

# ZONING BOARD OF APPEALS

## MINUTES

Wednesday, January 26, 2022

Chair Jacob Dewey opened the meeting at 7:05 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:

Join Zoom Meeting Option	Telephone Number Option
<a href="https://zoom.us/j/97457173289">https://zoom.us/j/97457173289</a>	888-475-4499 U.S. Toll Free
Meeting ID: 974 5717 3289	Meeting I.D. 974 5717 3289

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
Johnson	Present	
Pinard P.		Absent
Walantis T.		Absent
Webb, Aaron	Present	

Also in attendance, 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:**

No Response

## Approval of Minutes

January 12, 2022 - Herb Bodensiek motioned to accept the January 12<sup>th</sup> minutes, Mark Hansen seconded.

**Vote:**

**Aye: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

## NEW BUSINESS

Chair Dewey reads for the record.

7:10 PM

Appeal No. 2021-068

Leverioni

**Maureen Leverioni has applied for a Special Permit pursuant to Section 240.91 (H)(3) Nonconforming Lot. The Applicant proposes to demolish two existing single story structures and replace the structures with one, two story structure on the same foot print. The subject property is located at 14 Beale Way, Barnstable, MA as shown on Assessor's Map 279 Parcel 014. It is located in Residence F-1 (RF-1) Zoning District.**

Attorney Paul Tardif sent a letter requesting to withdraw without prejudice received 1/14/22.

Herb Bodensiek motioned to accept the withdrawal without prejudice, Mark Hansen seconded.

**Vote:**

**Aye: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

## **APPLICATION WITHDRAWN WITHOUT PREJUDICE**

Chair Dewey reads into the record. Assigned Members: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson

7:12 PM

Appeal No. 2021-069

Costa

**Alberto and Christine Costa have filed an appeal pursuant to Section 240-88 Appeal of an Administrative Official's Decision. The Building Commissioner issued a decision dated November 22, 2021 to Cease and Desist. The appeal cites Zoning Ordinance Section 240-91 H. Nonconforming lot and violation of Special Permit 2008-068 as the finished basement exceeds the floor area ratio and the newly installed generator is located too close to the property boundary. The subject property is located at 71 Sunset Avenue, Barnstable, MA as shown on Assessors Map 301 as Parcel 024. It is located in the Residence B (RB) Zoning District.**

Attorney Charles Sabatt represented the applicants Alberto and Christine Costa. This case involves a Special Permit 2008-068 which was issued to Prudence Pigot, the predecessor in title. It was granted with conditions allowing for the single family dwelling to be razed and replace on a nonconforming lot. The FAR calculations were based on 1<sup>st</sup> Floor and 2<sup>nd</sup> Floor living areas and the Garage as stated in the building permit. The basement area was not listed as part of this calculation. The building permit was issued in October 2009 and the occupancy permit in July 2010. In 2011 the house went on the market for sale. When the applicants acquired the new home in November of 2011, the basement was finished. There are photos showing the pictures of the home with the finished basement listed by the real estate agent. They have made no changes to the basement since it was acquired. In November of 2021, the Building Commissioner

issued a violation of the Special Permit because the property had violated the FAR calculation. Attorney Sabatt's argument that this violation notice should be overturned is based on the Statute of Limitations citing Massachusetts General Laws 40A Section 7, which states an expiration of ten years. The dates are important as to when the special permit was granted, the occupancy permit granted and the notification of the violation. It is less clear regarding the generator being in the setback requirement. The applicant is willing to move the generator to comply.

Commissioner Brian Florence responded to Attorney Sabatt. There is discussion regarding the generator. The Building Department was not aware of the finished basement and therefore there was not an opportunity to notice the owners until the town was aware of the violation. The Commissioner's opinion is the notice was given by the Zoning Board when it issued the Special Permit with conditions, as to what would be allowed.

Mark Hansen asked if this was precipitated by a complaint to the Building Commissioner. Yes, a neighbor had a complaint and brought to their attention the special permit.

Herb Bodensiek states there is no statute for a building violation. This situation is still a violation of the building code.

Commissioner Florence responded that the building code is a separate matter and will be enforced.

#### **Open for Public Comment –**

Attorney Paul Revere on behalf of Edith and Joe Dugas, neighbors of the Costas, explains where the generator is located on the property line next to the private way going to the beach. Special Permit 2008-068 defines as part of the condition, all mechanical equipment shall be located to conform with the minimum setback of 10' or reduced setback required in the permit and screened from the private way to the beach. Therefore the generator is violating the Special Permit. With respect to the finished basement, there was a change of use when the basement became livable space. The building permit did not authorize the basement. Therefore, the violation that was ordered is correct as to the layout of the generator and finished basement exceeding the FAR ratio. Attorney Revere reads an excerpt from the zoning board minutes Appeal No. 2020-031 Garvey which demonstrates the zoning board upholding a decision similar to this matter regarding FAR.

Chair Dewey acknowledges the receipt of nine emails with attachments from Mr. Densieski involving Sunset Lane, Barnstable.

Attorney Sabatt responds whereby he disagrees with the Building Commissioner's interpretation of being on notice. Attorney Sabatt explains there is no case law that states the town must be aware of a violation before the statute of limitations begins. An affidavit from the Costas shows the listing sheet with the finished basement. This listing was also in the building permit file. The property listing sheet is from September 2011. It's been ten years and there were no notifications to the current homeowners until November 2021. This appeal is in reference to the violation of the Special Permit. The building code violation is different from the zoning violation. The statute of limitations is what is being argued (MGL 40A Section 7) to overturn the Building Commissioner's notice.

**Herb Bodensiek motioned to close public comment, Mark Hansen seconded.**

**Vote:**

**Aye: Jacob Dewey, Herbert Bodensiek, , Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

Mark Hansen expounds on the intent of the statute of limitations and how it mostly likely doesn't pertain to a special permit in this case.

Aaron Webb states the applicants inherited this problem. There's no bedroom in the basement, it's just recreational space. How are they liable for the violation of the zoning? What is the resolution?

Commissioner Florence reiterates that a special permit or variance is issued forever. The building code violation has to be addressed and options that are available will depend on the zoning board's decision. If it was overturned they would probably have to look into a variance because they exceed FAR.

Jake Dewey - The special permit can't be modified. Member Hansen says the FAR is very tight. I have a hard time overturning the building commissioner on this.

Herb Bodensiek stated the finished basement is not allowed and the letter dated 11/22/2021 states the violation. Why is the garage part of the FAR calculation in the special permit?

Denise Johnson – Whose interest are we protecting? Chair Dewey explains the Board must decide whether to uphold the original decision by the previous Zoning Board. The special permit follows the property, not the owners, is there a violation of what was granted in the Special Permit 2008-068.

Herb Bodensiek asks if the permit can be modified to eliminate the garage calculation as part of the FAR calculation and replace it with the finished basement. Aaron Webb asks Attorney Sabatt if he would like to confer with his client. Attorney Sabatt answers that he is all set. Although, he said it is unclear why the garage was in the original calculation as living space and the basement was not calculated as part of FAR in the original permit. It would still exceed 30% ratio with swapping the garage area.

**Chair Dewey makes a motion from draft findings from Staff Report dated January 14, 2022**

The Board affirms the Building Commissioner's finding that the finished basement and location of the generator are not in compliance with zoning at 71 Sunset Lane, Barnstable, and MA and to uphold the Building Commissioner's Cease and Desist enforcement action.

Mark Hansen seconded.

**Vote:**

**Aye: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Denise Johnson**

**Nay: Aaron Webb**

**BUILDING COMMISSIONER'S RULING UPHELD**

**Chair Dewey reads into the record. Assigned members: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**8:06 PM**

**Appeal No. 2021- 070**

**Pizzillo/Perry**

**Patricia Pizzillo and Ellen M. Perry have petitioned for a Variance from Section 240.13(E) Bulk Regulations in the RC District minimum rear yard setback. The Petitioners seek to construct a 260 square foot addition located 3.2 feet from the rear lot line where a 10' rear yard setback is required. The subject property is located at 61 Antico Lane, Centerville, MA as shown on Assessor's Map 172 as Parcel 004-002. It is located in the Residence C (RC) Zoning District.**

Attorney John Kenney is representing Patricia Pizzillo and Ellen Perry. Also their builder Ben Thomas of Coastal Light Company is in attendance. Attorney Kenney's clients are seeking to add a 260 square foot addition to their home. They are the sole owners of this home which they purchased in September 1999. The house included a 10'x 12' deck on the back of the house which is included on the building permit. When the applicants purchased the house they were not aware the deck was only 3.2' from the rear lot line. Looking at the site plan submitted, there is a cleared area to the tree line. A photo was shared on screen showing the distance of the deck to the tree line which is cleared. The applicants assumed it was their property and not open space. They have been maintaining the open area. In early 2000, they added an addition to the deck and thought they were keeping within the setback because they did not extend it beyond the original deck. They are willing to remove the extension of the deck that has now encroached into the setback. They would like to add an enclosed addition. This is a unique lot as part of the open space subdivision and its pie shape. There is an odd jog in the lot which is not clear why it's there, possibly to meet open space requirements. The home is set back far on the lot because of the pie shape and to provide privacy from the vehicle impact with headlights shining into the house. The hardship is there is no other place to put this addition that would make sense with the floorplan of the house or location on the lot. It would be a benefit to the neighborhood, having an enclosed space versus open deck for noise, creates a buffer in the neighborhood and they will be removing part of the deck that is in the setback.

Herb Bodensiek asks for clarification about footprint of the new structure.

#### **Public Comment –**

Charles and Kelly Rich of 55 Antico Lane, Centerville submitted a letter of support.

Thomas and Linda McKeown of 60 Antico Lane, Centerville submitted a letter of support.

Debra Costa of 156 Braley Jenkins Rd. and Aida Chaves of 166 Braley Jenkins Road were present to review the plans and elevations. The building plans are shared on the screen. Attorney Kenney explains where the addition will be located. The 3.2 foot dimension will remain the same at the corner of the addition. The builder explains the house plans and what neighbors will view. This will improve their property value as well as increase the values of the abutters.

**Mark Hansen motioned to close public comment, Herb Bodensiek seconded.**

#### **Vote:**

**Aye: Jacob Dewey, Herbert Bodensiek, , Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

Mark Hansen comments the enclosed addition will be reducing the extent in which the deck protrudes from the house.

Mark Hansen makes finding from Staff Report dated January 14, 2022

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 due to the shape of the lot and location of the dwelling and bulkhead, there is no other location to place the addition.**
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and **The Board found that the Petitioners are requiring additional space and this is the only way to meet their needs.**

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 the Petitioners are improving the existing conditions by removing a portion of the existing deck to become more conforming to setback requirements.**

Herb Bodensiek seconded

**Vote on Findings**

**Aye: Jacob Dewey, Herb Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

**Mark Hansen moves to grant Variance No. 2021-070 subject to the following conditions:**

1. Variance No. 2021-070 is granted to Patricia Pizzillo and Ellen M. Perry to allow the construction of an addition 3.2 feet from the rear yard setback where 10 feet is required at 61 Antico Lane, Centerville, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Building Permit Plan Patricia Pizzillo & Ellen Perry 61 Antico Lane Centerville MA" prepared by Maddigan Land Surveying, LLC dated May 10, 2021.
3. The above-described structure shall represent full build-out of the lot. No further additions or accessory structures shall be permitted without approval from the Board.
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 on Conditions**

**Aye: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

**GRANTED WITH CONDITIONS**

**Chair Dewey reads for the record. Assigned Members: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**8:25 PM**

**Appeal No. 2021-067**

**DaSilva**

Eduardo DaSilva has petitioned for a Variance from Section 240.14(E) Bulk Regulations in the RF District, minimum rear yard setback. The existing garage is located 13.65' in the rear setback where 15' is required. The subject property is located at 30 Chippingstone Road, Marstons Mills, MA as shown on Assessor's Map 027 Parcel 042. It is located in the Residence F (RF) Zoning District.

Applicant was not able to attend the meeting because they had difficulty connecting to Zoom.

Chair Dewey makes a motion to continue Appeal 2021-067 to February 9, 2022, Aaron Webb seconded.

**Vote:**

**Aye: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

**Correspondence**

Cape Cod Commission hearing notices for Chapter A, Chapter C, and Administrative Regulations amendments on Thursday, January 27, 2022 at 3:00 p.m.

**Matters Not Reasonably Anticipated by the Chair**

Emmanuel Alves will be taking a leave of absence through April 2022.

Chair Dewey motioned to accept the leave of absence.

**Vote:**

**Aye: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

**Upcoming Meetings**

February 9, 2022, February 23, 2022, March 9, 2022

**Adjournment**

8:35 PM Denise Johnson moved to adjourn, Aaron Webb seconded.

**Vote:**

**Aye: Jacob Dewey, Herbert Bodensiek, Mark Hansen, Aaron Webb, Denise Johnson**

**Nay: None**

Respectfully Submitted,

Rachael Toolas

Administrative Assistant