

ZONING BOARD OF APPEALS

MINUTES

Tuesday, December 14, 2021

13 JAN '22 10:08
BARNSTABLE TOWN CLERK

Chair Jacob Dewey opened the meeting at 7:01 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 |
|---|-----------------------------|
| https://zoom.us/j/91378102471 | 888-475-4499 U.S. Toll Free |
| Meeting ID: 913 7810 2471 | Meeting I.D. 913 7810 2471 |

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, 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.

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. | Present | |
| Walantis T. | Present | |
| Webb, Aaron | | Absent |

Also in attendance, 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

OLD BUSINESS

None

NEW BUSINESS

Chair Jake Dewey reads for the record. Assigned Members Dewey, Bodensiek, Pinard, Hansen, Walantis

7:04 PM

Appeal No. 2021-048

Meadows

Mark Meadows has applied for a Special Permit in accordance with 240-46(C) Home Occupation. The Applicant is proposing to expand a home business to include property maintenance, landscaping, and snow removal services which will be based in an existing accessory building. The subject property is located at 633 Osterville, West Barnstable Road, Marstons Mills shown on Assessors Map 122 as Parcel 007. It is located in the Residence F (RF) Zoning District.

Mark Meadows explains that he has moved into more of a service based business to become more profitable with snow plowing and landscaping services. There are similar businesses in his neighborhood. It will be a small business. The neighbors are not able to see any equipment or vehicles from the road. He doesn't think this would be a detriment to the neighborhood.

Questions from the Board: What equipment will be stored on the property on a regular basis? Equipment that will be on the property are a Bobcat, Bobcat trailer, pick-up truck with a snow plow and possibly another truck with snow plowing capability. A site plan and application was submitted to Brian Florence in March 2021. The property is 2.5 acres. Currently, there is a special permit on file for farming. The equipment associated with the special permit is located inside buildings. He has chickens and rabbit coops that are enclosed in accessory buildings.

Open for Public Comment- No Comment

Chair Dewey makes a motion to close public comment, Hansen seconds

Vote

AYE: Jacob Dewey, Herbert Bodensiek, Paul Pinard, Todd Walantis, Mark Hansen

NAY: None

Board Discussion

Confirms the applicant is currently residing at the property.

Todd Walantis makes findings for Appeal No. 2021-048 from Staff Report dated October 8, 2021, motion is seconded by Mark Hansen.

Vote on findings

AYE: Jacob Dewey, Herbert Bodensiek, Paul Pinard, Todd Walantis, Mark Hansen

NAY: None

Todd Walantis moves to grant Special Permit No. 2021-048 subject to the following conditions:

1. Special Permit No. 2021-048 is granted to Mark Meadows to establish a home business for property maintenance, landscaping and snow removal services at 633 Osterville-West Barnstable Road, Marstons Mills, MA.
2. The home occupation shall conform to all of the requirements of Section 240-46 B. (1) – (12) and Section 240-46 C. (1) - (7) of the Zoning Ordinance.
3. This permit is issued only to the applicant and is not transferable.
4. There shall be no customers on site.

5. All distribution of products will be done by the Applicant.
6. The Applicant must reside on the property.
7. All conditions set forth from Site Plan Review letter dated March 12, 2021 are incorporated in this Decision.
8. This permit is for a property maintenance business including landscaping and snow removal to be based in an accessory structure located on the same lot as the principal dwelling.
9. Not more than one employee who is not a member of the Applicants family shall be permitted.
10. The Applicant is responsible for receiving sign permit(s) and any other applicable permits from town departments.
11. 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 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, Paul Pinard, Todd Walantis, Mark Hansen

NAY: None

GRANTED WITH CONDITIONS

Paul Pinard recuses himself from Appeal 2021-049 and 2021-050 The two appeals are read and discussed together. Assigned Members – Dewey, Bodensiek, Walantis, Johnson, Hansen

Member Mark Hansen reads for record.

7:17PM

Appeal No. 2021-049

Ross

George E. Ross, Trustee of George E. Ross Revocable Trust 2007, has petitioned for a Variance pursuant to Section 240-14(E) Bulk Regulations and Section 240-36(D) Resource Protection Overlay District (RPOD). The Petitioner seeks an equal land exchange of 631 sq. ft. with the abutting residence addressed as 119 Shell Lane. The subject property is located at 107 Shell Lane, Cotuit, MA as shown on Assessors Map 019 Parcel 099. It is located in the Residence F (RF) Zoning District and the Resource Protection Overlay District (RPOD).

Herb Bodensiek reads for the record.

7:19 PM

Appeal No. 2021-050

Manning

Michael T. and Mary A. Manning have petitioned for a Variance pursuant to Section 240-14(E) Bulk Regulations and Section 240-36(D) Resource Protection Overlay District (RPOD). The Petitioners seek an equal land exchange of 631 sq. ft. with the abutting residence addressed as 107 Shell Lane, Cotuit. This will allow the Petitioners to have sufficient easterly side yard setback and therefore the lot will become more conforming. The subject property is located at 119 Shell Lane, Cotuit as shown on Assessors Map 019 Parcel 101-02. It is located in the Residence F (RF) Zoning District and the Resource Protection Overlay District (RPOD).

Attorney Paul Tardiff is representing both petitioners George Ross of 107 Shell Lane, Cotuit and Michael and Mary Manning of 119 Shell Lane, Cotuit. 107 Shell Lane is a .5 acre property with a three bedroom single family dwelling built in 1954. The Ross' purchased in 1977, the lot was created by a plan dated 1960. The Manning property is 1.28 acres with a three bedroom single family dwelling built in 1993. This property is unique because much of it is wetland. There is a 30' utility and access easement and a 10' wide drainage easement to the south. The property was purchased in 1990 by the Manning's, the lot created on the plan dated 1987. The applicants are requesting to swap an even 631 sq.ft. with each property. This would allow for 119 Shell Lane to have a larger side yard setback in order to get to their backyard. They both have hardships in this case and it would benefit both owners.

Questions from the Board: What is the precursor to this application? 119 Shell Lane extended the deck and would like easier access to get around the deck to the backyard.

Open to Public comment: No comment

Chair Dewey makes a motion to close public comment, Member Hansen seconds.

Vote

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

NAY: None

Discussion: Member Hansen states this is the type of a situation where there is an equal land swap, both parties benefit with improvement and there is a hardship with restrictions of easements and wetlands that make this an excellent candidate for granting a variance.

Member Mark Hansen makes finding for Appeal No. 2021-049 from the Staff Report dated October 8, 2021, Todd Walantis seconds.

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 due to the location of wetlands and the shape of lots makes both lots unique.**
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. **The Board found the location of wetlands and easements on 119 Shell Lane cause hardships for both properties.**
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 grant of these variances would make one lot slightly less nonconforming but the swap is of equal square footage and will not change the square footage of either lot.**

Vote on Findings

AYE: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Denis Johnson

NAY: None

Mark Hansen moves to grant Variance No. 2021-049 subject to the following conditions:

1. Variance No. 2021-049 is granted to George E. Ross, Trustee of George E. Ross Revocable Trust 2007 to allow an equal land exchange of 631 sq. ft. with the abutting residence addressed as 119 Shell Lane, Cotuit.
2. The site development shall be in substantial conformance with the plan entitled "Plan of Land of 107 & 119 Shell Lane, Cotuit, MA" prepared for Michael Manning by Down Cape Engineering, Inc., dated August 25, 2021.
3. 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 on Conditions

Vote:

YAY: Jacob Dewey, Herbert Bodensiek, Todd Walantis, Mark Hansen, Denise Johnson

NAY: None

GRANTED WITH CONDITIONS

Member Todd Walantis makes appeal finding for Appeal No. 2021-050 from the Staff Report dated October 8, 2021, Mark Hansen seconds.

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 due to location of wetlands and the shape of lots makes both lots unique.**
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. **The Board found the location of wetlands and easements on 119 Shell Lane cause hardships for both properties.**
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 grant of these variances would make one lot slightly less nonconforming but the swap is of equal square footage and will not change.**

Vote:

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

NAY: None

Todd Walantis moves to grant Variance No. 2021-050 subject to the following conditions:

1. Variance No. 2021-050 is granted to Michael T. and Mary A. Manning to allow an equal land exchange of 631 sq. ft. with the abutting residence addressed as 107 Shell Lane, Cotuit.

2. The site development shall be in substantial conformance with the plan entitled "Plan of Land of 107 & 119 Shell Lane, Cotuit, MA" prepared for Michael Manning by Down Cape Engineering, Inc., dated August 25, 2021.
3. 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 on Conditions

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

NAY: None

GRANTED WITH CONDITIONS

Chair Jake Dewey reads for the record

7:37 PM

Appeal No. 2021-051

O'Rourke

Gail and Michael O'Rourke seek to change the current use, the sale and display of antiques, to a kitchen design showroom pursuant to Section 240-94(A) Nonconforming use. The Applicants seek to modify the existing Special Permit No. 1968-132 to allow the proposed change of a non-conforming use to another nonconforming use. The subject property is located at 660 Main St. West Barnstable, MA as shown on Assessor's Map 156 Parcel 011. It is located in the Residence F (RF) Zoning District.

Attorney Christopher Kirrane submitted a letter dated November 4, 2021 to withdraw without prejudice.

Member Mark Hansen makes a motion to accept the withdrawal of Appeal No. 2021-051, Denise Johnson seconds.

Vote:

AYE: Jacob Dewey, Herbert Bodensiek, Paul Pinard, Todd Walantis, Mark Hansen, Denise Johnson

NAY: None

Member Todd Walantis reads for the record. Assigned members – Bodensiek, Pinard, Walantis, Hansen, Dewey

7:39 PM

Appeal No. 2021-052

Mallegni/Bornbam Assoc. LLC

Marcello M. Mallegni, Manager of Bornbam Associates, LLC has applied for a Special Permit pursuant to 240-57(C) Circumstances warranting reduction of requirements for off-street parking for characteristics of use invalidating normal methods of calculating parking demand. The Applicant requests relief from the parking requirements, which would require 84 parking spaces for the existing warehouse space, because the use of the property as a warehouse for stone slabs has a minimal number of employees and customers at any one time, and therefore does not require 84 parking spaces. The Applicant is also seeking an additional use of the property as a cafe, primarily for the use of customers of

the warehouse. The subject property is located at 80 Airport Road, Hyannis, MA as shown on Assessor's Map 294 Parcel 068. It is located in the Highway Business (HB) and Industrial (IND) Zoning Districts.

Attorney Philip Coppinger is representing Mallegni- Bornbam Assoc. LLC who is requesting a reduction in the off street parking requirement for the warehouse. This is a 58,000 sq. ft. warehouse which contains a wholesale granite business, a showroom, office area and café space to serve customers. There are only three employees that work in the warehouse. Because the granite business doesn't use the required 84 parking spaces for the warehouse, the applicant is asking to reduce the number of spaces. Because it's not a retail business, there are not a lot of people coming into the warehouse. If someone is coming into the business it's usually just one customer by appoint only. The café was installed to possibly hold events or serve customers that come in. The way in which the warehouse is used, the allotted amount of parking spaces are not necessary. The applicant is seeking relief from the 84 spaces designated specifically to the warehouse in order to be able to have both the café and warehouse.

Board Questions for Applicant

Paul Pinard asked if there is another tenant in the warehouse because there is a loading dock at the warehouse. Coppinger replied no there is not. Attorney Coppinger stated the applicant would like to seek relief to 37 spaces which would include the warehouse and café. Coppinger explains how the number of 84 spaces was calculated. Currently, there aren't 84 spaces. Bodensiek replied, 41 spaces, as marked on the plan would be adequate for the office and café space. Is the café pre-existing? When it was renovated the café was included for employees.

Is there a lower level in the warehouse? No

Is the applicant looking to have events with a 1450 sq.ft. restaurant space? The purpose is to showcase material to clients.

This is a 1450 sq. ft. café and on occasion the business would like to showcase the material. Down Cape engineering did the parking calculation on the site plan, Café 15 spaces, Warehouse – 20 spaces, Employee – 2 spaces totally 37 parking spaces. One space for every three seats for the café.

Does 100 Airport Road share parking with 80 Airport Road? No

Public Comment

No Comment

Chair Dewey makes a motion to close public comment, Hansen seconds

Vote:

AYE: Jacob Dewey, Herbert Bodensiek, Paul Pinard, Todd Walantis, Mark Hansen

NAY: None

Discussion:

The Board doesn't understand why there is a 45 seat café for customers. Will this be opened to the public? Attorney Coppinger through more discussion replies, yes. It would also hold events for customers. It looks like this has gone through the Board of Health and they are aware of the café and mixed use. Does this need to be re-advertised because what the legal ad states is a café primarily for customers, but that's not what has been presented by Attorney Coppinger today. Do you want to continue this hearing Attorney Coppinger until there is more information as to what you are asking for? He replies yes.

Mark Hansen motions to continue Appeal No. 2021-052 to January 12, 2022 at 7 p.m., Paul Pinard seconds.

Vote:

AYE: Pinard, Bodensiek, Walantis, Dewey, Hansen

NAY: None

Chair Dewey reads for the record. Members Assigned – Johnson, Bodensiek, Dewey, Hansen, Pinard

8:17 PM

Appeal No. 2021-053

Oshry

Barry and Karen Oshry have applied for a Special Permit pursuant to Section 240-92(B) Nonconforming buildings or structures used as single-and two-family residences. The Applicants seek to demolish the pre-existing nonconforming 700 sq. ft. dwelling and construct a 1,200 sq. ft. three-bedroom single family dwelling. The existing dwelling has a front yard setback of 29.25' where 30' is required. *The proposed dwelling will have a front yard setback of 27.66' where 30' is required, therefore making it more conforming. The subject property is located at 44 Lakewood Drive, Centerville, MA as shown on Assessor's Map 212 Parcel 003. It is located in the Residence D-1 (RD-1) Zoning District.

*The front yard setback will now remain the same

** Please note the Applicant is now seeking a Special Permit pursuant to Section 240-91 H. (3) as the lot is under 10,000 square feet. Also, the front and side yard setbacks have been revised.

Ken Murphy of Centerpoint Design is representing the Oshrys. The applicant was originally scheduled for the October 27th meeting that was canceled. In the meantime, Conservation wanted the location of the house on the plan moved an additional 1.5' away from the buffer which would put the house another 1.5' into the front yard setback. A revised plan was submitted showing the house footprint being reduced by 1.5' so that it didn't change the front yard setback.

Open to public comment – No comment

Paul Pinard motions to close public comment, Bodensiek seconds.

Vote:

AYE: Jacob Dewey, Herbert Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson

NAY: None

Mark Hansen makes Appeal Findings for Appeal 2021-053 from Staff Report dated October 12, 2021 and revised December 7, 2021.

Mark Hansen, motions to accept findings, Denise Johnson seconds.

Vote:

AYE: Jacob Dewey, Herbert Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson

NAY: None

Mark Hansen moves to grant Special Permit No. 2021-053 subject to the following conditions:

1. Special Permit No. 2021-053 is granted to Barry and Karen Oshry for the demolition of a pre-existing nonconforming 700 sq. ft. dwelling and construction a 1,200 sq. ft. three-bedroom single family dwelling on a lot containing 7,084 square feet at 44 Lakewood Drive, Centerville.
2. The site development shall be constructed in substantial conformance with the plan entitled "Certified Plot Plan of Land in Centerville (Barnstable), Massachusetts as prepared for Barry & Karen Oshry prepared by Paul E. Sweetser dated August 5, 2021 with revision dates of September 13, September 23, 2021, and November 27, 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. The total lot coverage of all structures on the lot shall not exceed 13.26% and the floor-area ratio shall not exceed 22.5%.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
6. 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 on Conditions

AYE: Jacob Dewey, Herbert Bodensiek, Paul Pinard, Mark Hansen, Denise Johnson

NAY: None

GRANTED WITH CONDITIONS

List of Documents Used at the Meeting

1. Mallegni-Bornbam LLC – Shared interior photos of the granite warehouse and Site Plan

Correspondence

None

Matters Not Reasonably Anticipated by the Chair

None

Upcoming Meetings

January 12, January 26, February 9

Adjournment

8:32 PM Herb Bodensiek moves to adjourn, Paul Pinard seconds

Vote:

AYE: Jacob Dewey, Herbert Bodensiek, Paul Pinard, Todd Walantis, Mark Hansen, Denise Johnson

NAY: None

Respectfully Submitted

Rachael Toolas,
Administrative Assistant