

# Zoning Board of Appeals MINUTES Wednesday, August 23, 2023 at 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, August 23, 2023, 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 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://townofbarnstable-us.zoom.us/j/83951464880">https://townofbarnstable-us.zoom.us/j/83951464880</a>	US Toll-free 888 475 4499
Meeting ID: 839 5146 4880	Meeting ID: 839 5146 4880

3. 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

Chair Jacob Dewey calls the meeting to order at 7:07 PM with an introduction of Board Members:

Member	Present	Absent
Dewey, Jacob	X	
Bodensiek, Herbert	X	
Pinard, Paul	X	
Hansen, Mark		X
Hurwitz, Larry	X	
Johnson, Denise	X	
Webb, Aaron	X	

Also in attendance is Anna Brigham, Principal Planner and Genna Ziino, Administrative Assistant.

### Notice of Recording

The Chairman reads: 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.

### Minutes

July 26, 2023 – Paul Pinard makes a motion to approve the minutes. Denise Johnson seconds.

### Vote:

**Aye:** Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Denise Johnson

**Nay:** None

## Old Business

None.

## New Business

7:00 PM

Appeal No. 2023-018

Cape Cod Five Cents Savings Bank

Cape Cod Five Cents Savings Bank has petitioned for a Variance in accordance with Section 240-65 Signs in B, UB, HB, HO, and SD-1 Districts. The Petitioner seeks a Variance to allow for 4 signs where 2 are allowed and to install an oversized directional signs to replace existing directional signs. The subject property is located at 157 Falmouth Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 075. It is located in the Residence B (RB) Zoning District and the Highway Business (HB) Zoning District.

Sitting on this is Jacob Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, and Denise Johnson.

Bert Talerman, President of Cape Cod Five introduces those with him: Andrea Ponte who runs operations, Chris Raber who is head of real estate, and Gary McCoy from Poyant Signs. Mr. McCoy provides background on the request. They're looking to replace existing signs on the building with like-for-like signs that are smaller than the existing ones. They are additionally proposing directional signs that are more modern. They are proposing 4 directionals located at 2 curb cuts: one on the west side of the building and one on the east, one to direct visitors out of the property, and one to direct visitors to the drive thru. He walks the Board through his explanations of how this meets the variance criteria:

1. This business is set back 120 feet from the street so it's a significant setback. Most of the other businesses nearby are close to and easily viewed from the road. They also have mature plantings in the front because the bank has been here for more than 20 years, and those create an obstruction. Those are hardships related to the unique property.
2. They've always had these signs and if they were to have to lose an existing one, that would be a hardship.
3. The signs have been here for more than 20 years and have not created any detriment to public good, and the new ones are similar and won't create any detriment.

**Chair Dewey brings it back to the Board for questions.** Aaron Webb asks if the signs are illuminated currently. Mr. McCoy answers no, the signs in this proposal are not currently and not proposed to be illuminated.

**Chair Dewey opens for public comment.** There is none. The Chairman moves to close public comment. Paul Pinard seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Denise Johnson**

**Nay: None**

**Paul Pinard makes findings:**

Cape Cod Five Cents Savings Bank has petitioned for a Variance in accordance with Section 240-65 Signs in B, UB, HB, HO, and SD-1 Districts. The Petitioner seeks a Variance to allow for 4 signs where 2 are allowed and to install an oversized directional signs to replace existing directional signs. The subject property is located at 157 Falmouth Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 075. It is located in the Residence B (RB) Zoning District and the Highway Business (HB) Zoning District.

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. He finds that the large setback and the mature trees in the way is a hardship for signage.
2. a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner. He finds that removing two existing signs would be a hardship.
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. He finds that the signs have not and will not create a detriment to the public good.

Herb Bodensiek seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Denise Johnson**

**Nay: None**

Paul Pinard says that the appeal is subject to conditions 1-3 from the Staff Report dated August 10, 2023.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Denise Johnson**

**Nay: None**

**Variance No. 2023-018 Cape Cod Five Cents Savings Bank is approved with conditions.**

**7:01 PM**

**Appeal No. 2023-019**

**Vilsaint**

Kevin Y. and Corrie L. Vilsaint have applied for a Special Permit in accordance with Section 240-47.2 Accessory Dwelling Units (ADUs). The Applicants seek to remove and replace an existing accessory structure with a new accessory dwelling unit (ADU). The Applicants also seek to modify Special Permit No. 2020-038 to allow further build out of the property for the accessory dwelling unit and additions to the principal dwelling. The subject property is located at 358 Flint Street, Marstons Mills, MA as shown on Assessor's Map 101 as Parcel 121. It is located in the Residence F (RF) Zoning District.

Sitting on this is Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, and Denise Johnson.

Attorney Chris Kirrane is representing the applicants. The applicants are proposing to raze and replace an existing accessory structure with an ADU in excess of 900 sq. ft. They are also seeking the removal of a condition from a prior special permit that limited further buildout of the property. He adds that were it not for that condition, their proposed addition would be as of right. He provides background on the structures: the existing accessory structure is 1,384 sq. ft., which is the same size they are proposing for the ADU, so they will not be increasing the footprint. Additionally, the proposed ADU would be moved to make the structure conform to setbacks where it is currently nonconforming.

**Chair Dewey brings it back to the Board for questions.** Denise Johnson asks for clarification about existing and proposed square footage. Attorney Kirrane says the existing principal dwelling is 2,132 sq. ft. of gross floor area, and the addition would increase that to 4,404 sq. ft. He reiterates that the addition will conform to all zoning requirements. Paul Pinard asks about an additional building on the site. Attorney Kirrane says it's a boathouse type structure, with no living space to his knowledge. They are not proposing any changes to that structure. Chair Dewey asks if the applicants are planning to rent this. Attorney Kirrane confirms, and clarifies that the applicant is asking for two bedrooms in the ADU. Herb Bodensiek does not feel that more than 900 sq. ft. has been shown to be necessary. The Board discusses whether the addition and the ADU being proposed together is appropriate. They discuss whether the prior special permit made extra restrictions on the accessory structure that aren't addressed in this application. The Board discusses that the accessory structure has been used as guest spillover so far, so they have concerns that it may not be rented out. The Board does not feel they have been shown why the space needs to be over 900 sq. ft.

**Chair Dewey opens for public comment.** There is none. The Chairman moves to close public comment. Paul Pinard seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Denise Johnson**

**Nay: None**

**The Board deliberates.** They feel that justification to make the ADU larger is needed because the current structure is going to be razed. The Board feels as though they are seeing more 900+ sq. ft. ADU requests and they discuss what they consider a special case. They discuss the intent of the bylaw and Town Council's decision to set 900 sq. ft. as the limit without a special permit, and whether this is a special case. This application has not shown a hardship. Chair Dewey encourages Attorney Kirrane to talk to his clients to either establish justification or propose an ADU that meets the size restrictions.

Attorney Kirrane requests to continue to September 27. Chair Dewey makes a motion to continue Appeal No. 2023-019 to September 27, 2023. Herb Bodensiek seconds.

**Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Denise Johnson** (Administrative note: Aaron Webb dropped off the meeting so was not present for this vote)

**Nay: None**

**Appeal No. 2023-019 Vilsaint is continued to September 27, 2023.**

### **Correspondence**

The Department of Environmental Protection has given Public Notice of a Chapter 91 license application for 160 Lake Elizabeth Drive, Centerville.

The Southwind Plaza ANR has been referred to the Cape Cod Commission as a mandatory Development of Regional Impact.

### **Matters Not Reasonably Anticipated by the Chair**

None.

### **Upcoming Hearings**

September 13, 2023, September 27, 2023, October 11, 2023

### **Adjournment**

Chair Dewey makes a motion to adjourn. Paul Pinard seconds.

### **Vote:**

**Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Denise Johnson, Larry Hurwitz**

**Nay: None**

### **Documents Used at This Meeting**

- 2023-018 Cape Cod Five Cents Savings Bank application packet
- 2023-019 Vilsaint application packet
- Correspondence from Department of Environmental Protection
- Correspondence from Cape Cod Commission

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>