

**Zoning Board of Appeals
MINUTES
Wednesday, January 8, 2025
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, January 8, 2025, at the time indicated:

Call to Order

Chair Dewey calls the meeting to order 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 | |
| Pittenger, Natalie | X | |
| Tavano, Rodney | X | |
| Webb, Aaron | X | |

Also present is Anna Brigham, Principal Planner.

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 23, 2024 and November 13, 2024 – Mark Hansen moves to approve the minutes. Aaron Webb seconds.

Vote:

Aye: Jake Dewey, Mark Hansen, Larry Hurwitz, Natalie Pittenger, Rodney Tavano, Aaron Webb

Nay: None

Old Business

7:01 PM

Appeal No. 2024-039

25 Falmouth Rd, LLC

25 Falmouth Road LLC has filed an Appeal of an Administrative Official's Decision in accordance with M.G.L. Chapter 40A Sections 7, 8, and 15 and Section 240-88 of the Barnstable Zoning Ordinance. The Appellant is appealing the Decision of the Building Commissioner in issuing Building Permit BLDC 22-227, dated September 17, 2024. The permit was initially denied pending the receipt of a narrative to explain the expansion of the mechanical bays on the property. The Appellant's position is that the permit fails to take into account evidence and documentation from the town records and files, which conflict with the determination to issue the Building Permit. The subject property is located at 95 Falmouth Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 073. It is located in the Highway Business (HB) and Residence B (RB) Zoning Districts. Continued from November 13, 2024. No members assigned.

Chair Dewey reads Appeal No. 2024-040 into the record as well:

7:02 PM

Appeal No. 2024-040

25 Falmouth Rd, LLC

25 Falmouth Road LLC has filed an Appeal of an Administrative Official's Decision in accordance with M.G.L. Chapter 40A Sections 7, 8, and 15 and Section 240-88 of the Barnstable Zoning Ordinance. The Appellant is appealing the Decision of the Building Commissioner in a letter dated September 4, 2024. The Appellant believes that the determination fails to take into account evidence and documentation from the town records and files, which conflict with the determination and do not address the concerns raised

as set forth in the Appellant's enforcement letters and correspondence. The subject property is located at 95 Falmouth Road and 123 Falmouth Road, Hyannis, MA as shown on Assessor's Map 311, Parcels 073 and 078. Lots are located in the Highway Business (HB) and Residence B (RB) Zoning Districts. Continued from November 13, 2024. No members assigned.

Attorney Michael Ford is representing the applicant and asks to continue both appeals because his office needs additional time to file their memo response to Attorney Kenney. Chair Dewey moves to continue Appeals No. 2024-039 and 2024-040 to February 12, 2025. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Mark Hansen, Larry Hurwitz, Natalie Pittenger, Rodney Tavano, Aaron Webb

Nay: None

Appeals No. 2024-039 and 2024-040 are continued to February 12, 2025.

New Business

7:03 PM

Appeal No. 2024-044

Sundelin

Richard Sundelin has applied for a Special Permit pursuant to Section 240-94 B. Nonconforming Use. The Applicant seeks relief to codify a preexisting, nonconforming use (auto repair) at the property. The subject property is located at 970 Main Street, West Barnstable, MA, as shown on Assessor's Map 156 as Parcel 026. It is located in the West Barnstable Village Business District (WBVBD).

Chair Dewey says the Board received a request from Attorney David Lawler to continue this to February 12, 2025. Mark Hansen moves to continue Appeal No. 2024-044 to February 12, 2025 at 7 PM. Aaron Webb seconds.

Vote:

Aye: Jake Dewey, Mark Hansen, Larry Hurwitz, Natalie Pittenger, Rodney Tavano, Aaron Webb

Nay: None

Appeal No. 2024-044 is continued to February 12, 2025.

7:04 PM

Appeal No. 2024-046

Bunn & Creedon

Brian M. Bunn and Jennifer A. Creedon have petitioned for a Variance pursuant to Section 240-14 (E) RC-1 and RF Residential Districts and Section 240-126 Variance Provisions. The Applicants seek a variance to the front yard setback to build an accessory structure (pool house) in the northeast corner of their property. The Petitioners request a variance to the required 30-foot front yard setback to locate the structure 25 feet from the property line. The subject property is located at 157 Poponessett Road, Cotuit, MA, as shown on Assessor's Map 019 as Parcel 079. It is located in the Residence F (RF) Zoning District.

Chair Dewey assigns himself, Mark Hansen, Aaron Webb, Larry Hurwitz, and Natalie Pittenger.

Attorney Dan Creedon is representing the applicant. He explains that this was before the Board the past year but ultimately withdrew that application. His client heard the concerns of the Board and scaled back the project and the request. The structure is now 50% smaller than the prior proposed structure. The Acting Chair at the last hearing said if they were requesting a mere 5 feet than he might be more inclined to grant. The location needs to be close to the pool in order to be utilized for its intended purpose as a pool house. There is a topographical feature of a planter and a change in grade that limits possible locations, so there is nowhere else the structure could go. The hardship is that locating it elsewhere where it would comply would make the structure not feasible as a pool house. They submitted a letter from the most affected abutter, who has no opposition.

Back to the Board for questions. Chair Dewey asks why they can't just move the pool house 5 feet closer to the pool. Attorney Creedon says moving it 5 feet closer would make it essentially right up against the pool and would create a safety hazard for children coming out of the structure. Larry Hurwitz asks what the basement stairs are. Attorney Creedon says storage. Mark Hansen asks what the second floor is for. Attorney Creedon says general additional living space. Aaron Webb asks if there is a fence around the pool. Attorney Creedon says there is a fence but it goes around the property.

Chair Dewey opens for public comment. Anna Brigham says the Board received an email from Christopher Minervino stating he had no concerns. Chair Dewey moves to close public comment. Aaron Webb seconds.

Vote:

Aye: Jake Dewey, Mark Hansen, Larry Hurwitz, Natalie Pittenger, Aaron Webb

Nay: None

The Board deliberates. Mark Hansen thinks there's a way to orient the structure to make it conform. Chair Dewey thinks it does not meet variance criteria. The Board discusses whether it meets the criteria for approval. As the Board's comments are not in favor of approval, Attorney Creedon is asked if he would like to withdraw his appeal. He says his client would like the Board to vote. Chair Dewey moves to close the public hearing. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Mark Hansen, Larry Hurwitz, Natalie Pittenger, Aaron Webb

Nay: None

Mark Hansen reads the findings as submitted by Attorney Creedon:

1. Owing to circumstances relating to the soil conditions, shape or topography of the land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located as follows: (a.) a pool house needs to be located in close proximity to the existing swimming pool but not so close to it as to pose a safety concern; (b) the proposed northeast corner of the property is the only location available to site the proposed structure adjacent to the pool; and (c) there is a significant change in topographical grade supported by a rectangular retaining wall immediately behind and to the south of the proposed location of the structure that further limits the area within which the proposed structure can be located,
2. A literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner because: (a) relocating the proposed structure to a different location not adjacent to the pool would preclude the applicants from utilizing the structure as a pool house; or (b) further reducing the size of the proposed structure by an additional five feet in depth would result in a structure lacking requisite depth and inhabitable space to be utilized for its intended purpose as a pool house;
3. That 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 because the request to vary the front yard setback requirement from 30 feet to 25 feet is minimal, no abutter has communicated opposition to the proposal and the abutter most directly affected whose property is located immediately adjacent to the proposed structure submitted correspondence indicating that he does not oppose the project as proposed.

Vote:

Aye: None

Nay: Jake Dewey, Mark Hansen, Larry Hurwitz, Natalie Pittenger, Aaron Webb

Chair Dewey moves to deny Variance No. 2024-046.

Vote:

Aye: Jake Dewey, Mark Hansen, Larry Hurwitz, Natalie Pittenger, Aaron Webb

Nay: None

Variance No. 2024-046 Bunn & Creedon is denied.

7:05 PM

Appeal No. 2024-047

WS Landing at Hyannis LLC

WS Landing at Hyannis LLC has applied for a Special Permit pursuant to Section 240-25.C (10) Drive-Through Windows for Banks and Restaurants. The Applicant proposes to construct an approximately 3,366 sq. ft. bank with a drive-up window and an approximately 3,605 sq. ft. restaurant with a drive-up window. The subject property is located at 790 Iyannough Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 092. It is located in the Highway Business (HB) and the Business (B) Zoning District.

Chair Dewey assigns himself, Mark Hansen, Aaron Webb, Larry Hurwitz, and Rod Tavano.

Attorney Eliza Cox is representing the applicant and is joined by Katie Campion and Charlie O'Brien from WS Development and Mark Doramus, the civil engineer for the project from Tighe & Bond. Katie Campion explains that they recently completed Phase 1 of The Landing and they are now beginning Phase 2. They are proposing 2 buildings with drive-up windows—one is proposed as a bank with

a drive-up ATM and one is proposed as a Panera Bread with an order window and a pickup window. They've gotten approval from Site Plan Review and will be adding a sidewalk for foot traffic coming from the west on Iyannough Road.

Attorney Cox says the applicant received prior ZBA approval for a comprehensive signage package for The Landing. She explains that the property is split between 2 zoning districts; all of Phase 2 is within the HB Zoning District, which allows drive-throughs for banks and food establishments by special permit. She suggests that their proposed drive-up windows would not adversely affect the public. The bank drive-through proposes queueing for 4 cars but there is additional space alongside the building without blocking parking spaces if necessary. The drive-through is also separated from the proposed parking area by a vegetated median. The Panera Bread drive-through comfortably allows 8 cars to queue and includes a bypass lane around the queueing lane. It also includes a designated "waiting space" that does not interfere with site circulation. Attorney Cox explains that Panera Bread does about 20-25% of their sales through their drive-through, so much less volume than nearby fast food like Chick-fil-a, which does 80-85% of sales through its drive-through. Attorney Cox stresses the importance of drive-through options to people who have handicaps.

Back to the Board for questions. Chair Dewey thinks it should be specified in the findings and conditions that the bank drive-through is for an ATM only and not an actual window. The group discusses medians and sidewalks. Chair Dewey asks for confirmation that the proposal doesn't trigger any traffic or flow changes. Attorney Cox confirms.

Chair Dewey opens for public comment. There is none. Chair Dewey moves to close public comment. Aaron Webb seconds.

Vote:

Aye: Mark Hansen, Aaron Webb, Larry Hurwitz, Rod Tavano

Nay: None

Chair Dewey moves to close the public hearing. Mark Hansen seconds.

Vote:

Aye: Mark Hansen, Aaron Webb, Larry Hurwitz, Rod Tavano

Nay: None

Mark Hansen makes findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit:
 - Section 240-25 C. (10) allows for drive-throughs by 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. He finds that all changes are within the property and will not spill out into other areas.
3. A site plan has been reviewed and found approvable in accordance with Article IX herein subject only to the issuance of a special permit.

Aaron Webb seconds.

Vote:

Aye: Mark Hansen, Aaron Webb, Larry Hurwitz, Rod Tavano

Nay: None

Mark Hansen says the appeal is subject to conditions 1-3 with the change in Condition No. 1 from "bank with a drive-up window" to "bank with a drive-up ATM."

Vote:

Aye: Mark Hansen, Aaron Webb, Larry Hurwitz, Rod Tavano

Nay: None

Special Permit No. No. 2024-047 WS Landing at Hyannis LLC is granted with conditions.

Correspondence

- Planning Board Notification Transmittal – Proposed ADU Zoning Amendment
- Evergreen Circle Pickleball Meeting, 12/16/24 at 3:00 p.m.
- Long Pond Rd Monopole Hearing, 12/16/24 at 5:00 p.m.

- Boxberry Hill Rd Hearing, 1/2/25 at 1:00 p.m.
- Final EIR for Straightway and Hyannisport Water Facility and Cape Cod Commission determination it is a DRI
- Long Pond Road Monopole, Subcommittee Meeting, 12/31/24 at 10:00 a.m.
- Cape Cod Commission meeting, 1/2/25 at 3:00 p.m., Virtual
- Committee on Planning and Regulations meeting 1/2/25 at 1:00 p.m., Virtual
- Continued hearing notice for Evergreen Circle Pickleball being held on Thursday, January 2, 2025 at 3:00 p.m.

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

January 22, 2025 (remote), February 12, 2025 (in person), February 26, 2025 (remote)

Adjournment

Chair Dewey moves to adjourn. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Mark Hansen, Larry Hurwitz, Natalie Pittenger, Rodney Tavano, Aaron Webb

Nay: None

Documents Used at This Meeting

- October 23, 2024 and November 13, 2024 minutes
- Request from Attorney Ford to continue Appeals No. 2024-039 and 2024-040
- Request from Attorney Lawler to continue Appeal No. 2024-044 Sundelin
- Appeal No. 2024-046 Bunn & Creedon application materials
- Staff Report dated December 13, 2024 for Appeal No. 2024-046
- Appeal No. 2024-047 WS Landing at Hyannis LLC application materials
- Staff Report dated December 13, 2024 for Appeal No. 2024-046
- Correspondence: Planning Board Notification Transmittal – Proposed ADU Zoning Amendment
- Correspondence: Evergreen Circle Pickleball Meeting, 12/16/24 at 3:00 p.m.
- Correspondence: Long Pond Rd Monopole Hearing, 12/16/24 at 5:00 p.m.
- Correspondence: Boxberry Hill Rd Hearing, 1/2/25 at 1:00 p.m.
- Correspondence: Final EIR for Straightway and Hyannisport Water Facility and Cape Cod Commission determination it is a DRI
- Correspondence: Long Pond Road Monopole, Subcommittee Meeting, 12/31/24 at 10:00 a.m.
- Correspondence: Cape Cod Commission meeting, 1/2/25 at 3:00 p.m., Virtual
- Correspondence: Committee on Planning and Regulations meeting 1/2/25 at 1:00 p.m., Virtual
- Correspondence: Continued hearing notice for Evergreen Circle Pickleball being held on Thursday, January 2, 2025 at 3:00 p.m.

Respectfully submitted,
Genna Ziino, Administrative Assistant

Further detail may be obtained by viewing the video via the Barnstable Government Access Channel on demand at town.barnstable.ma.us