

**Zoning Board of Appeals**  
**MINUTES**  
**Wednesday, October 23, 2024**  
**7:00 PM**

To all persons interested in or affected by the actions of the Zoning Board of Appeals, you are hereby notified, pursuant to Section 11 of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, and all amendments thereto, that a public hearing on the following appeals will be held on Wednesday, October 23, 2024, at the time indicated:

The Zoning Board of Appeals Public Hearing will be held by remote participation methods. Public access to this meeting shall be provided in the following manner:

1. The meeting will be televised live via Xfinity Channel 8 or high definition Channel 1072. It may also be accessed via the Government Access Channel live stream on the Town of Barnstable’s website:  
<http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>
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://townofbarnstable-us.zoom.us/j/83994909914">https://townofbarnstable-us.zoom.us/j/83994909914</a>	US Toll-free 888 475 4499
Meeting ID: 839 9490 9914	Meeting ID: 839 9490 9914

Applicants, their representatives and individuals required or entitled to appear before the Zoning Board of Appeals may appear remotely, 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).

**Call to Order**

Acting Chair Herb Bodensiek calls the meeting to order at 7:07 PM with an introduction of Board Members:

Member	Present	Absent
Dewey, Jacob – Chair		X
Bodensiek, Herbert – Vice Chair	X	
Pinard, Paul – Clerk		X
Alves, Manny	X	
Hansen, Mark	X	
Hurwitz, Larry	X	
Webb, Aaron	X	

Also present is Anna Brigham, Principle Planner and Genna Ziino, Administrative Assistant.

**Notice of Recording**

This meeting of the Zoning Board of Appeals is being recorded and broadcast on the Town of Barnstable’s Government Access Channel. In accordance with MGL Chapter 30A §20, I must inquire whether anyone is recording this meeting and if so, to please make their presence known.

**Minutes**

October 9, 2024 – Manny Alves makes a motion to approve the minutes. Mark Hansen seconds.

**Vote:**

**Aye: Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb**

**Nay: None**

**Abstain: Herb Bodensiek (not present at October 9 meeting)**

**Old Business**

**7:00 PM**

**Appeal No. 2024-034**

**Mannheim Realty, LLC**

Mannheim Realty, LLC has applied for a Special Permit pursuant to Section 240-91 F Merged Lots. The Applicant seeks to transfer Lot 2B, which is presently part of 17 Hawthorne Avenue (Lots 3 and 2B), to 19 Irving Avenue, which is presently comprised of Lot 1 and Lot 2A. With the requested relief, 19 Irving Avenue would be comprised of Lots 1, 2A, and 2B, and 17 Hawthorne Avenue would be comprised of Lot 3. No additional building lot is being created. The subject property is located at 19 Irving Avenue, Hyannis, MA as shown on Assessor's Map 286 as Parcel 006. It is located in the Residence F-1 (RF-1) Zoning District. Continued from October 9, 2024

NOTE: \*The subject property is 17 Hawthorn Ave (Map 286/Parcel 003) and the property receiving Lot 2B is 19 Irving Ave.

Acting Chair Bodensiek assigns himself, Manny Alves, Mark Hansen, Aaron Webb, and Larry Hurwitz.

Attorney Michael Schulz is representing the applicant. He explains that his client is seeking to transfer lot 2B from 17 Hawthorne Ave to 19 Irving Ave. In 2004, the applicant purchased 19 Irving, and later purchased 17 Hawthorne. They later purchased 12 Atlantic Avenue and cut that lot in half into 2A and 2B and conveyed 2A to 19 Irving Ave and 2B to 17 Hawthorne Ave. They were making both lots less nonconforming at the time so no zoning relief was needed. Now the lots are merged and held commonly, and they're proposing to make 17 Hawthorne more nonconforming, which requires a special permit. The proposed transfer will not create any new buildable lots, and they will be maintaining the single-family nature of the neighborhood.

**Back to the Board for questions.** Manny Alves asks if 12 Atlantic used to be a buildable lot. Attorney Schulz says yes, it was previously developed but he believes the house burned down. Manny Alves asks if 2B being conveyed to 17 Hawthorne was done in connection with development. Attorney Schulz says lot 1 and lot 3 were purchased in 2004, and 13 years later 12 Atlantic became available and was purchased by his client. The intent was just to add area to the lots. They want to disassociate lot 2A from lot 3. For conveyance purposes they'll be considered one lot (lot 1, lot 2A, and lot 2B—as 19 Irving Avenue, and it's still a nonconforming lot).

**Herb Bodensiek opens for public comment.** There is none. Aaron Webb moves to close public comment. Mark Hansen seconds.

**Vote:**

**Aye: Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb, Herb Bodensiek**

**Nay: None**

Manny Alves asks if development of the new 19 Irving could be done as of right. Attorney Schulz says it would be the same as any other sub-2-acre lot in the area and would need to comply with zoning.

Herb Bodensiek moves to close the public hearing. Mark Hansen seconds.

**Vote:**

**Aye: Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb, Herb Bodensiek**

**Nay: None**

**The Board deliberates.** Mark Hansen asks if anything about this will change according to the new housing legislation expected in the coming months. Attorney Schulz says no.

**Manny Alves makes findings:**

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit: Section 240-91 F. allows for 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.
3. The single-family nature of the property and of the accessory nature of the detached structure are preserved.

Aaron Webb seconds.

**Vote:**

**Aye: Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb, Herb Bodensiek**

**Nay: None**

The Board discusses whether they need to condition this to take into account the new housing legislation. Attorney Schulz thinks there are significant limitations to the new bill, but would be fine with a condition of, "Any future reconfiguration of these lots must come before the Zoning Board of Appeals."

Manny Alves moves to grant Special Permit No. 2024-034 with conditions 1-3 from Staff Report dated September 26, 2024. Attorney Schulz has requested changes and discusses with the Board:

- From condition no. 1, strike "site development shall be constructed in substantial conformance with plan entitled..." because the site is existing and there is no construction proposed.
- Strike condition no. 2 because they are not seeking a building permit and move the reference to specific plans to condition no. 1.

The Board adds a condition that any future reconfiguration must come before the ZBA. Herb Bodensiek moves to approve the conditions as discussed. Mark Hansen seconds.

**Vote:**

**Aye: Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb, Herb Bodensiek**

**Nay: None**

**Special Permit No. 2024-034 Mannheim Realty, LLC is granted with conditions.**

**7:01 PM**

**Appeal No. 2024-035**

**Tripp**

Christopher Tripp has applied for a Variance pursuant to Section 240-14 E Bulk Regulations in the RC-1 and RF Residential Districts. The Applicant seeks a variance to the front yard setback to construct a pool with a 6-foot fence around it. The Applicant proposes to reduce the front yard setback to 58.98 feet where 100 feet is required along Route 28. The subject property is located at 12 Geraldine Road, Cotuit, MA as shown on Assessor's Map 040 as Parcel 009. It is located in the Residence F (RF) Zoning District. Continued from October 9, 2024.

Herb Bodensiek moves to move ahead with this appeal. Mark Hansen seconds.

**Vote:**

**Aye: Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb, Herb Bodensiek**

**Nay: None**

Herb Bodensiek assigns himself, Manny Alves, Mark Hansen, Aaron Webb, and Larry Hurwitz.

Mo Vequetini is representing the applicant. He explains that his client would like to put in a pool. There is an existing vegetative privacy screen and a proposed fence from Route 28 so a pool could not be seen from the road from any angle. The septic leeching field is out back so this is the only place they could put a pool.

**Back to the Board for questions.** Mark Hansen asks for current lot coverage and proposed lot coverage. Mr. Vequetini is not sure, but says the pergola will be removed so the pool can be as far from the lot line as possible. The Board discusses whether this satisfies the 3-prong test required to grant a variance. Unique factors considered are the septic location, it being a corner lot, and also the 100-foot front setback.

**Herb Bodensiek opens for public comment.** The applicant, Chris Tripp, says that 16 Old East Osterville Road, 3 miles east of him, is also a corner lot and has a pool that's 33 feet off the road and the pool is in a gully. Mark Hansen moves to close public comment. Manny Alves seconds.

**Vote:**

**Aye: Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb, Herb Bodensiek**

**Nay: None**

Herb Bodensiek moves to close the public hearing. Mark Hansen seconds.

**Vote:**

**Aye: Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb, Herb Bodensiek**

**Nay: None**

**The Board deliberates.** They discuss whether this has met the 3-prong test. They feel that it doesn't meet the criteria because it's not unique and it doesn't display substantial hardship. The members feel that pools need to be addressed by Town Council. Aaron Webb notes that the structures on the lot are preventing the applicant from putting the pool anywhere else. They discuss the reasoning behind the 100-foot setback requirement from Route 28. Manny Alves asks whether the Board's concerns about repeated signage- and pool-related variance issues were raised to Town Council. Anna Brigham doesn't think so but will check with Jim Kupfer, Director of Planning & Development. Herb Bodensiek wants to know why there's a 100-foot setback along Route 28.

Aaron Webb explains to the applicant that it does not seem as though the Board is going to vote in favor of granting the appeal, so the applicant has the option to withdraw without prejudice. Mr. Tripp requests a vote. The Board expresses concern that Mr. Tripp is without legal counsel and a vote is not in his best interest, although he continues to request a vote and refuses to withdraw. The group discusses that they could continue the appeal and request more information on their options and the reasoning for the 100-foot setback. Aaron Webb moves to continue the appeal to December 11. Herb Bodensiek seconds.

**Vote:**

**Aye: Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb, Herb Bodensiek**

**Nay: None**

Appeal No. 2024-035 Tripp is continued to December 11, 2024.

**New Business**

**7:02 PM**

**Appeal No. 2024-036**

**Hyannis Series Four, LLC**

Hyannis Series Four, LLC has filed an Appeal of an Administrative Official's Decision in accordance with 240-11(A)(1) Principal Permitted Uses in the RB, RD-1, and RF-2 Residential Districts. The Appellant seeks to overturn the Order to Cease, Desist, and Abate dated August 2, 2024. In the Notice of Zoning Ordinance Violation letter, the Chief Local Inspector stated that they observed a violation of Chapter 240-11(A)(1), namely, an apartment created on the second floor of a building used as a lodging house. The property is not owner-occupied and is not eligible under Chapter 240-47.1 Family Apartments or Chapter 240-47.2 Accessory Dwelling Units for a second unit as of right. The subject property is located at 48 Greenwood Ave, Hyannis, MA as shown on Assessor's Map 289 as Parcel 138. It is located in the Residence B (RB) Zoning District.

This item is taken out of order and is heard before Old Business. Attorney Alva is representing the applicant and explains that he spoke with Building Commissioner Brian Florence and they reached an agreement to continue this item. There is state legislation that goes into effect in February that may make this entire appeal moot. He requests a continuance to March 26, 2025. Mark Hansen moves to continue the appeal to March 26, 2025 at 7 PM. Herb Bodensiek seconds.

**Vote:**

**Aye: Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb, Herb Bodensiek**

**Nay: None**

Appeal No. 2024-036 Hyannis Series Four, LLC is continued to March 26, 2025 at 7 PM.

**Correspondence**

- Cape Cod Commission Subcommittee meeting for Sandwich Community Health Center to be held on October 29, 2024 at 5:00 p.m.

**Matters Not Reasonably Anticipated by the Chair**

**Upcoming Hearings**

November 13, 2024 (remote), December 11, 2024 (remote), January 8, 2025 (in person)

**Adjournment**

Aaron Webb moves to adjourn. Mark Hansen seconds.

**Vote:**

**Aye: Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb, Herb Bodensiek**

**Nay: None**

## Documents Used at this Meeting

- October 9, 2024 minutes
- Appeal No. 2024-034 Mannheim Realty, LLC application packet
- Staff Report dated September 26, 2024 for 2024-034 Mannheim Realty, LLC
- Appeal No. 2024-035 Tripp application packet
- Correspondence: Cape Cod Commission Subcommittee meeting for Sandwich Community Health Center to be held on October 29, 2024 at 5:00 p.m.

Respectfully submitted,  
Genna Ziino, Administrative Assistant

Further detail may be obtained by viewing the video via Channel 18 on demand at <http://www.town.barnstable.ma.us>

APPROVED