

## ZONING BOARD OF APPEALS

### MINUTES

Wednesday, November 17, 2021

**Chair Jacob Dewey** opened the meeting at 7:03 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:

Join Zoom Meeting Option	Telephone Number Option
<a href="https://zoom.us/j/96370794716">https://zoom.us/j/96370794716</a>	888-475-4499 U.S. Toll Free
Meeting ID: 963 7079 4716	Meeting I.D. 963 7079 4716

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 Jacob Dewey took roll call of members present:**

Member	Present via Zoom	Absent
Alves E.		Absent
Bodensiek H.	Present	
Dewey J.	Present	
Hansen M.	Present	
Hirsch D.		Absent
Pinard P.		Absent
Thorne-Johnson, D.	Present	
Walantis T.	Present	
Webb, Aaron	Present	

Also in attendance were David Bogan – Town Councilor, Anna Brigham - Principle Planner and Rachael Toolas– Administrative Assistant

#### **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.

#### **Response:**

None

**June 23, 2021** Mark Hansen motions to accept the minutes Aaron Webb seconds.

Roll Call

AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Thorne-Johnson

NAY: None

**July 14, 2021** Mark Hansen motions to accept the minutes. Todd Walantis, seconds

Roll Call

AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Thorne-Johnson

NAY: None

**July 28, 2021** Todd Walantis motions to accept the minutes, Mark Hansen seconds

Roll Call

AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Thorne-Johnson

NAY: None

**October 13, 2021** Todd Walantis motions to accept the minutes Aaron Webb seconds

Roll Call

AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Thorne-Johnson

AYE: None

#### **OLD BUSINESS**

None

#### **NEW BUSINESS**

***Member Mark Hansen reads for the record.***

**7:07PM**

**Appeal 2021-054**

**Cornwall**

Craig Cornwall has petitioned for a Variance from Section 240-43 Incidental and subordinate nature of accessory uses. The Petitioner proposes to build a 16' x 24' barn prior to completion of the primary residence. The subject property is located at 40 Waterman Farm Road, Centerville, MA as shown on Assessor's Map 207 Parcel 091 005. It is located in the Residence C (RC) Zoning District.

Attorney Lawler presents on behalf of Dr. Cornwall. The parcel is about 12 acres near Craigville Beach. The Cornwalls want to build a traditional Cape Cod home and Barn. Because of the pandemic situation with Covid-19 it has been difficult to schedule contractors and vendors for this project. It will be a year or so to get the house built. It's a hardship to line up contractors at this time. The property is unique because the nature of the lot, size and upland I think it meets the variance requirement. Looking at the intent of 240.43 this would be in keeping with the ordinance. It's understandable to discourage people from putting up an accessory structure in a residential area and using a structure for storage only with no plans of residing on the property. That is not the intent of the applicant. This is a small structure for 12 acres. The homeowner plans on building a residential structure. It's keeping with the intent of the bylaw. We think this is a reasonable request. Therefore the applicant would like to start building the Barn before the residence. The current plans for the house have been delayed and therefore the scheduling of the residence project is delayed along with lining up contractors. The contractor for the Barn is ready to begin. The Barn could also store equipment such as a bobcat or other landscaping items while waiting for the house to be built. In my opinion it's keeping within the intent of the bylaw.

Mark Hansen comments on the plans that read approved and wondered who approved them. Conservation had approved plans from the previous owner 12 or 13 years ago. When pulling the building permit Dr. Cornwall was notified of the zoning by law stating an accessory dwelling could not be constructed before the residential dwelling.

Todd Walantis thought the project looked great and thinks this is a simple request for size and scope of the property.

Chair Dewey asks what is the purpose for the barn going up before the house. Attorney Lawler states the builder and materials are lined up. If the work can't be complete before winter then the applicant goes back into the queue. Covid has created back logs in construction and supplies. This is creating a hardship.

The intent is to store tractors and possibly construction materials during construction of the house.

If the home was under construction the barn could be under construction. The home is delayed because of Covid. The materials have been ordered for the barn and the contractor is available. It would be most efficient. If the barn had living space the applicant could move forward without the variance. There is no living space.

Chair Dewey is concerned with granting the Variance in terms of what happens if the Barn is built and then for some reason the owner is not able to build the residence.

**Chair Dewey opens public comment:**

Paul Plifka of 160 Horseshoe Lane expresses his concern over the plans that are being reviewed which are from twelve years ago. Since 48 Waterman Farm Rd residence was built the water flow situation has changed and has impacted properties. Wetlands are further encroaching on properties. My concern is the water in the driveway as it flows. He also asked what is the height of the barn.

Mr. Cornwall responds that a new culvert was added last week to the driveway and the Barn is 14' tall.

Nathan Rudman –a direct abutter submitted a letter in support of the Barn being built before the house.

***Chair Dewey makes a motion to close public comment***

**Aye: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Thorne-Johnson**

**NAY: None**

Chair Dewey is concerned if this meets the three prong test for granting the Variance. There is much discussion on the board and with Attorney Lawler. There was discussion about adding the storing of equipment in the conditions. Hansen asks who pulled the building permit, the builder tried to pull a permit for the barn and wasn't able to pull it without the residence. When does the applicant think he'll be able to start on the residence, hoping late spring 2022, depending on the architect's schedule. The situation is the barn is not large for this size lot and it would be more expensive to wait until the house plans are complete. Everyone is very busy and materials are delayed. The contractor for the barn is able to start now and it would be more efficient to do so. Todd Walantis states that the responsibility of the Board is to distinguish regulation and intent. This is a small structure compared to what could be built. The applicant is a resident of Barnstable. The Board is here to help. Walantis thinks this is a reasonable request of the applicant. Dewey states the Board is very limited in what it's allowed to grant based on those powers that have set the criteria. Aaron Webb is in agreement with Member Walantis. This is basically a shed and it's a timing issue.

**Todd Walantis makes Appeal Findings for Variance No. 2021-054 from Staff Report dated November 1, 2021, Aaron Webb seconds.**

**Vote:**

**Roll Call:**

**AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb**

**NAY: None**

**Todd Walantis, moves to grant a Variance No. 2021-054 subject to the following conditions:**

1. Variance No. 2021-054 is granted to Craig and Maria Cornwall to allow the construction of the 16 foot by 24 foot barn prior to the construction of the primary dwelling at 40 Waterman Farm Road, Centerville, MA.
2. The site development shall be in substantial conformance with the plan entitled "Site Plan Proposed Improvements at 40 Waterman Farm Road, Barnstable (Centerville), Mass" by Sullivan Engineering Inc., dated July 6, 2021.
3. Construction of the primary dwelling must commence within 18 months and the Barn to be used for the storage of construction and landscape materials while primary dwelling is being constructed.
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.

**Vote**

**AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Thorne-Johnson**

**NAY: None**

**GRANTED WITH CONDITIONS**

**Member Aaron Webb reads for record.**

**7:55 PM**

**Appeal 2021-055**

**O'Rourke**

Daniel O'Rourke has applied for a Special Permit pursuant to Section 240-24(C)(1) Conditional uses. The Applicant seeks to operate a catering kitchen with the possibility of takeout dining on a limited basis. Sit down dining will not be available. The proposed catering kitchen will be a seasonal operation between the months of May and November open five to seven days a week. The subject property is located at 3821 Falmouth Road/ Route 28, Marstons Mills, MA as shown on Assessor's Map 057 Parcel 004. It is located in the Village Business A (VB-A) Zoning District.

**Mr. O'Rourke discusses there are other food establishments located in the Windmill Plaza. He plans on having a catering business where the food is prepared at the location. Most times he will be delivering food to the customer. Mr. O'Rourke has already, been to the Board of Health and has dealt with the grease trap. Sometimes customers may pick up their clambake items, but it is not usual.**

**Open for public comment – None**

**Close Public Hearing**

**Vote**

**AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb, Denise Thorne-Johnson**

**NAY: None**

Board Discussion: This parcel is a traffic nightmare, therefore we don't want to add to the congestion. How many employees will be working on site? Probably two or three and Mr. O'Rourke has found that he works during hours that are not the peak traffic hours in the plaza. The landlord doesn't have designated parking spaces. Bodensiek asks if Mr. O'Rourke has a catering van. Yes, for catering events. He may cater one or two events per day depending on the schedule. Usually he will be going to someone's home to cater the event.

**Herb Bodensiek makes Appeal Findings for Special Permit No. 2021-055 from Staff Report dated November 1, 2021, motion seconded by Aaron Webb.**

**Vote**

**AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, , Aaron Webb, Denise Thorne- Johnson**

**NAY: None**

**Herb Bodensiek moves to grant Special Permit No. 2021-055 subject to the following conditions:**

1. Special Permit No. 2021-055 is granted to Daniel O'Rourke to establish a catering kitchen with the possibility of take-out dining on a limited basis in Unit 2 at Windmill Square, 3821 Falmouth Rd, Route 28, Marstons Mills, MA.
2. The site development shall be constructed in substantial conformance with the site plan entitled "Site Plan" showing the units of the development dated January 4, 2017.
3. The project shall comply with the Site Plan Review approval dated September 29, 2021, the conditions of which shall be incorporated as conditions of this decision.
4. No further additions or alterations to Unit 2 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.

**Vote on Conditions**

**AYE: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Thorne-Johnson**

**NAY: None**

## **GRANTED WITH CONDITIONS**

**Chair Dewey reads for the record.**

**8:15 PM**

**Appeal 2021-056**

**GEMAC/KAM**

GEMAC/KAM has petitioned for a Variance from Section 240-65 Signs in the Business District. The Petitioner seeks to install two building signs, 100 square feet each, for a total of 200 square feet. The Ordinance allows one building sign of 100 square feet. The subject property is located at 6 Aggregate Lane, Barnstable MA as shown on Assessor's Map 274 Parcel 040-002. It is located in the Business (B) and Residence G (RG) Zoning Districts.

Bethany Leonard of Poyant Signs represents KAM appliance. Sarah Richardson and Ryan from KAM appliance were also present. The applicant is requesting to put up two signs that are internally illuminated. Only the letters will light up not the background. The building is located 100' from Attucks Lane and is in a gully, and located 100' feet from Aggregate

Lane. The size of the signage is in relation to the building and elevation of the lot. It's important for customers to be able to see the signs from two viewpoints, on Attucks and Aggregate. The KAM letters and the swoosh detail will be back lit with the color blue.

Member Walantis asked about other signage in the area, specifically BJ's and Stop and Shop. They have freestanding signs. Kam will not have a freestanding sign.

**Opened discussion for public comment. There was none.**

**Chair Dewey closes public comment.**

**Vote:**

**AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen Denise Thorne-Johnson**

**NAY: None**

Mark Hansen thinks for safety reasons, it's important for KAM to have their signage on both sides of the building with the size requested because of the large scale of the building.

**Mark Hansen makes Appeal Findings for Variance 2021-056 from Staff Report dated November 1, 2021.**

**Vote:**

**AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Denise Thorne-Johnson**

**NAY: None**

**Mark Hansen moves to grant Variance No. 2021-056 subject to the following conditions:**

1. Variance No. 2021-056 is granted to GEMAC/KAM for the installation of two building signs, 100 square feet each, for a total of 200 square feet at 6 Aggregate Way, Barnstable MA.
2. The signs shall be in substantial conformance with the sign specifications by Poyant dated July 14, 2021 and exterior elevations entitled "KAM Appliance New Location for KAM Appliance Attucks Lane/Aggregate Way, Hyannis" prepared by Conserv dated February 8, 2021.
3. The Applicant is required to obtain sign permits from the Building Division prior to installation.
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 prior to issuance of a building permit. The rights authorized by this variance must be exercised within one year, unless extended.

**Vote:**

**AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Denise Thorne-Johnson**

**NAY: None**

## **GRANTED WITH CONDITIONS**

**Chair Dewey reads for the record.**

**8:38 PM**

**Appeal 2021-058**

**McWilliams**

Dean R. McWilliams and Andrea B. McWilliams have applied for a Special Permit pursuant to Section 240-92 Nonconforming Buildings or Structures used as single and two-family residences. The Applicants seek to demolish a legal preexisting nonconforming shed on the common property line with the Wianno Club and construct an addition to the easterly side of the existing principal dwelling, along with a pool, pursuant to the elevations prepared by Patrick Ahern and the site plan by Sullivan Engineering. The subject property is 153 Seaview Ave, Osterville, MA on Assessors Map 162 as Parcel 023. It is located in the Residence F-1 (RF-1) Zoning District.

Attorney Michael Schulz states the project has been approved by the Historic and Conservation Commission. The distance from where the shed is currently located is 2' from the Wianno Club property. With the new addition it will be moved to 7.5' from the property line. It will be less detrimental, an improvement to the setback and aesthetically improved. The Wianno Club President Charles Cramb sent in a letter of support to the historically commission. The proposal meets the criteria in the section of 240.92 (B). The request is in keeping with the neighborhood which has undergone significant renovations in recent years. Eddy Gafney, Architect with Patrick Ahearn, LLC and Andrea McWilliams homeowner were also present.

Mark Hansen asks if the homeowners view across the street view would be affected. There is no view easement and the view wouldn't be affected.

**Opened for public comment. No comment is made.**

**Closing public hearing**

**Vote:**

**AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Denise Thorne-Johnson**

**NAY: None**

*Chair Jake Dewey makes Appeal Findings 2021-058 from Staff Report dated November 1, 2021 .*

**Vote:**

**AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Denise Thorne-Johnson**

**NAY: None**

**Chair Dewey moves to grant Special Permit No. 2021-058 subject to the following conditions:**

1. Special Permit No. 2021-058 is granted to Dean R. McWilliams and Andrea B. McWilliams for the demolition of a legal preexisting nonconforming shed on the common property line with the Wianno Club and construction of an addition to the easterly side of the existing principal dwelling, along with a pool, pursuant to the elevations prepared by Patrick Ahearn and the site plan by Sullivan Engineering at 153 Sea View Avenue, Osterville.
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan Proposed Improvements at 153 Sea View Avenue Barnstable (Osterville) Mass" by Sullivan Engineering & Consulting, Inc., dated September 12, 2021 and elevations prepared by Patrick Ahern.
3. The proposed redevelopment shall represent full build-out of the lot. Further alteration or expansion of the dwelling 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. 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.

**Vote:**

**AYE: Jacob Dewey, Herbert Bodensiek Todd Walantis, Mark Hansen, Denise Thorne-Johnson**

**NAY: None**

**GRANTED WITH CONDITIONS**

**Chair Dewey reads for the record.**

**8:50 PM                      Appeal 2021-059**

**Gionfriddo/Honey Dew Donuts**

Tony Gionfriddo has petitioned for a Variance from Section 240-78 Sign Illumination and dimensions in the Hyannis Gateway District. The Petitioner seeks to install a standard size 55 square foot LED backlit drive-thru menu board to replace the existing 30 square feet single size one. The subject property is located at 313 Iyannough Road, Hyannis, MA as shown on Assessor's Map 328 Parcel 235. It is located in the Hyannis Gateway (HG) District.

Tony Gionfriddo would like to install a standard size menu board. The current board is too small which creates a back-up in the drive thru lane because customers are asking questions on what is available. The new standardized board would be installed in the same location behind the building. This would elevate drive thru congestion and also increase sales.

**Opened for public comment – No comments**

**Public comment closed**

**Vote:**

**AYE: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Thorne-Johnson**

**NAY: None**

**Mark Hansen makes Appeal Findings for Variance 2021-059 from Staff Report dated November 1, 2021, Chair Dewey seconds.**

**Vote:**

**AYE: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Thorne-Johnson**

**NAY: None**

**Mark Hansen moves to grant Variance No. 2021-059 subject to the following conditions:**

1. Variance No. 2021-059 is granted to Tony Gionfriddo, for Honey Dew Donuts for the installation of a 55 square foot LED backlit drive-thru menu board at the Honey Dew Donuts located at 313 Iyannough Road, Hyannis.
2. The signs shall be in substantial conformance with the sign specifications entitled "Proposed Menu Board" submitted with the application and the site plan entitled "Site Plan of 195 Ridgewood Ave, Hyannis MA" prepared for Peter Cutler by Down Cape Engineering, Inc. dated November 5, 2020 and revised November 10, 2020.
3. The Applicant is required to obtain sign permits from the Building Division prior to installation.
4. The project shall comply with the Site Plan Review approval dated October 8, 2021, the conditions of which shall be incorporated as conditions of this decision.
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:**

**AYE: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Thorne-Johnson**

**NAY: None**

## **GRANTED WITH CONDITIONS**

**Chair Dewey reads for the record**

**9:00 PM                      Appeal 2021-060**

**Babcock Holdings LLC**

Babcock Holdings, LLC has applied for a Special Permit pursuant to Section 240-92 (B) Nonconforming Buildings or Structures used as single and two-family residences. The Applicant seeks to demolish a preexisting nonconforming garage and rebuild a 1 ½ story garage with an attached pool house. The subject property is located at 11 Marchant Avenue, Hyannisport (Hyannis), MA shown on Assessor's Map 286 Parcel 026. It is located in the Residence F-1 (RF-1) Zoning District.

Chair Jake Dewey and Member Denise Thorne-Johnson recuse themselves from this matter.

Attorney Ted Schilling is representing Babcock Holdings, LLC. Craig Ashworth of E.B. Norris & Sons and Kelly Conlon, Project Manager are in attendance. The property was purchased in January 2021. The historical commission has approved plans that were submitted.. The applicant is seeking to demolish the non-conforming garage and to build a new garage structure.

*Mark Hansen asked about the number of bedrooms in the garage. The current garage has a one bedroom and the new garage will have two bedrooms and an upgraded septic system installed.*

**Open Public comment – No comments**

**Closed Public comment**

**Vote:**

**AYE: Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb**

**NAY: None**

***Mark Hansen makes Appeal finding for Special Permit 2021-060 from Staff Report dated November 1, 2021.***

**Vote:**

**AYE: Herbert Bodensiek, Todd Walantis, Mark Hansen, and Aaron Webb**

**NAY: None**

**Mark Hansen moves to grant Special Permit No. 2021-060 subject to the following conditions:**

1. Special Permit No. 2021-060 is granted to Babcock Holdings, LLC to allow the demolition of a preexisting nonconforming garage and construct a 1 ½ story garage with an attached pool house at 11 Marchant Avenue, Hyannisport (Hyannis), MA.
  
2. The site development shall be constructed in substantial conformance with the plan entitled "Site Plan Proposed Improvements at 11 Marchant Avenue Barnstable (Hyannis Port) Mass" prepared by Sullivan Engineering and Consulting Inc. dated October 13, 2021.
  
3. The proposed redevelopment shall represent full build-out of the lot. Further alteration or expansion of the dwelling 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. 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.

**Vote:**

**AYE: Herbert Bodensiek, Todd Walantis, Mark Hansen, Aaron Webb**

**NAY: None**

**GRANTED WITH CONDITIONS**

**List of Documents Used at the Meeting**

1. KAM Appliance sign elevations
2. Gionfriddo/ Honey Dew Site Plan and Menu Board Photos

**Correspondence**

None

**Matters Not Reasonably Anticipated by the Chair**

None

**Upcoming Meetings**

December 8, 2021, December 14, 2021, January 12, 2022

**Adjournment**

***9:13 PM Herb Bodensiek moves to adjourn***

***Vote:***

***AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen Aaron Webb***

***NAY: None***

Respectfully Submitted

Rachael Toolas,  
Administrative Assistant