sign Regulations for the OM Zoning District. The Petitioner is seeking a total sign area of all signs on premises of 74 square feet. The relief being sought is to allow for a 24 square foot free standing pylon sign. The property is located at 141 and

ZONING BOARD OF APPEALS – Continuation – February 10, 2021

157 Stevens Street and 91 and 105 Bassett Lane, Hyannis, MA as shown on Assessors Map 309 as Parcel 237, Map 309 as Parcel 240, Map 308 as Parcel 042, Map 309 as Parcel 236. It is located in the Office/Multifamily Residential (OM) District. Attorney Mike Ford represents applicant. This involves the Mazda Dealership. It received a special premise for the ZBA to demolish and build a new dealership and then an opportunity came along for Mr. Laham to purchase 105 Basset. This was once the location of the Salvation Army property. Mr. Laham purchased this property and went back to Planning Board and amended that property. **Attorney Ford** continued regarding signage. 24 square feet in total. Total aggregate signage on property is 74 square feet.

Discussion from Board: Acting Chair Hirsch: in his opinion it was a good move on Mr. Laham’s part to purchase the Salvation Army property. It will alleviate congestion at corner. A good step to safety to egress to the property. **Mr. Dewey:** asking about elevation. Sign is only on one side of the building. DPW has not commented on any of the signage. A thought was brought up that if we do this for this situation we are opening up a “Pandora’s box” for other situations that might come up as well.

Acting Chair Hirsch: opened up for public comment. Hearing none. Discussion is brought back to the board.

Mr. Pinard read the following findings

Findings of Fact

At the hearing on February 10, 2021, the Board voted and made the following findings of fact in Variance No. 2021-005, a request for a 24 square foot pylon sign for a total area of all signs to be 74 square feet at the car dealership at the intersection of Bassett Lane and Stevens Streets, Hyannis.

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 shape of the lot is unique due to the combination of several lots with different frontage.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. The Board found that due to the merger of four lots and the Sign Ordinance regulation, the Petitioner is unfairly penalized for amount of signage allowed.
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 there had been a pylon sign and the Petitioner is simply replacing what had been existing.

The Board voted to accept the findings as follows:

Member	Appeal No. 2021-005 Signage/Laham	Absent
Alves E.	-----	
Bodensiek H.		x
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.	In favor	
Rodolakis A.		x
Walantis T.	Opposed	

ZONING BOARD OF APPEALS – Continuation – February 10, 2021

Decision

The Board voted to grant the requested Variance to the sign regulations with conditions as follows:

1. Variance No. 2021-005 is granted to Laham Management & Leasing, Inc to allow the installation of a pylon sign at the auto dealership at 141 Stevens Street, 157 Stevens Street, 91 Bassett Lane and 105 Bassett Lane, Hyannis, MA.
2. **The pylon sign shall be no larger than 24 square feet, dimensions.**
3. The site development shall be constructed in substantial conformance with the plan entitled “Proposed Site Plan” by AGI dated July 7, 2020 and revised on August 17, 2020.
4. The proposed pylon sign shall represent full build-out of the lot. No further signage shall be permitted without approval from 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 building permit. The rights authorized by this variance must be exercised within one year, unless extended.

Vote count on Decisions

Member	Appeal No. 2021-005 Signage/Laham	Absent
Alves E.	-----	
Bodensiek H.		x
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.	In favor	
Rodolakis A.		x
Walantis T.	Opposed	

2021-005 was granted the variance for signage.

Appeal No. 2021-006 Lambert Sandra Lambert has applied for a Special Permit in accordance with Section 240-47.1 B. (4) Family Apartments. The Applicant is proposing to create a 1-bedroom family apartment in the existing detached accessory structure. The property is located at 14 Shirley Point Road, Centerville, MA as shown on Assessors Map 233 as Parcel 004. It is located in the Residence D-1(RD-1) Zoning.

Mr. Walantis is signing off for the evening.

Acting Chair Hirsch notified the Lamberts that once they vacate the addition they have to be rid of the kitchen. There is a special permit for a separate septic system, Mr. Lambert noted.

ZONING BOARD OF APPEALS – Continuation – February 10, 2021

Findings of Fact

At the hearing on February 10, 2021, the Board made the following findings of fact in Special Permit Application No. 2021-006 a request to create a family apartment in a detached structure:

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.
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.

The following is the votes in favor of 2020-06 findings for Mr. & Mrs. Lambert.

Member	Appeal No. 2021-006 Lambert	Absent
Alves E.	In Favor	
Bodensiek H.		x
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.	In favor	
Rodolakis A.		x
Walantis T.		X

Decision

Based on the findings of fact, a motion was duly made and seconded to grant Special Permit No. 2021-006 subject to the following conditions:

1. Special Permit No. 2021-006 is granted to Sandra Lambert to establish a family apartment in a detached accessory structure at 14 Shirley Point Road, Centerville, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Title 5 Site Plan of 14 Shirley Point Road, Centerville, MA" prepared for Mr. and Mrs. Lambert, by Down Cape Engineering, Inc, dated January 31, 2018 with a last revision date of November 28, 2018.
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.

ZONING BOARD OF APPEALS – Continuation – February 10, 2021

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:
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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.

The following is the vote on the Decision for Lambert

Member	Appeal No. 2021-006 Lambert	Absent
Alves E.	In Favor	
Bodensiek H.		X
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.	In favor	
Rodolakis A.		X
Walantis T.		X

ZONING BOARD OF APPEALS – Continuation – February 10, 2021

COMMUNICATIONS

None.

NEXT MEETING

February 24, 2021

There are two appeals at that time.

ADJOURNMENT

Member	Members	Absent
Alves E.	In Favor	
Bodensiek H.		X
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.	In favor	
Rodolakis A.		X
Walantis T.		X

All in favor of Adjournment.

Respectfully Submitted,

Elizabeth B. Silva
Temporary Scribe