

**Zoning Board of Appeals
MINUTES
Wednesday, December 10, 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, December 10, 2025, 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 18 or high definition Channel 1072. It may also be accessed via the Government Access Channel live stream on the Town of Barnstable’s website:
<https://barnstable.cablecast.tv/internetchannel/watch-now>
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://townofbarnstable-us.zoom.us/j/84908680792	US Toll-free: 888 475 4499
Meeting ID: 849 0868 0792	Meeting ID: 849 0868 0792

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 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.

Call to Order

Chair Dewey calls the meeting to order at 7:03 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	
Dworkis, Debra	X	
Hurwitz, Larry	X	
Pittenger, Natalie	X	
Webb, Aaron	X	

Also present is Allison Cogliano, Assistant Town Attorney; Anna Brigham, Principal 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

None

Old Business

7:00 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, January 8, 2025, February 12, 2025, April 9, 2025 and October 22, 2025. Members assigned: Dewey, Bodensiek, Pinard, Webb, Alves.

This matter is heard together with Appeal No. 2024-040.

7:01 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, January 8, 2025, February 12, 2025, April 9, 2025, and October 22, 2025. Members assigned: Dewey, Bodensiek, Pinard, Webb, Alves.

Chair Dewey says they are here tonight to discuss whether Appeals No. 2024-039 and -040 have legal standing. Attorney Allison Cogliano, Assistant Town Attorney is present.

Attorney Mike Ford is representing the applicants and says at the last meeting, he was asked to show that he has the right to a public hearing, and was charged with talking to the Town Attorney. He spoke to Attorney Cogliano and he thinks she agreed that he has the right to a public hearing.

Attorney Cogliano says she sent a memo advising about standing. She spoke with Attorney Ford and Attorney Kenney, and she believes Attorney Ford should be able to put forth his case and the first issue the Board needs to decide is if he has standing to go forward. Attorney Ford can make his case, Attorney Kenney can rebut, and then the Board needs to decide whether there is standing to go forward. She reminds the Board that in order to establish standing, the applicant must show credible evidence: a particularized injury to a legally protected interest. Chair Dewey asks Attorney Cogliano to confirm that in her legal opinion, she thinks there is not standing. Attorney Cogliano confirms. Attorney Kenney says he recommended a bifurcated approach: he thinks Attorney Ford is entitled to a hearing on standing but not a full hearing on his case.

Attorney Ford says his understanding was that he would be able to submit his case to the record, not simply narrowed to questions involving standing. Attorney Cogliano asks Attorney Ford to make the standing argument with only as little of his argument as is necessary. The Board discusses whether to hear the full case or first decide on standing. They agree that standing must be decided before the full case can be heard. Manny Alves asks Attorney Ford to address the issues in Attorney Cogliano's memo. Attorney Ford says his problem with the memo is that there has been no evidence in the case because the hearing hadn't been opened. The Board can't make a finding of no standing when 40A says he has the right to a public hearing. Manny Alves thinks Attorney Ford's role is to present his client's facts how they fit within the memo.

Attorney Ford says his client is assumed to not have standing because they are not abutters. The use of the properties at 95 and 123 Falmouth Road is similar to the use his client conducts on his property: auto sales and service. Bays and lifts invoke the groundwater protections and so auto service is a prohibited use on the lots in question. When Attorney Ford's client redeveloped the Audi dealership, there was a lengthy review of the question of what was preexisting nonconforming in terms of automobile dealership and service. Once it was determined through an inspection by the Building Dept., a memo was developed as to how much hazmat a bay or lift utilized. The enforcement action enacts the question of whether these are legal bays. It appeared to him that 95 Falmouth Road did have a claim for preexisting nonconforming because of factual existence of bays and lifts prior to prohibition in GP. He could find no such evidence for 123 Falmouth Road. There appeared to be a 3-year lapse in the use of the bays at 95 Falmouth Road, and Attorney Kenney wrote a letter to the Building Commissioner arguing that the use had not been abandoned.

Regarding 123 Falmouth Road, Attorney Ford couldn't find any evidence of preexisting lifts or service. He found letters in the Building Dept. file finding that there were not preexisting nonconformities there. Attorney Kenney's letter addresses that through a series of licenses saying there are two buildings with ten bays, which are laid out on the licenses—but Attorney Ford says they're not laid out. The Building Inspector denied building permits and sent an email that it was denied pending explaining the expansion of the bays. But Attorney Kenney did not address how there was an expansion of the mechanical bays. The Audi property is in the GP district. There are cases that indicate that properties are to be treated uniformly in a zoning district. And if a property in a zoning district is affected by the fact that other properties are not being treated uniformly as to uses, that's a property right issue. The other reason is a novelty with respect to standing. And that is the question of uniform application of regulations in the town. His client's opinion is that the property didn't go through the required rigorous review. He thinks the law of standing was not meant to be hard and fast, but rather flexible.

Chair Dewey asks Attorney Ford to clarify his argument. Attorney Ford says his argument is based on two parts: case law that found that there is standing to complain about uses being conducted in a zoning district that are not permitted, and that the regulations are not being applied uniformly on uses in the same district and it harms his client.

Chair Dewey asks the Board members for their thoughts. Manny Alves says Attorney Ford's argument doesn't seem to be the prevailing view of the law—that the Board has the authority to expand standing. Attorney Ford says he thinks this Board should rule on the evidence and not on standing. Paul Pinard is not sure this is the venue that this should occur. Attorney Ford says the appeal must occur at the Building Commissioner's level first. Otherwise, this would leave his client without legal remedy.

Attorney Kenney rebuts. He is representing 123 Falmouth Road and Copeland Subaru, the tenant in the building. According to Attorney Ford's facts, anyone in the town could come before this Board aggrieved. He says the applicant asked for enforcement action, and the Building Dept. denied it after a thorough investigation. They then appealed that denial to this Board, and Attorney Kenney appealed that because they are not an aggrieved party. "Aggrieved party" is not an abstract standard; it is defined clearly. Attorney Ford said nothing about aggrievement, only disparate treatment, which is not the same. The properties are at different stages in development, so to argue that they are entitled to uniform application of the zoning ordinance is nonsensical. Everyone is, entitled to uniform application, and that is why his client already went through the Building Dept. process. He adds that the alleged zoning violation is not enough to confer standing, according to the Supreme Court. There is no personalized harm here. He cites a case law that groundwater contamination is not enough to confer standing. Attorney Kenney believes this appeal is about holding up a competitor.

Attorney Ford says disparate treatment is the reason for the appeal—he doesn't have case law on it, but thinks this Board could evolve standing that way. Manny Alves thinks if there is no established law, this Board is not the one to make it. Attorney Kenney says there is established law, and it reaffirms that an alleged zoning violation is insufficient to confer standing. Attorney Cogliano says she provided language for three different motions. She hasn't heard anything this evening that was above and beyond what was included in her memo, so she stands by that opinion. She asks the Board to make a decision based on what they heard tonight.

Chair Dewey asks the Board for thoughts. Manny Alves agrees with the town's counsel, and thinks they should close the public hearing and vote. Manny Alves moves to close the public hearing. No vote is taken. Attorney Kenney requests to keep the public hearing open and vote first. Paul Pinard moves to close the public hearing and vote on the issue of standing. No vote is taken. The Board decides not to close the public hearing. Paul Pinard moves to rule on the issue of standing. Chair Dewey moves that the Board find the applicant has not met its burden of establishing standing as an aggrieved person under general law Chapter 40A and therefore dismiss the appeal for lack of jurisdiction. Herb Bodensiek seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Manny Alves

Nay: None

Abstain: Aaron Webb

Chair Dewey moves to close the public hearing on 2024-039 and 2024-040 due to the lack of vote of standing on both appeals. Paul Pinard seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Manny Alves, Aaron Webb

Nay: None

Appeals No. 2024-039 and 2024-040 are dismissed.

7:02 PM

Appeal No. 2025-032

WS Landing at Hyannis LLC

WS Landing at Hyannis LLC has petitioned for a Variance pursuant to Section 240-65 J. Drive Up Menu Board, Quantity and Area. The Applicant seeks to install 2 signs for a drive-through window, including an approximately 35 sq. ft. menu board sign and an approximately 1.25 sq. ft. sign on the menu speaker board. 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 Districts. Continued from November 12, 2025. Members assigned Dewey, Bodensiek, Alves, Hurwitz, Pittenger.

The Board received a request to withdraw the appeal without prejudice. Attorney Jeannie Kampas is present representing Liza Cox and reiterates they would like to withdraw without prejudice. Chair Dewey moves to withdraw the appeal without prejudice. Larry Hurwitz seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Manny Alves, Larry Hurwitz, Natalie Pittenger

Nay: None

Variance No. 2025-032 WS Landing at Hyannis LLC is withdrawn without prejudice.

New Business

7:03 PM

Appeal No. 2025-035

Ashley Manor LLC

Ashley Manor LLC has applied for a Special Permit pursuant to Section 240-11 C. (6) Condition Uses in the RB, RD-1, and RF-2 Districts – Bed and Breakfast. The Applicant is seeking to change the use from group home to owner-occupied bed and breakfast. The subject property is located at 3660 Main Street, Barnstable, MA as shown on Assessor's Map 317 as Parcel 021-001. It is located in the Residence F-2 (RF-2) Zoning District.

Chair Dewey assigns himself, Herb Bodensiek, Paul Pinard, Aaron Webb, and Manny Alves.

Kai Cole is the applicant and one of the property owners. Ms. Cole explains that this was most recently a group home, but they want to turn it back into a bed and breakfast, which it was for decades. It was built in 1720 and is listed as 11 bedrooms in the Assessor's Records but only has 5 bedrooms and the owner's room. Chair Dewey asks if they went to Site Plan Review. Ms. Cole says they don't need to do SPR because it was a group home for less than 3 years. They submitted a no detriment letter from SPR.

Back to the Board for questions. Chair Dewey asks about the capacity intended. Ms. Cole says they want to go back to what it was: 5 rentable rooms and the owners occupying the other space. There is a second building on the lot as well: a cottage built in 1935 that's used as rentable space. Chair Dewey says the provision says no more than 3 bedrooms can be rented to 6 guests at a time. Ms. Cole says they are asking for a variance from that, to which the Chairman says their application did not include that. Paul Pinard asks if the Board of Health has to review this. Ms. Cole says they are doing licensing now, and she thinks the group home had more stringent requirements. It will still be subject to inspections and requirements. Chair Dewey asks if it's on public water. Ms. Cole says it's on town water. Chair Dewey asks if they got a determination of their impact on the water supply. Ms. Cole says they are within the capacity allowed. There are no cooking facilities in rooms. Chair Dewey asks how many cars can be accommodated. Ms. Cole says there is more than adequate parking—it's spread out but there are technically 11 spaces. Chair Dewey reads the parking requirement and says he can't tell how many spaces there are from their site plan. Ms. Cole didn't know she needed to show those numbers. Manny Alves says as recently as 1999 there was a modification to a special permit to allow the use as a BnB. He asks if this is amending the special permit back. Chair Dewey questions whether the ask is to allow the change of use. Manny Alves thinks it may be more sufficient to go back and modify an existing decision because of the number of bedrooms and the parking. Chair Dewey suggests continuing this to allow the applicant to get everything together to make sure the Board doesn't accidentally condition the applicant into a corner. There is confusion because parking was confirmed by SPR. Manny Alves says it may be done easier by modifications of prior special permits. The group discusses the best way for this to move forward.

Aaron Webb moves to continue the appeal to January 14, 2026. Paul Pinard seconds.

Vote:

Aye: Herb Bodensiek, Paul Pinard, Aaron Webb, Manny Alves

Nay: None

7:04 PM

Appeal No. 2025-036

Sullivan

William and Susan Sullivan have applied for a Modification of Special Permit No. 2006-076 pursuant to Section 240-91 H. Developed Lot Protection; Demolition/Rebuilding on a Nonconforming Lot. The Applicants are seeking modifications to approve the conversion of the existing barn into a garage with finished office, remove the existing deck and construct a 395 sq. ft. swim spa and a 23' x 27' patio, and revise and update lot area, lot coverage, setbacks, floor areas, and floor area ratios per engineer's plan. The subject property is located at 990 Main Street, Cotuit, MA as shown on Assessor's Map 034 as Parcel 034. It is located in the Residence F (RF) Zoning District.

Paul Pinard recuses himself and leaves the meeting. Aaron Webb leaves the meeting. Chair Dewey assigns himself, Herb Bodensiek, Manny Alves, Larry Hurwitz, and Natalie Pittenger.

Attorney Patrick Nickerson is representing the applicant and is joined by Attorney John Kenney and engineer John O'Dea. Attorney Nickerson explains that there is a long, shared driveway by 992 and 994 Main Street. The lot was created in 1947, which predates dimensional requirements. Zoning changes in 1956 and 1969 rendered both the property and the structures thereon nonconforming. In 2006, this Board issued a special permit allowing the complete demolition and rebuilding of the single-family dwelling. In that decision, there were two conditions relevant here: one represented full buildout of the lot, and one limited the barn's use to not be turned into habitable space. In 2008, the applicant received building permits to renovate the barn, which resulted in 300 square feet of finished space (used as an office). It is certainly not a dwelling—no kitchen, no bedroom—but the applicant should have come before the Board for that, but didn't. They are also seeking to construct a swim spa and patio. He walks through the site plan, building permits, images of the garage, and a foundation plan. Both direct abutters have submitted letters of support.

Back to the Board for questions. Chair Dewey asks why this can't go under H1. Attorney Nickerson says because the side yard setbacks are less than 15 feet. Manny Alves asks if the applicants here were the owners in 2006. Attorney Nickerson confirms. Manny Alves asks what the lot coverage will be, because 240-91H has a requirement that lot coverage not exceed 20%. Attorney Nickerson says 19.9%. And FAR is 29.5 where 30 is allowed. Natalie Pittenger is bothered that they said the barn wouldn't be habitable but then they made it habitable. Attorney Nickerson says it could be open to interpretation what habitable means—does it mean not capable for human occupancy as defined today or does it mean not to be used as a dwelling? For a layperson, the language may not have been understood. Bill Sullivan, the applicant, says it was a misunderstanding—it was always intended to be used as an office. Chair Dewey asks if the loft above is being calculated in FAR. Attorney Nickerson says that is correct, there is no standing room height in that portion. Chair Dewey is concerned that it is still conditioned space. Bill Sullivan says he thinks the floor is plywood—he's fine dismantling the loft, it's not used. Attorney Kenney says it's not unusual to have space like that not included in gross floor area. Attorney Nickerson suggests a condition of removing the staircase so it's not accessible. Chair Dewey is not sure that is sufficient.

Chair Dewey opens for public comment. He says the Board received two letters in support. The Chairman moves to close public comment. Herb Bodensiek seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Manny Alves, Larry Hurwitz, Natalie Pittenger

Nay: None

Back to the Board for discussion: Manny Alves asks if this is modifying the 2006 special permit. Attorney Nickerson thinks by approving this, the Board is modifying. Attorney Nickerson asks the Board to make a finding to modify the special permit to allow additional buildout of the pool and patio pursuant to condition no. 7, and also to approve the conditional buildout of the garage with finished office and update the technical data as submitted. The group discusses whether they need to include the different calculations because the applicant is not asking relief for that data. Manny Alves thinks they could add a finding that anything inconsistent in the 2006 special permit is hereby superseded.

Chair Dewey moves to close the public hearing. Larry Hurwitz seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Manny Alves, Larry Hurwitz, Natalie Pittenger

Nay: None

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 H. (3) allows for the demolition and rebuilding of a residence on a nonconforming lot.*
2. Site Plan Review is not required for single-family residential dwellings.
3. 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 neighbors approve and that the work is already done in the garage and the pool work will not be visible to neighbors.

Further, Section 240-91 H. (3) requires the Board to find that if the proposed demolition and rebuilding cannot satisfy the criteria established is H. (1) As-Of-Right, then the Board may allow the demolition and rebuilding by Special Permit provided the Board finds that:

4. The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building. *The setbacks for both dwellings are not changing. The proposed setbacks for the swim spa are 6.7 ft and 9.4 ft.*
5. The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. *The proposed lot coverage is 19.9%, less than maximum.*
6. The floor area ratio shall not exceed 0.30 or 30% the existing floor area ratio of the structure being demolished, whichever is greater. The proposed gross floor area is 29.5%.
7. The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 ½ stories. *The height of the dwelling is 23.5 feet and will not change.*

The Board is also asked to find that:

8. The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.
9. The existing and proposed side yard setbacks of the single-family dwelling are 9.8 ft on the northern boundary and 7.5 ft on the southern boundary.

Natalie Pittenger seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Manny Alves, Larry Hurwitz, Natalie Pittenger

Nay: None

Manny Alves makes a motion to grant Special Permit No. 2025-036 based on findings, with conditions 1-6 from the Staff Report dated November 18, 2025. Herb Bodensiek seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Manny Alves, Larry Hurwitz, Natalie Pittenger

Nay: None

Chair Dewey moves to pass the item. Natalie Pittenger seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Manny Alves, Larry Hurwitz, Natalie Pittenger

Nay: None

Special Permit No. 2025-036 Sullivan is granted with conditions.

Correspondence

- Cape Cod Commission MEMBER Workshop, 11/20/25 @ 1:00 p.m., Cape Cod Commission Office, 3225 Main Street, Barnstable
- Cape Cod Commission Meeting, 11/20/25 @ 3:00 p.m., Mary Pat Flynn Conference Room, 3195 Main Street, Barnstable
- Technical Bulletins Hearing, 12/4/25 @ 3:00, Virtual
- Wychmere Beach Club Hotel Redevelopment, 12/16/25, @ 5:00 p.m., Harwich Community Center, 100 Oak Street, Harwich, MA 02645
- Cape Cod Commission Meeting, Thursday, December 4, 2025 – Online
- Pound Pond Mitigation Hearing, Thursday, December 18, 2025 – Hybrid
- Barnstable LCP Hearing, Thursday, December 18, 2025 – Hybrid
- Executive Committee Meeting Agenda on Thursday, December 4, 2025 at 2:00 p.m.

Matters Not Reasonably Anticipated by the Chair

Upcoming Hearings

January 14, 2026 (in person), January 28, 2026 (remote), February 11, 2026 (in person)

Adjournment

Chair Dewey moves to adjourn. Natalie Pittenger seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Manny Alves, Larry Hurwitz, Natalie Pittenger, Debra Dworkis

Nay: None

Meeting adjourned at 9:31 PM.

Documents Used at this Meeting

- Letter from Attorney Cox requesting to withdraw without prejudice Appeal No. 2025-032 WS Landing at Hyannis LLC
- Appeal No. 2025-035 Ashley Manor LLC application materials
- Appeal No. 2025-036 Sullivan application materials
- Staff Report dated November 18, 2025 for 2025-036

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