

**ZONING BOARD OF APPEALS**

**MINUTES**

**Wednesday, March 24, 2021**

**Chair Rodolakis** opened the meeting at 7:00 PM with following narrative:

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:

<b>Join Zoom Meeting Option</b>	<b>Telephone Number Option</b>
<a href="https://zoom.us/j/97765916692">https://zoom.us/j/97765916692</a>	888-475-4499 U.S. Toll Free
Meeting ID: 977 6591 6692	Meeting I.D. 9776591 6692

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](mailto: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](mailto:anna.brigham@town.barnstable.ma.us).

**Chair Rodolakis took roll call of members present and absent:**

<b>Member</b>	<b>Present via Zoom</b>	<b>Absent</b>
Alves E.	x	
Bodensiek H.	x	
Dewey J.	x	
Hansen M.	x	
Hirsch D.	x	
Pinard P.	x	
Rodolakis A.	x	
Walantis T.	x	
Webb, Aaron	x	

) A full house present.

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**Taping of meeting**

None

**MINUTES**

None

**OLD BUSINESS**

None

**NEW BUSINESS**

**Chair Rodolakis read the following: Appeal No. 2021-012 DeVesto** Thomas DeVesto and Angela Hahn/Thomas J. DeVesto has petitioned for a Variance pursuant to Section 240-14 E Bulk Regulations, Minimum Lot Area for the RF Zoning District. The Petitioners are seeking a Variance to adjust the lot lines between two properties. The new lot located at 821 Old Post Road will remain a conforming lot. The new lot located at 835 Old Post Road will remain a nonconforming lot but will be less nonconforming than the existing lot. The properties are located at 821 Old Post Road and 835 Old Post Road, Cotuit, MA as shown on Assessors Map 073 as Parcel 007 and Map 073 as Parcel 006-002. They are both located in the Residence F (RF) Zoning District and Resource Protection Overlay District (RPOD).

**Chair Rodolakis** introduced Attorney John Kenny on behalf of the Mr. Thomas DeVesto and Ms. Angela Hahn. Attorney Kenny: submitted memo where a variance is requested under Chapter 48, Section 10 240-14E of Zoning Ordinance. Attorney Kenney read his memo which all members have copies of. He noted that his client is swapping some land but will not encroach on any neighbors. They are trying to sell the property at 821 Old Post Road and have removed a change house for the pool. They've had the property surveyed to see what other encroachments were there; planted trees and made a buffer. The pool is near the edge of their property and the trees are for privacy. They have had several deals fall through because people spending that kind of money in this market are not interested in people having exclusive use of their property. Attorney Kenny continued, "Unfortunately, our zoning ordinance doesn't allow these types of swaps, special permits so we were forced to look at the option of going for a variance. We have submitted in writing the variance to allow the land swap. We are swapping 2,329 sq feet of land at 821 Old Post Road adding it to 835 Old Post Road and taking 1,620 square feet and upland of 239 square feet of wetlands from 835 Old Post Road and adding it to 821 Old Post Road. As read in the appeal 821 Old Post Road will remain a conforming lot and 835 Old Post Road will remain a nonconforming lot. This has no impact on any other property. Attorney Kenney would entertain any questions board has.

**Chair Rodolakis:** asked if any members of the board had any questions. **Mr. Pinard:** Just want to make clear that Thomas DeVesto is the same as Mr. DeVesto. Attorney Kenney confirmed. **Chair Rodolakis:** is there an agreement right now to sell this? Do you have to come back if they don't like the way we've done this? They have someone who is interested. Attorney Kenney asked if Mr. DeVesto could unmute

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himself to join discussion. Mr. DeVesto noted that they do have a signed offer. Mr. DeVesto continuing, “The house was put on the market about a week ago and we had an offer this week. It’s not contingent on anything that comes out of this variance appeal. We are optimistic and hope we will prevail in this hearing. ...and that there won’t be an issue. Just a new lot.”

**Chair Rodolakis** asked if there were any other questions from the board. Hearing none, **he** asked if there was anyone from the public that wished to be heard. No one to be heard. **He** closed public comment.

**Chair Rodolakis** brought discussion back to board for deliberation. There were none.

**Mr. Pinard** indicated that he would read the findings as follows:

**Findings for Appeal No. 2021-012 DeVesto**

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 topography and coastal back setback requirements impact the potential development.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. The impact would be financial if the Petitioners lose the sale of the property due to encroachments.
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 this issue only involves these two lots and does not impact the neighborhood.

<b>Member</b>	<b>Appeal No. 2021-012</b>
Alves E.	
Bodensiek H.	In favor
Dewey J.	In favor
Hansen M.	
Hirsch D.	In favor
Pinard P.	In favor
Rodolakis A.	In favor
Walantis T.	
Webb, Aaron	

**Vote: All in favor.**

Prior to Conditions being set some discussion took place as to the position of the pool and how close it was to the property line. Mr. DeVesto explained that the land they are planting on is so they can have their privacy with the trees acting as a buffer for privacy.

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**Conditions for Appeal 2021-012 DeVesto** – Attorney Kenney did see the conditions and on behalf of his clients are in favor of them as written.

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

1. Variance No. 2021-012 is granted to Thomas DeVesto and Angela Hahn/Thomas J. DeVesto to allow the adjust the lot lines between two properties at 821 and 835 Old Post Road, Cotuit, MA.
2. Lot 1, 821 Old Post Road will have approximately 90,022 square feet of total lot area. Lot 2, 835 Old Post Road will have approximately 57,599 square feet of total lot area.
3. The site development shall be in substantial conformance with the plan entitled “Property Line Adjustment & Proposed Garage Plan” dated January 6, 2021 and revised February 5, 2021, drawn and stamped by Baxter Nye Engineering & Surveying.
4. 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. The rights authorized by this variance must be exercised within one year, unless extended.

<b>Member</b>	<b>Appeal No. 2021-012</b>
Alves E.	
Bodensiek H.	In favor
Dewey J.	In favor
Hansen M.	
Hirsch D.	In favor
Pinard P.	In favor
Rodolakis A.	In favor
Walantis T.	
Webb, Aaron	

**All in favor for conditions.**

**Appeal No. 2021-013 McDonald’s Corporation** The McDonald’s Corporation has applied for a Special Permit pursuant to Section 240-25 (C) Conditional drive-thru use, Section 240-65 (J) Menu Board Signage, and Section 240-61 (B) Prohibited Signs. The Applicant is seeking site improvements to (1) allow for the proposed drive-thru modifications, as the drive-thru use is a conditional use in the HB District, (2) allow two menu boards (20 square feet each) and two pre-browse boards (10 square feet each) where the maximum menu board shall not exceed three (3) square feet in area, and (3) to allow for the four LED menu boards, where LED signs are prohibited in the HB Zoning District. The property is located at 654 Iyannough Road (Route 132), Hyannis, MA as shown on Assessors Map 311 as Parcel 86. It is located in the Highway Business (HB) Zoning District.

**Chair Rodolakis** recognized Tim Cranston with Bohler Engineering representing McDonald’s Corporation. Mr. Cranston pulled up a plan on the screen that had been submitted at an Informal Site Plan Review in February which had been approved. Mr. Cranston showed another slide entitled “Side by side drive through.” They are doubling the number of digital menu boards to move customers through quicker.

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Mr. Cranston also noted that the LED lighting does not encroach on to other properties at all. He also noted that he understands that the town Zoning was going to take another look at LED lighting and rewrite the rulings for LED lighting. Extra drive through increases efficiency of drive=through.

Discussion: will lose 9 parking spots and putting in landscaping. **Mr. Dewey** asked about parking spaces and Mr. Cranston noted that they were in compliance. **Mr. Pinard**, “Will that cause traffic to back up into the street or is that happening now?” Mr. Cranston noted that he wasn’t aware of it having any issues at the site. If traffic does back up, this remodeling will significantly help this scenario just because of the ability to take another order and stack the cars with this feature. **Mr. Dewey** asked if there were going to be any additional lights or overhead parking lot lighting or anything around 2<sup>nd</sup> area. Mr. Cranston noted that there are no additional light poles. There is an overhead canopy where people sit. There is a small LED light that shines down over the order area but that is the only lighting that is contained within that order area. No additional site poles proposed. Screen sharing was dropped at this point.

**Chair Rodolakis:** asking if there was anyone from the public wishing to comment. Hearing none, public comment is closed.

Will now go back to board for deliberation: **Mr. Hirsch** commenting that it adds to the safety of those people parking to the right because the que will now be shorter and you won’t have to walk between cars as they que up. Mr. Pinard noted that his thought would be that given the situation with COVID that more people would be driving through rather than stopping then going inside the restaurant.

### **Mr. Dewey to read the findings as follows:**

1. The application falls within a category specifically excepted in the ordinance for a grant of 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. The Board found these proposed site alterations are an improvement to the overall site circulation.
3. A Site Plan has been reviewed and found approvable with conditions. (see letter dated February 18, 2021).
4. Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.
5. The Building and site design are consistent with Section 240-25.E, District-wide design and performance standards applicable within the Highway Business District.
6. In granting a special permit for the alteration of preexisting nonconforming site dimensions pursuant to Section 240-93.B., the Board finds that that the proposed alterations are not substantially more detrimental to the surrounding area.
7. In granting a special permit that reduces the requirements of Article VI of the Zoning Ordinance (Off-Street Parking Regulations) pursuant to 240-57, the Board finds that lesser off-street parking is adequate given special circumstance

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<b>Member</b>	<b>Appeal No. 2021-013</b>
Alves E.	
Bodensiek H.	In favor
Dewey J.	In favor
Hansen M.	
Hirsch D.	In favor
Pinard P.	In favor
Rodolakis A.	In favor
Walantis T.	
Webb, Aaron	

**All in favor for findings on Appeal 2021-013.**

**Conditions for Appeal No. 2021-013 - Discussion ensued regarding the signage in Condition #4.**

**Decision**

Based on the findings of fact, a motion was duly made and seconded to grant Special Permit No. 2021-013 subject to the following conditions:

1. Special Permit No. 2021-013 is granted to McDonalds Corporation VWM Associates, LLC, to (1) allow for the proposed drive-thru modifications, as the drive-thru use is a conditional use in the HB District, (2) allow two menu boards (20 square feet each) and two pre-browse boards (10 square feet each) where the maximum menu board shall not exceed three (3) square feet in area, and (3) to allow for the four LED menu boards, where LED signs are prohibited in the HB Zoning District located at 654 Iyannough Road, Hyannis, MA.
2. The site development shall be constructed in substantial conformance with the preliminary site plans entitled "Proposed Site Plan Documents" Sheets C-101, C-102 C-201, C-301, C-401, C-501, C-502 dated February 2, 2021, revised February 2, 2021 by Bohler.
3. The project shall comply with the Site Plan Review approval dated February 18, 2021, the conditions of which shall be incorporated as conditions of this decision.
4. No further additions or alterations to the signage or structure 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 Special Permit must be exercised within two years, unless extended.

<b>Member</b>	<b>Appeal No. 2021-013</b>
Alves E.	
Bodensiek H.	In favor
Dewey J.	In favor
Hansen M.	
Hirsch D.	In favor
Pinard P.	In favor
Rodolakis A.	In favor
Walantis T.	
Webb, Aaron	

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**Correspondence**

None

**Discussion and Approval**

FY 2020 Annual Report (July 1, 2019-June 30, 2020)

**Chair Rodolakis:** all members reviewed the Annual Report for 2020. With no corrections, deletions or omissions, there will be a vote for the annual report to the town:

<b>Member</b>	<b>Appeal No. 2021-013</b>
Alves E.	In favor
Bodensiek H.	In favor
Dewey J.	In favor
Hansen M.	In favor
Hirsch D.	In favor
Pinard P.	In favor
Rodolakis A.	In favor
Walantis T.	In favor
Webb, Aaron	In favor

Unanimous vote to pass with all in favor. At this juncture Chair Rodolakis thanked everyone for all their efforts during this time of COVID. It has been a challenge and all deserve a “pat on the back.” Anna and Carol were also recognized as well because they do “all the work and it is appreciated.”

**Matters Not Reasonably Anticipated by the Chair**

Chair Rodolakis asked of Anna if she had any idea when they would be going back to doing meetings live. Anna replied that she didn’t know yet.

**Upcoming hearings:**

April 14<sup>th</sup>, 28<sup>th</sup> and May 12<sup>th</sup>.

There are 4 appeals on the agenda for the 14<sup>th</sup> of April. One is an appeal of the Building Commissioner’s decision.

**Roll Call to Adjourn**

<b>Member</b>	<b>Appeal No. 2021-013</b>
Alves E.	In favor
Bodensiek H.	In favor
Dewey J.	In favor
Hansen M.	In favor
Hirsch D.	In favor
Pinard P.	In favor
Rodolakis A.	In favor
Walantis T.	In favor
Webb, Aaron	In favor

Respectfully Submitted – Elizabeth B. Silva – Temporary Scribe