

ZONING BOARD OF APPEALS

MINUTES

Wednesday, May 12, 2021

Chair Rodolakis opened the meeting at 7:00 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/98275477067	888-475-4499 U.S. Toll Free
Meeting ID: 982 7547 7067	Meeting I.D. 982 7547 7067

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 Rodolakis took roll call of members present and absent:

Member	Present via Zoom	Absent
Alves E.	x	
Bodensiek H.	x	
Dewey J.	x	
Hansen M.	x	
Hirsch D.		x
Pinard P.	x	
Rodolakis A.	x	
Walantis T.		x
Webb, Aaron	x	

Chair Rodolakis : noted Members Hirsch and Walantis were absent.

Taping of meeting

No one taping.

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We have minutes from December 9th, February 20th and February 24th. to be approved. **Member Pinard** moved to accept with Member Dewey seconding.

Member	Acceptance of Minutes	Absent
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.		x
Pinard P.	In favor	
Rodolakis A.	In favor	
Walantis T.		x
Webb, Aaron	In favor	

All in favor.

OLD BUSINESS

Appeal No. 2021-018 Crawford William G. Crawford and Lynne A. Crawford has applied for a Special Permit pursuant to Section 240-91.H(3) – Demolition and Rebuilding on a Nonconforming lot. The Applicants are proposing to demolish an existing two-bedroom dwelling and construct a new, four-bedroom dwelling on a lot consisting of less than 10,000 square feet. The subject property is located at 181 Hollingsworth Road, Osterville, MA as shown on Assessor’s Map 140as Parcel 040. It is located in the Residence C Zoning District. **Continued from April 28, 2021.**

Chair Rodolakis noted that he saw Mr. Crawford in the “Zoom” audience and knew there was a letter of continuance from Attorney Shultz. (Ms. Brigham verified there had been a letter of continuance from Attorney Shulz). **Chair Rodolakis** took Mr. Crawford’S appeal out of sequence for this reason. **Member Hanson** moved to continue this appeal No. 2021-018 to May 26th. **Member Dewey** seconded the motion.

Member	Appeal 2021-018 continuance
Alves E.	
Bodensiek H.	In favor
Dewey J.	In favor
Hansen M.	In favor
Hirsch D.	
Pinard P.	In favor
Rodolakis A.	In favor
Walantis T.	
Webb, Aaron	

All in favor to continue to May 26th.

CONTINUANCE OF OLD BUSINESS

Appeal No. 2021-014 Johnson, Lot 1 Linda and Donald Johnson have petitioned for a Variance in accordance with Section 240-36 Resource Protection Overlay District, 240-128 Definitions. The

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Petitioners are proposing to divide one conforming lot containing two dwellings into two nonconforming Town of Barnstable Page 2 of 2 2 lots with an existing dwelling on each. The subject property is located at 495 Willow Street, West Barnstable MA as shown on Assessor’s Map 130 as Parcel 003. It is located in the Residence F (RF) Zoning District and Resource Protection Overlay District (RPOD). **Continued from April 14, 2021**

Appeal No. 2021-015 Johnson, Lot 2 Linda and Donald Johnson have petitioned for a Variance in accordance with Section 240-36 Resource Protection Overlay District, 240-128 Definitions, 240-007 D. Lot Shape Factor. The Petitioners are proposing to divide one conforming lot containing two dwellings into two nonconforming lots with an existing dwelling on each. The subject property is located at 495 Willow Street, West Barnstable MA as shown on Assessor’s Map 130 as Parcel 003. It is located in the Residence F (RF) Zoning District and Resource Protection Overlay District (RPOD).

Chair Rodolakis recognized that Attorney Revere was present. He noted that Mr. Hirsch was on this appeal but is not available tonight and Attorney Revere noted that he thought that Chair Rodolakis had someone present from ZBA for this appeal. **Chair Rodolakis** stated that there was himself, **Members Hirsch (who is not here), Bodensiek, Dewey and Hanson** (who was not sitting in on it) but substitute **Member Hanson** for **Member Hirsch**. **Chair Rodolakis** asked Attorney Revere if he would be all right with this. Attorney Revere noted that since **Member Pinard** was present at the last meeting and heard the whole appeal he (Attorney Revere) would be fine with Mr. Pinard being on the voting roll for these appeals. **Chair Rodolakis** indicated that Attorney Revere had submitted supplemental paperwork since last meeting. Attorney Revere began by summarizing the information. What his clients plan to do is divide the cottage and the main house sit on their own separate lots and and we come to issues on whether variances are needed or not for the lots and provide that information. Three issues came up during discussion at the last meeting that were problematic with the board. 1) Setting a precedent – does the set of precedence that we are going to allow lots to be divided without compliance of research and protection of an overlay district 2) a board member thought there might be “(what I call) a tax windfall to the Johnsons’ to get two lots out of this property and 3) demonstration of hardship required for zoning ordinance. Moving forward to these issues: the first issue “setting of precedence”. The question of whether the resource protection overlay bulk requirement even apply to this lot. By the terms of the grandfathering provision 240-91G zoning ordinance which came into effect when the Resource Protection Overlay District came into effect it reads “any increase in area frontage with yard or depth requirements of the Resource Protection Overlay District shall not apply to a lot for a single family or two family residential use which immediately prior to November 16th 2000 (paraphrasing now) comply with applicable bulk residence. Note: to be clear does not apply to a lot in two family residential use. It’s specifically exempt. That is what we have here. It is noted to and I bolded and underlined it was the protection afforded this subsection provided would become permanent. I’m not sure when you read the ordinance the zoning board would have to apply to it but I think the lot is a lot for a two family use in 2000 and is exempt from the two acre requirements. I note however that it is still subject to the frontage and shape factor requirements. If you concluded that the exemption entered into when the Research Protection overlay came into effect Lot 1 would not even need a variance because it is exempt from the

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area requirements of the Research Protection Overlay District. Lot 2 would need for shape factor and frontage. The important thing here is the question of precedence.....Attorney Revere did extensive research to try to figure out if anyone else had made the same exact request as my client had made to divide an existing property with two grandfathered dwellings on it into two separate lots on it within the Resource Protection Overlay District. I attached it as Exhibit 1 (a variance that was granted and I believe it was in 2009 for 700 South Main Street. It was a 2.35 acre upland lot. Two separate lots for 1.53 and 0.83 upland acres. One for each dwelling. The applicant was granted variances from the Resource Overlay District. The RD1 lot acre 1 acre requirement and for shape factor. . It was voted on and ZBA granted it 5-0 vote at a single meeting. Attorney Revere continued....the Johnson request is not a new precedent...it has been done in the past. The other thing there was a concern that a number of people would apply with a “tidal wave” as I called it of variant requests for similar parcels. The 700 South Main Street (Exhibit 1) was approved in 2009 and there was no “tidal waive” of applications afterwards. So the concern that this would happen was unfounded. The other example I found was a Bora application and many of the same board members were on that application. It involved two pre-Resource Overlay Protection Districts plots. Each, when they were divided which merged became, the variance they were granted allowed them to be separated into two less then one acre lots. Again that was approved by the ZBA in 2020. It was actually later in terms of noncompliance Research Protection Overlay and the underlying zoning. That was another situation the ZBA granted the variance but as far as I can tell there was no “wave of application”. Secondary question asked by board member was, are we going to have a request for every family apartment we have been approving? Attorney Revere felt that this answer was fairly simple. 1) When the Johnsons developed this property into two single family homes they were allowed to do so through two building permits without any zoning relief. The Barnstable Zoning Ordinance in Section 240-47.1 on family apartments refers to them as temporary family apartments; requires a recorded occupancy agreement; be occupied by a family member and terminated when no longer occupied by a family member. It’s clear that family apartments...when you receive approval for one (received approval that you can never divide it off from the property and by their nature; they’re temporary (obtained with knowledge they are temporary) and never should qualify as such. 2) Another point was brought up...are the Johnsons receiving a windfall? Attorney Revere attached various Assessors cards for the property. They show the property has been assessed under Code 10-90 which is “multiple houses on one parcel”...the Assesors are well aware of the situation and includes separate listings and separate replacement values for each of the individual buildings. The Johnsons have been taxed as a multi-house property by the Assessor’s office. There’s no windfall. This is what it is. The Johnsons have come to the neighbors for support. They submitted a letter on their behalf. 3) the final issue is the issue of hardship. There were concerns about hardship. I’ve said as a lawyer I am fairly technical. I’m not good at explaining some of the more emotional issues, the gut issues, the why of something. I submitted a letter by Russell Johnson explaining the desires of the Johnson family to maintain the cottage and their situation. Attorney Revere recognized Russell Johnson sitting next to him because he can better explain that Attorney Revere can the hardship. Mr. Johnson read the letter he submitted to the ZBA members. The letter encompasses the long history and the whys of dividing the cottage from the main house. The letter explains how the mother, Mrs. Johnson can no longer afford the home because she has no pension and therefore must sell the house but they want to keep the cottage for future Johnsons. Attorney Revere summarized presentation. Attorney Revere would entertain any questions from the

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board.

Chair Rodolakis asked if anyone from the board would like to engage in further discussion on this appeal? He noted it will take a 4-1 in favor of granting the variance. **Member Dewey:** Question about the building permits that were referenced. Can we see them? I think we asked for them last time...especially on how the 2nd structure was created. Attorney Revere responded that the cottage found no building permit on record for the cottage. The 1974 home, I have the building permit. It will take me a second to pull it up here and get it in front of you. **Member Dewey:** To clarify we don't have documentation that the cottage was built legally with a permit. Attorney Revere: Very simply, 1) the town's own Assessing records shows the cottage in existence by aerial photos in 1962; 2) the cottage has its own separate septic system that the town has been aware forever; 3) the Assessor's data has it constructed in 1960 which is more or less consistent with Mr. Johnson's calculations because his father built it when he (Mr. Johnson) was 17 years old. That would put it at about 1959/1960. It has a complete building permit file. There were some minor renovations done. I can pull the building permit file. It shows up in Board of Health and town records. It shows up in the Assessors with that date. **Member Dewey:** When was the other structure built? Attorney Revere: I can get you the paperwork on that. 1974. There are lots of things that show 2 septic systems on the property. **Member Hanson:** Was there anybody outside of the family using that structure or has it been just family members using the structure? Mr. Johnson: We have friends who come and stay for a week or whatever. Attorney Revere: the Johnsons may come down and bring family and a friend. **Member Hanson:** With regard to the hardship, it's usually an access issue or an inability to sell based on (inaudible), something that clearly shows the owner has exhausted other avenues in order to get a desired result. There's a portion of their land with somebody else on it, a blurb line with properties that abut. Here you state the hardship is Mr. Johnson's mother is unable to afford to keep the house but there appear to be a lot of family members using the property. I'm not getting into anything with family...I don't believe the property.....is the property saleable in the current condition, configuration? Here it just seems is it a hardship to sell because you have to (here **Member Hanson** cited a house in Chatham that has been in family 150 years and they have to sell – the taxes alone they just can't handle). Is there an inability to sell? Johnson family member: we are trying to wrap our heads around this and we appreciate the time that the board has taken to listen to appeal. The people around the house approve it. It's not setting a precedence. Because the precedence is already there. It's being taxed as two units and there's no negative implications for not approving it. What we are asking is that you look deep inside; this is something that has been in our family forever...to not approve it, we are trying to understand what the issue is. It is not going to do anything to Barnstable. It is a huge benefit to our family going back 7 years and going forward 150 years..I'm trying to understand what the objection would be for granting something that would be beneficial to us and our family and I'm struggling a little bit for why it wouldn't get approved. **Chair Rodolakis:** One of the questions I have is to go to a two condo and keep the other as a single condo. That is one way to do it without a variance. It is not my most favored way. I am the least in favor of variances. I agree with **Member Hanson** that the hardship has to be with the land not particular to the owner. I think that's where we are duty bound on those. I am happy to poll the members Attorney Revere and my recollection was we were going the wrong way or we can vote. Attorney Revere: I wouldn't mind hearing a poll from the members. **Member Dewey:** Want to add from everything we are looking at I don't see any reason why they couldn't rent the cottage separately. It seems it's a legal structure. It sort of takes the financial hardship piece away. Johnson family member noted his mother needs the money to

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live the rest of her life from the sale of the house. Renting the cottage doesn't generate enough to support her enough for the rest of her life. Attorney Revere: the Johnsons are talking about maintaining the status quo of the property. There exists two separate dwellings. That is something that has been a common issue in zoning for years and allows in many circumstances by right division of these properties subject to only attaining zoning approval. Johnson family member noted that his brother Russ has a friend who has expressed interest in the property and he would prefer to have just the house and not the cottage so there's additional maintenance, worrying about the septic system up there, mowing etc. So his preference in buying (he owned a house down the street) so we haven't gone to a full discussion with all the realtors but we do know that probably the most likely potential buyer would value it higher if it were separated without the additional burden of the cottage up the hill.

Chair Rodolakis: to take a poll at this point

Member	Appeal 2021-014 & 2021-015 Poll Discussion
Alves E.	
Bodensiek H.	Will not be in favor
Dewey J.	Not in favor
Hansen M.	
Hirsch D.	
Pinard P.	
Rodolakis A.	
Walantis T.	
Webb, Aaron	

After polling two members **Chair Rodolakis** noted that there would be a problem. Attorney Revere would like to do a continuance. At this point **Chair Rodolakis** stated he was hasn't to do a continuance. I'd be more inclined to do a full vote or a withdrawal. **Chair Rodolakis** asked if there were any other board members who wanted to withdraw, continue or take a vote. No one responded to having a continuance. We are looking at a vote or a withdrawal. Attorney Revere would like to explain to his client. If they vote it down, we can appeal it. But if they vote it down we are subject to reapply in two years and if we withdraw it we can reapply next week. After discussion with clients, Attorney Revere and clients chose to withdraw the two appeals 2021-014 and 2021-015. To be withdrawn without prejudice. **Chair Rodolakis** moved to dwithdraw without prejudice with a second from **Member Hanson**.

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Member	Appeal 2021-014 & 2021-015	
Alves E.		
Bodensiek H.	In favor	
Dewey J.		
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.		
Rodolakis A.	In favor	
Walantis T.		
Webb, Aaron	In favor	

To summarize – all in favor to withdraw without prejudice.

Mr. Johnson: Alex, Herb, Jake, Mark, Dave, Paul, Emmanuel, Aaron: We are extremely disappointed in your perspectives. Very very devastating. **Chair Rodolakis:** Sir, I appreciate that but this is not public comment and we have taken a vote. The matter is off for tonight. We are moving on to the next matter.

Appeal No. 2021-016 McDonough RE-NOTICED James McDonough of 111 Mockingbird Lane, Marstons Mills, MA has filed an appeal of an Administrative Official’s Decision. The appeal cites Zoning Ordinance §240-10 Prohibited Uses and states: “the nature of activity presently is not legal use, request is to end all non “by right” activities immediately by enforcing Barnstable Zoning bylaw against prohibited uses.” The Building Commissioner issued a ‘Notice of Zoning Ordinance Request for Enforcement Denial’ to Mr. McDonough on January 29, 2021. The subject property is located at 810 Wakeby Road, Marstons Mills, MA as shown on Assessors Map 013 as Parcel 052. It is located in the Residence F (RF) Zoning District.

Continued from April 28, 2021.

Chair Rodolakis recognized Mr. McDonough. Building Commissioner, Brian Florence and Elizabeth Jenkins Director of Planning and Development is present as well. Mr. McDonough: summarized how his situation began a quarter century ago through to today. The situation now is recreating a scenario which will allow another decade and a half of court proceedings to legitimize this entity profiting from its own illegal acts again. Mr. McDonough described the packaged documents that he submitted to the board. There are depositions for you to read from his neighbors. The Judge (in #14 on my count) it is the findings/facts rulings/laws for judgement from the trial judge and he mentions on Page 3 around 1987 William Gifford removed trees and top soil from the northwest corner of the property. I mention it now because it is going to be one of the conditions of the special permit later. In #13 on Page 3 he says “by 1995. Mr. McDonough described the tree removal process that he and his family went through on an Easter morning. **Chair Rodolakis** noted at this point that it is his understanding of the extensive history that Mr. McDonough is giving right now and they were prohibitive of what they were doing at that time. What we are facing today is Mr. McDonough’s belief that they have reinstated it or never ceased it. Mr. McDonough gave explanation of some of the courts past rulings at that time and fell back into the early history of the property. (Please refer to time frame:

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Chair Rodolakis noted that Mr. McDonough sent a letter to Building Department stating that something was going on with the property and the Building Department responded and disagreed and that is the travel today and you are filing an appeal today. Mr. McDonough noted that there is no existing usage of salvage on this property because the judge says so. **Chair Rodolakis:** You filed an appeal and the town sent you a notice on January 29th. We have a 30 day issue whether or not..... **Chair Rodolakis** as a preliminary matter I wanted you to talk about the case but I want to bring us back to a preliminary matter as whether or not we have jurisdiction. Mr. McDonough replied that, “none of these things were ever legal.” All these things go back to each other. **Chair Rodolakis** noted he is trying to understand what Mr. McDonough’s needs are from ZBA. We have a procedural issue we have to tackle; The Town has recommended that we get a legal opinion from Town Counsel whether or not we have jurisdiction and whether or not it’s timely. **Chair Rodolakis** recognized Director Elizabeth Jenkins. **Director Jenkins of Planning and Development:** “ZBA would not be aware of this but late this afternoon did hear back the filing Mass General Law Chapter 4 Section 9 allows that when the last day of performance of an act including those authorized or acquired by state statute qualifies on a Sunday or legal holiday the act may unless it is specifically authorized that cannot be performed on Sunday or a legal holiday may be performed on the next succeeding business day. I do believe under that section as the attorney’s office advises that because the authority of the appeal period fell on a Sunday then under Mass General law Chapter 4, Section 9 the timeframe to final the appeal was extended. I do think **Chair Rodolakis** that your comments do raise an additional procedural issue and there are some concerns to specificity of the applicant’s appeal of the Building Commissioner and the exact remedy he seeks.” **Chair Rodolakis:** “Mr. McDonough you did timely file it and I apologize if I put it in the wrong order but I wanted to give you a chance for introduction. We do have jurisdiction.” Mr. McDonough: “yes you do have jurisdiction.” **Chair Rodolakis:** “is the request you are seeking from the town?” Mr. McDonough: “I’m appealing because I kind of got backed into this. Back in January my neighbors came to me and stated, that I was in charge of this situation the last time it happened and we are all sending notices to the Building Commissioner and would you please support us? I sent a letter to the Building Commissioner and I mentioned a couple of facts that I had firsthand knowledge of and I had one question, “If these facts were true, would it make any difference?” It took 98 days for me to get an answer. When I did get an answer it was 5:30 PM on a Friday. I had a 30 day deadline thrown at me and I had no idea it was coming. In the days of Covid at that time, it was almost impossible to find people on short notice. I contacted all the lawyers that were involved with the situation years ago. I got a couple of maybes; a couple of can’t do its and a lot of people just didn’t even bother to call back. I had only two weeks left and no lawyer I had to take up the issue myself and so I did. What I found was this letter that says, “We know that you didn’t ask for enforcement but we think you might have meant to. So we are going to do it that way and we are going to deny it and one of the things is it’s not in the proper form of the enforcement action you never asked for. I am appealing a decision that was thrown at me that I really didn’t ask for and I believe the town is in the same situation it was 25 years ago when the Building Commissioner made a really bad call and he had to reverse it a year later and then we were thrown into court for 10-15 years trying to get through a right that this person never had and now we are doing the same thing again. He’s got a sign out in front that reads Southwest or Southeast Salvage or something and he has no salvage license. There’s no evidence that the metal license was transferred correctly. We know that he has no use because it was

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sunsetted. In order to do what he is trying to do, he has to go back to you and ask you for this all over again.” **Chair Rodolakis:** “on that one is he using it as a salvage yard? The sign is up you would have to ask him what he is using it for? Are you asking me to have him take the sign down?” Mr. McDonough: “What I’m asking you, (Mr. McDonough shows a copy of the town’s bylaws in his hands) here’s what I am asking you to enforce. Article 2 General Provisions 240-10. Mr. McDonough reads the aforementioned by law. I and my neighbors are complaining that six out of the seven specific things he’s doing. Nobody’s complaining about the lighting. We are complaining about all the other things and he also has other causes. So we have 7 out of 8 that are going on there. **Chair Rodolakis:** “What I see from the Building Commissioner (the letter he wrote to you denying your request) I would see to me in my read it would focus on the property being used as a gravel pit or a place to commercially process fill or for depositing fill, brush or equipment. He said he didn’t find any instances of that.” Mr. McDonough: “It also prohibits commercial activity.” **Chair Rodolakis:** “I just want to focus on that one first. Is that commercially process fill or for depositing fill, brush or equipment for resale?” Mr. McDonough: “he is being paid to deposit dredge find.” **Chair Rodolakis:** “Mr. McDonough it says resale.” Mr. McDonough: “Resale, that’s a commercial activity. **Chair Rodolakis:** “The appeal before us is the denial of the building commissioner’s request.” Mr. McDonough: “I never made a request. It took 98 days for me to find out that this was happening. 98 Days. 3 months later. Out of nowhere I get this letter telling me that I made a request for enforcement that I never made. **Chair Rodolakis:** “What you are asking me now is to reverse what the Building Commissioner issued. I am running into a quandary. I don’t know what you are asking us to do then. If you are saying you didn’t ask for this letter and you weren’t seeking that letter but then the relief in the appeal you are seeking is for that letter to be rescinded; I am not sure what we can do.” Mr. McDonough: “Why would that be?” **Chair Rodolakis:** “the appeal being that the appeal being sought right now is that the Building Commissioner’s letter effectively be overturned.” Mr. McDonough: “No I asked you to stop all non by right activity going on out there. To stop the commercial activity that’s been prohibited (doesn’t matter which one they are). Something you are telling me I was denied for because I was taking it out of context; now you want to take it out of context out of context a second time to make me responsible for it?” **Chair Rodolakis:** “I am trying to go through the process we are trying to go through. The process we have is we have an appeal of this specific letter from the Building Commissioner by you and you are saying, “I want you Board (ZBA) to withdraw it. I don’t have the ground to say “enforce the zoning ordinances in the town.” I don’t think that is a power we have as a board.” **Chair Rodolakis:** “The board has the power to vote and in certain circumstances overturn some decisions if all the other facets are being properly handled we can reverse the decision of the Building Commissioner. But the request I have in front of me now deals with his letter and the relief in the letter. I don’t think I have the ability to go beyond the letter if that is what you are asking me to do and say, “Building Commissioner your letter is wrong not only is your letter wrong but you should go and enforce the zoning requirements on that property. I presume he is enforcing the zoning requirements on that property.....” Mr. McDonough: “May I refer to the letter?” **Chair Rodolakis:** “of course.” Mr. McDonough: “it says on the bottom of the first page, “in request for enforcement you

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QUESTIONS FROM THE BOARD

Member Bodensiek noted he read all 91 pages of submitted paperwork and feels this is a commercial endeavor because the landowner is accepting landfill and acting like a landfill which falls under commercial umbrella. He asked of Mr. McDonough what the landfill smells like.” Mr. McDonough was indicated it smelled like low tide at Poppenesett. He also explained how they are loading of dredge material was being rendered. This 16 acre parcel of land is almost rendered not usable for residential use. You got sump pumps, all sorts of building debris – you don’t know where everything is. You don’t know where the documentation of this is and some unsuspecting developer is going to come in in 20 years and find that his foundations are cracking and possible sink holes. There are so many red flags here. I don’t know if Brian Florence is the one to do the enforcement. Somebody I think at the local level should be looking into this. I went over to the site and there is a No Trespassing sign. I couldn’t go on the site and look around. Town officials the same way. If there are “No Trespassing” signs, unless you have permission like Brian did that one day, you just can’t go in there and poke around. But hearing that it smells like low tide and a marsh (assumably) that’s a huge thing. The soil aspect, I’ve read Cape Cod Times articles, Patriot articles, I’ve looked into this quite a bit, you’re supposed to track materials like that with Bills of Lading and it doesn’t sound like that is being done. There was a landfill in New Bedford that was supposed to be taking this material. Mr. Keyes under bid them. I found out so much about this that I could go on for another hour without a script. As a soils professional, this is a sacrilege to me. **Member Alves:** I am stuck on the procedural aspect of this. If all of these facts exist, this is a question for Mr. McDonough. The enforcement officer should be presented with all of these issues and asked to enforce the zoning bylaws. I am not sure that that is the role of this board. I also hear what Member Bodensiek is saying, “if all of these issues are happening, that should be taken up. But I’m not sure procedural this should be taken up by us. **Member Webb:** “I’d like to know from Mr. Florence how he came about the request from Mr. McDonough and how that all got started.” There seems to be confusion about that? **Chair Rodolakis:** Brian Florence Building Commissioner was recognized. Mr. Florence: noted he had received numerous emails about this property not asking if anyone was going to do anything about I but just telling me the things that were being put on the property. They all complained about a previous mining operation. Emails started in October and I didn’t respond until January. The fact is the emails were not entitled to a response because there was no request for enforcement. I did an inspection as you heard. Mr. Florence explains what has been determined and what his findings were on this property. (Please refer to the video of May 12, 2021 ZBA meeting Brian Florence segment – using time frame beginning 1:16:43 and ending at 1:09:44). **Chair Rodolakis** noted to Mr. McDonough that at this time “we (ZBA) are constrained by the letter from the town to you even if it wasn’t the letter you wanted or expected but as the ZBA we are limited in looking at that letter and saying we are going to affirm what the Building Inspector has indicated to you in terms of a denial to you for request for enforcement or go back and say Building Inspector you need to enforce the provisions you said there were no enforcements needed. Mr. McDonough explained what happened in 1995 with regard to hole digging on the property. **Chair Rodolakis:** noted that ZBA is constrained by the letter from the town to him. Mr. McDonough questioned why. **Chair Rodolakis:** There was a court decision and a ruling what we have in front of ZBA today is the Building Inspector’s letter saying I am not going to enforce today what you are asking him to stop. Now you may disagree by his asking you what he is asking you to stop but I have to go by

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his letter. **Member Dewey:** If we do not overturn the Building Commissioner's decision, does Mr. McDonough have the right to ask for enforcement again or does it have to be on enforcements that are not listed in this letter or a time period he has to wait. In answer to this Chair Rodolakis explained that if the items were listed in a letter to the Building Commissioner and he was asked to act on them by enforcing the Zoning Bylaws as illegal activity; I think the Building Commissioner has to enforce it or write him a letter stating that he doesn't view it as illegal and I'm not going to enforce it. He has to do something. Mr. Florence did note that he received emails and comments but none that he found asking for enforcement. If we deny them this, then they have a right to appeal us (ZBA). **Member Pinard:** It seems to him that the issue whether the filling of the lot is a commercial enterprise or not. If it is deemed to be a commercial enterprise, it is illegal. That's kind of where I am. Mr. McDonough agreed that's where he is. **Member Dewey :** Procedurally we are looking at this letter that's before us which is not taking on everything that Mr. McDonough is complaining about. I think the best course of action here procedurally would be Mr. McDonough made an enforcement request of the Building Commissioner specifically spelling out his complaints. Commissioner Florence would have to go back and address each of those complaints. I don't mean to make more work for him. If enforcement is denied, Mr. McDonough can come back to us and we could go through those specific complaints because it doesn't seem like this letter covers everything Mr. McDonough feels like he is addressing on the site. **Chair Rodolakis:** That's where my thinking is going to Mr. McDonough. We are not the enforcement agency for the town. **Member Bodensiek:** I don't think we have a choice but to uphold Commissioner Florence's letter because the request was so vague but that doesn't make the problem go away. There is an illegal situation going on here and somebody needs to look into this. DEP should be involved as well. I don't know who it is but there was a cease and desist order in 1997, and the owner is clearly violating that. **Chair Rodolakis:** Are there any other board members that want to ask questions? **Member Hanson:** Is it in fact true that he is being paid for this material? Mr. McDonough noted that he (landowner) under bid the contract. **Member Hanson:** have you seen money exchanged or seen the contract? Mr. Florence noted that DEP contacted him and after viewing documents, they were cited for not dewatering properly. Material was determined not hazardous materials. There's no money exchanged now. Nothing to prohibit them from filling their land. **Member Pinard:** We have to rule on the letter.

Chair Rodolakis: Opened up Public Comment:

Ann Salas, 145 Mockingbird Lane – Abutter. She has difficulty with the Supreme Court decision stating that any commercial activity, the depositing of fill is not allowed on this property. This is a clear violation of this court decision. That land has been like that for 25 years with that football stadium sized hole in it. Suddenly he decides to shore up those gaping sides of 100ft. Mary Burkenshaw, 133 Mockingbird Way. We live on this, we abut it and we see everything. I understand Mr. Florence came out for one day. We work here all day long remotely. We see it, we smell it. Mr. Florence to dismiss this that it doesn't really smell. I've watched cars being buried there. **Chair Rodolakis** noted that Mr. Florence would not be addressing what has been said about him because **Chair Rodolakis** did not want to put him into that position. Ms. Burkenshaw said she understood but just wanted to clarify because she was one of the ones who emailed Mr. Florence about situation and he had told her that he was new on the job and had boxes of paperwork on this situation. **Chair Rodolakis** recognized **Director Jenkins** who wanted to reiterate that these filings can be procedurally tricky and they do require a certain amount of specificity

ZONING BOARD OF APPEALS – MAY 12, 2021 MINUTES - CONTINUED

relative to the action being done.

Chair Rodolakis – Closed public comment.

BACK TO BOARD FOR DELIBERATION

Chair Rodolakis: noted that ZBA is constrained in terms of the letter and the procedure. We are being asked to affirm or reverse the Building Inspector's decision with respect to the four corners of his letter. I don't think we have powers beyond that. **Member Dewey:** would like clarification of his previous question from either Director Jenkins or Mr. Florence. If Mr. McDonough's has ability to appeal for a more specific request for enforcement by any actions we take tonight? **Director Jenkins:** does not have satisfactory answer for that. She is not aware of any bar of Mass General Law 40A that would prevent from filing another action for a procedural issue but I would not want to put anyone in a position tonight. I don't have that information. **Commissioner Florence:** It's up to me as to whether I want to enforce. If a question comes to me I will tell you how I will act. If a question comes to me and I have not already addressed then I will certainly consider it for enforcement. I also have the opportunity to readdress it. I'm willing to do that because I don't want to waste the board's time or the court's time but I obviously take everything that is brought to me and consider it in the best interest of the community. To answer Member Dewey's question, it is up to me whether I decide to enforce a new complaint coming in. **Chair Rodolakis:** What I'd like to see is some specific requests or questions he can respond to. If this were to come before us again (and I haven't seen it) saying that this is a commercial dumping/fill enterprise and he was to say that he disagrees that he doesn't think this is commercial; I think we would be in a very different place. If you had evidence of that you could come forward; I personally don't think this could be an endless fill job. I hear you on that and that is what I think. I think you owe Mr. Florence, if you wanted an enforcement from him that he says he is going to go and enforce the ZBA law or I am not going to. You have a clear path and we have a clear path. If that's helpful to you, that's where I am. I'm still of the mind that I am going to affirm the Building Commissioner tonight because I think based on what he understood from you 'all' he answered properly. I think there is a way to restate the questions to him. That is not what we are going to vote on tonight. We can only act on solely what was written in the letter. At this point ZBA went to a vote because they didn't need a withdrawal. Withdrawal wouldn't do any good. It's just a vote. **Chair Rodolakis** moves based on the facts and circumstances from Commission Florence including testimony provided tonight on Appeal No. 2021-016 Mr. McDonough Renoticed that we affirm the decision of the Building Inspector and his denial of an enforcement action in the his letter dated as of January 29, 2021. Seconded by **Member Alves**.

ZONING BOARD OF APPEALS – MAY 12, 2021 MINUTES - CONTINUED

Member	Appeal No. 2021-016 McDonough RE-NOTICED	
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.		
Hirsch D.		
Pinard P.	In Favor	
Rodolakis A.	In Favor	
Walantis T.		
Webb, Aaron		

All in favor affirming Commissioner Florence’s decision in his letter dated January 29, 2021.

NEW BUSINESS

Appeal No. 2021-023 Covell Brian O. Covell and Roey Covell have applied for a Special Permit in accordance with Section 240-47.1 B. (4) Family Apartments. The Applicants are proposing to construct a 600 square foot detached structure and create a 1-bedroom family apartment on the same lot as the principal dwelling. The property is located at 41 Wilton Drive, Centerville, MA as shown on Assessors Map 208 as Parcel 136. It is located in the Residence C (RC) Zoning District.

Chair Rodolakis recognized Attorney Mark Beaudreau representing Mr. & Mrs. Covell. Under 240-47.1 they are seeking permission to construct a 600 square foot detached family apartment with only one bedroom for family only. Pretty straight forward. I have read the staff report and his clients are agreeable to the conditions in the report that have been suggested. **Chair Rodolakis** has recused himself from this appeal as Attorney Beaudreau’s brother is representing **Chair Rodolakis** on another matter unrelated but **Chair Rodolakis** felt it only fair to recuse himself. **Chair Rodolakis** has placed **Member Dewey** as the Acting Chairman for this appeal as **Member Bodenseik** only has audio. **Acting Chair Dewey** assigned Mark Hanson as the 5th voting person for this appeal.

Acting Chair Dewey: questions from the Board. **Member Hanson:** Is there any correspondence from neighbors or abutters? Mr. Covell walked around the neighborhood and there hasn’t been one objection that we know of. This is detached because of the way the current house is set up really would be eliminating one of the bedrooms in order to make an attached family apartment. They have a good architect. It looks like a cottage and none of the neighbors have any objections that we have heard of.

Member Bodensiek: Attorney Boudreau you answered my question about why it was detached. No one else has any questions.

Acting Chair Dewey opened up public comment. Craig Tamesh lives directly across the street at 40 Wilton Drive. My only question is this is being requested as a family apartment. At any point in the future can it be changed to use as a rental? Attorney Boudreau noted not under the current set up. There are some regulations before the town to allow accessory dwellings that I believe are at the Planning Board Stage at this time. This particular request is for a family apartment. No it would not be rented. Mr. Tamash noted that as a family apartment, he has no problem with it. Bill Davidson 31 Harvest Lane: quick question....does the restriction about renting run with the deed in terms of rental? Attorney Beaudreau: it would. There is an affidavit that is filed with the town and it would ask who resides in the

ZONING BOARD OF APPEALS – MAY 12, 2021 MINUTES - CONTINUED

space and it would have to be a family member.

Acting Chair Dewey: public comment is closed.

BACK TO THE BOARD FOR DELIBERATION

Hearing none. Findings were made by Acting Chair Dewey.

Findings of Fact

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-47.1. B. allows a Special Permit for a Family Apartment in a detached structure.
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.
4. The proposed family apartment would not be substantially more detrimental to the neighborhood than the existing dwelling.
5. The single-family nature of the property and of the accessory nature of the detached structure are preserved.

Member	Appeal No. 2021-023 Brian and Roey Covell	
Alves E.		
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.		
Pinard P.	In Favor	
Rodolakis A.		
Walantis T.		
Webb, Aaron	In favor	

CONDITIONS PROPOSED ON STAFF REPORT DATED 4/28/2021

Attorney Beaudreau is satisfied with conditions as written.

- a. Certificate of occupancy. Prior to occupancy of the family apartment, a certificate of occupancy shall be obtained from the Building Commissioner. No certificate of occupancy shall be issued until the Building Commissioner has made a final inspection of the apartment unit and the single-family dwelling for regulatory compliance and a copy of the family apartment accessory use restriction document recorded at the Barnstable Registry of Deeds is submitted to the Building Division.
- b. Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that there shall be no rental of the principal dwelling or family apartment unit to any non-family members, shall be signed and submitted to the Building Division.

ZONING BOARD OF APPEALS – MAY 12, 2021 MINUTES - CONTINUED

- c. At no time shall the single-family dwelling or the family apartment be sublet or subleased by either the owner or family member(s). The single-family dwelling and family apartment shall only be occupied by those persons listed on the recorded affidavit, which affidavit shall be amended when a change in the family member occupying either unit occurs.
 - d. When the family apartment is vacated, or upon noncompliance with any condition or representation made, including but not limited to occupancy or ownership, the use as an apartment shall be terminated. All necessary permit(s) must be obtained to remove either the cooking or bathing facilities (tub or shower) from the family apartment, and the water and gas service of the utilities removed, capped and placed behind a finished wall surface; or a building permit must be obtained to incorporate the floor plan of the apartment unit back into the principal structure.
2. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
3. 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.
 - a. Certificate of occupancy. Prior to occupancy of the family apartment, a certificate of occupancy shall be obtained from the Building Commissioner. No certificate of occupancy shall be issued until the Building Commissioner has made a final inspection of the apartment unit and the single-family dwelling for regulatory compliance and a copy of the family apartment accessory use restriction document recorded at the Barnstable Registry of Deeds is submitted to the Building Division.
 - b. Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that there shall be no rental of the principal dwelling or family apartment unit to any non-family members, shall be signed and submitted to the Building Division.
 - c. At no time shall the single-family dwelling or the family apartment be sublet or subleased by either the owner or family member(s). The single-family dwelling and family apartment shall only be occupied by those persons listed on the recorded affidavit, which affidavit shall be amended when a change in the family member occupying either unit occurs.
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5. 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.

ZONING BOARD OF APPEALS – MAY 12, 2021 MINUTES - CONTINUED

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 - b. Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that there shall be no rental of the principal dwelling or family apartment unit to any non-family members, shall be signed and submitted to the Building Division.
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6. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.

Member	Appeal No. 2021-023 Brian and Roey Covell	
Alves E.		
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.		
Pinard P.	In Favor	
Rodolakis A.		
Walantis T.		
Webb, Aaron	In favor	

All in favor and the permit is okayed.

Chair Rodolakis is back as Chair. Will now continue.

Discussion and Vote Notice of Project Change – Add 02:32:00

Discussion and Vote Notice of Project Change – Addition of a gymnasium and Exercise Facility. Living Independently Forever (L.I.F.E.) has requested that the Board approve a modification, as an insubstantial change, to Comprehensive Permit No. 2010-036 to allow the addition of a gymnasium and exercise facility for the exclusive use of the residents of the LIFE Condominium as shown on plans submitted on

ZONING BOARD OF APPEALS – MAY 12, 2021 MINUTES - CONTINUED

April 23, 2021. facility for the exclusive use of the residents of the LIFE Condominium as shown on plans submitted on April 23, 2021.

Chair Rodolakis recognizes Attorney Peter Freeman. L.I.F.E has a long and positive history. Facility where learning disabled people live with help and assistance. Under 40B there are certain guidelines as to what is or is not substantial and insubstantial change. The guidelines in the 40B if you are increasing units or changing program itself those can be considered substantial. We respectfully submit that it is reasonable. We went through the typical process and were happy to do it. The building is only used for the residents there. Attorney Freeman introduced Ed Whelan who is Construction person at L.I.F.E. and Dan Ojala from DownCape Engineering who did the site plan. Greg Saronian is the Architect. Ed Whelan first, TOB Facility Director for L.I.F.E. We would construct a building on-site. We have a small fitness room in the basement of building and a small basketball/tennis court in corner of our property and we would like to replace with a small building using same footprints which would give our residents year round indoor facility. Our residents are heavily involved in the Special Olympics programs. Some of our residents have won medals, one a gold medal in the world Olympics three years ago. Physical fitness and nutrition is a big part of our program. This building would be a great great great thing for our residents to enjoy year round. Gregg Saronian (splg) described how the building would look and how it conforms to the neighborhood.

BOARD DISCUSSION

Member Pinard – Is there someone on site to assist the residents with the use of the facility? They have fitness instructors in one of the lower level buildings that they use for fitness. **Member Dewey:** The basement space will be reused for something else when they move out of there. Mr. Whelan: that will be repurposed for our employment people that assist the residents in getting jobs out in the community. We’ve grown so much that we have had to bring in so much help that we are running out of office space. The building being constructed will not bring in more employees, the existing building will free up more office space. No parking demands. Attorney Freeman indicated he has been to the building many times and there is always ample parking during working hours. Residents ride bikes or take buses. Attorney Freeman: including in the packet that you all have. They are all 4 unit buildings. First 16 were two bedroom units and four units in each building. I would say they are roughly 2,000 square foot prints. They may be a little bigger. The two newer buildings are roughly 2 bedroom units; slightly smaller but the footprint is pretty similar to the other two buildings. I think it’s pretty consistent what we are proposing. The new building noted Mr. Saronian is 7,433 square feet. Mr. Ojala interjected that the units are pretty close to what Attorney Freeman said.

Member Dewey made a motion to approve as a minor modification along with approval of appeal.

Member	Vote	Notice of Project Change to 2010-036
Alves E.		
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.		
Pinard P.	In Favor	
Rodolakis A.	In favor	
Walantis T.		
Webb, Aaron		

ZONING BOARD OF APPEALS – MAY 12, 2021 MINUTES - CONTINUED

Matters Not Reasonably Anticipated by the Chair

None

Upcoming Hearings

May 26, 2021, June 9, 2021, June 23, 2021

Re: May 26th Chair Rodolakis noted he will not be here. It was noted that Member Hirsch takes Chair Rodolakis place.

Re: Affordable apt program at 6:30 PM Chair Rodolakis stated he will not be there for this item. Member Dewey will do. The addresses involved are 97 Old Town Rd and 3 Granville Rd in Hyannis,

Other meetings are June 9th and June 23rd.

ADJOURNMENT

Member Pinard move to adjourn and Member Dewey seconded.

Member	Adjournment	
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.		
Pinard P.	In Favor	
Rodolakis A.	In favor	
Walantis T.		
Webb, Aaron		

Respectfully Submitted

Elizabeth B. Silva
Temporary Scribe

Appeal No. 2021-023 Crawford William G. Crawford and Lynne A. Crawford have applied for a Special Permit pursuant to Section 240-91.H(3) – Demolition and Rebuilding on a Nonconforming lot. The Applicants are proposing to demolish an existing two-bedroom dwelling and construct a new, four-bedroom dwelling on a lot consisting of less than 10,000 square feet. The subject property is located at 181 Hollingsworth Road, Osterville, MA as shown on Assessor’s Map 140as Parcel 040. It is located in the Residence C Zoning District.

DISCUSSION: **Chair Rodolakis:** A few days ago we received a letter from Attorney Scholls (splg) asking for a continuance to May 12th meeting. **Chair Rodolakis** moved to take a vote for acceptance of request for continuance. Mr. Hanson seconded the motion.

Member	Appeal No. 2021-018 Acceptance of continuance to ZBA May 12th meeting.	Absent
Alves E.		
Bodensiek H.		X
Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.	In favor	
Rodolakis A.	In favor	
Walantis T.	In favor	

Webb, Aaron	In favor	
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All in favor.

POINT OF INFORMATION: Chair Rodolakis recognized Attorney Princi and indicated to him that they (ZBA) would be covering both of his appeals because it makes sense to. Attorney Princi agreed.

Appeal No. 2021-019 Windmill Sq LLC/Tractor Supply Windmill Square, LLC., has applied for a Special Permit in accordance with Section 240-57 Circumstances warranting reduction of requirements by Special Permit. The Applicant is seeking to reduce the number of required parking spaces from 73 to 60. The subject property is located at 1174 Pitcher’s Way, Hyannis, MA as shown on Assessor’s Map 273 as Parcel 123. It is located in the Business (B) Zoning District and Groundwater Protection (GP) Overlay Zoning District.

Appeal No. 2021-020 Windmill Sq LLC/Tractor Supply In the alternative to Appeal No. 2021-019, Windmill Square, LLC., has petitioned for a Variance in accordance with Section 240-53 Landscape Requirements for Parking Lots, Section 240-53 B. setback requirements of a parking lot, and Section 240-56 Schedule of off street parking requirements. The Petitioner is seeking relief from landscape and parking requirements. The subject property is located at 1174 Pitcher’s Way, Hyannis, MA as shown on Assessor’s Map 273 as Parcel 123. It is located in the Business (B) Zoning District and Groundwater Protection (GP) Overlay Zoning District.

DISCUSSION:

Chair Rodolakis recognized Attorney Princi. Attorney Princi recognized Craig Ferrari. If Attorney Princi misses anything, Craig can “fill in the blanks”. Attorney Princi: A DRI approval (over an 8-10 month period) was made from the Cape Cod Commission with multi page findings. The matter was appealed as you well know and that matter is back before you on a very limited basis. Because of the negotiations, discussions and vetting, by the CCC and because of a request by the Town of Barnstable to segregate out a bypass in favor of the Town of Barnstable and also to create a sidewalk on Pitchers Way for safety reasons, the applicant lost a portion of his land which can be seen by the shape of the land based on the plans submitted. By giving up 15 feet along the Bearses way side and another 10 feet on the Pitcher’s Way side; because of the request of the town the applicant was in a position where they were not able to fulfill the 73 parking spaces. With respect to the special permit Attorney Princi has provided ZBA with the traffic study that was presented to the CCC, however; probably the easiest way to digest the traffic study is in the decision of the CCC. Referring to Page 8 of the Commission decision referencing F63 the

Commission did note that the traffic impact study was done by a special organization in keeping with the requirements of the CCC in comparison with other Tractor Supply stores they anticipated during peak hours that there would be 74 vehicles during a weekday peak hour. It is a total of what would be there during a 3-4 hour timeframe. In that section F63, the Commission recognized Tractor Supply is a low volume specialty retailer and generates fewer vehicle trips in general than other types of high volume retail uses. You can rely on the vetting that was done by the CCC in terms of rendering a decision here tonight that the Tractor Supply store appeals to a very limited audience of prospective buyers as opposed to something like “Best Buy” where all of us can go in and buy things for our household. Tractor Supply is geared towards farm use and towards those who are into horticulture farming, raising horses and those people who are dedicated to that type of activity. 74 vehicle trips translates roughly into 30 people being at the store at any one time during peak hours based upon the type of store it is you’ll note there are only 8 employees there. Anthony Princi continued: Based upon the special permit where Article 240 Section 57 of the by-law does allow for the granting of a special permit (citing B&C).....age, or other characteristics of occupant with reduced auto usage and c) characteristics of use validating normal calculating of parking demand. The findings of the CCC are substantiated by the traffic study and support in my belief a special permit for a number of reasons: 1) we have special characteristics of the occupants (those being limited to the number of farmers, horticulturists those with animals of the store which reduces the usage as noted by the traffic study; 2) the characteristics of the use of the normal calculating of parking is also in play based upon the finding that this is a low volume, specialty retailer and generates fewer field trips than other types of high volume users. With respect to what is request, part of vetting through the site plan we were able to create the landscape plan in a way that we do not need any landscape relief. The only thing we need is the parking from 73 to 60. Craig Ferrari, DownCape Engineering who responded with an affirmative. We have evergreen landscape plantings and buffers to shield some of these parking and storage areas from the road. As you can see from the site plan, there are several different types of planting going back into this site to help beautify it and create a buffer between these roadways. Attorney Princi continued with noting that he made reference to the applicant who was asked by the Town of Barnstable to dedicate land for the easement which is noted and highlighted on Page 9 of the decision and the F72 paragraph does talk about the fact that of the 8 employees it is encouraged to have them use the bicycle racks that are there. This is part of the mitigation. They have programs to encourage car pooling. To summarize Attorney Princi noted with respect to both appeals we are only seeking reduction from the 73 to 60 parking spots. With respect to the variance, it’s the same thing. If you do not find that 240-57 is in play my argument to you on the variance side of things is given the shape of the parcel which is clearly a difficult site to build on and the fact that we were required and asked to and voluntarily did dedicate the bike path to the town, that shape factor along with the dedication of the bike path prevented us from meeting the goal of 73 parking spaces.

BOARD DISCUSSION WITH QUESTIONS/COMMENTS

Hearing None -

Public Comment:

Chair Rodolakis opened up both Appeals for comment by the Public. **Chair Rodolakis** recognized Gordon Starr of Barnstable. He noted that he watched the original Planning Board meeting. He noted everything was settled. He has no site plans in front of him. What happened that the bike path and parking

was settled? Why is everything moving around and he asked that the ZBA keep in mind that Tractor Supply's business could change because that is what is happening to businesses. Please keep that in mind. Attorney Princi responded to this query. The proposal really has never changed in terms of the total number of parking which was 60 and the DRI approval was the same showing 60. Even with the DRI approval, we still wanted to come back to the town requesting the relief and we did identify it and it is stated in the decision that we show 60, the town by-law technically requests 73. We've requested relief on two fronts; the permit and variance front and I fully agree with you that if the character of the store would change from a low volume store to a high volume store that would change the approval and I believe as part of the write-up on this from the Planning Dept., Elizabeth Jenkins has made certain recommendations to the board to consider putting some language in any approval so that if the use of the store changes; the special permit or variance granted would be changed as well. **Chair Rodolakis** recognized Ms. Brigham who noted that on the main page under Boards and Committees if you click down to Zoning Board of Appeals the meeting materials are there. **Chair Rodolakis** recognized another member of the public. Susan Silvestri, 20 Schooner Lane....Question: Could someone define to me landscape relief. Could someone help me with the extensive landscape buffers? Attorney Princi: The CCC required us to put in an extensive landscape program. It involved over 400 plantings many of which were from 10 to 30 feet along with other bay shrubs to shield especially the parking area away from the Pitcher's Way side where the residential section is. We also have some buffering on the Pitcher's Way side because we have the bike path there. As a result of the appeal, we added 10 or 15 large trees (those that will grow to 30 feet) buffering the building from residences on Pitcher's Way and extended around the corner of the building as well. We had to eliminate some bay shrubs in order to put the larger trees in. the landscaper has been vetted both with the CCC and the town. Once we get through this we have one last step and that's because we added more vegetation. We have to go back to the commission to get permission to allow us to put more in. Carol Ramos, 5 Schooner Lane: She attended all the Cape Cod Commission hearings and she feels like there are a lot of inconsistencies because the CCC had all these conditions and it is her understanding that Tractor Supply was going to downsize their outside storage and in regard to that, there was an appeal and because of that downsize they were no longer having to follow through with what the CCC said they needed to do. Now they are expanding again. I am confused on that point. When I bought my house it wasn't zoned for that kind of business. All these things keep happening and she feels it's very strange. Now there is a landscape issue. We are moving parking spaces and all these things.....myself and all my neighbors cannot believe what we are looking at. They didn't preserve the trees that DownCape Engineering identified as being preserved...the bike path...the sidewalk...there have been people who have been hit and killed on this road. Just down the road there was a little girl on West Main who was hit by a car. Craig Ferrari addressed these issues here. **Chair Rodolakis** reminded viewers in the public comment segment that Tractor Supply has already had their hearings...and he wants to stay with the subject that are before ZBA today. The reduction of parking spaces. Attorney Princi.....with respect to the landscaping. We tried to do as much shading on the residential side consistent with what we were directed to do on the residential side by the CCC. I believe we are within the requirements of the CCC with regard to landscaping and by the town. Discussing of crosswalks is not under ZBA's jurisdiction. Attorney Princi: according to our landscaper designer, the smaller shrubs that have to be moved and the larger trees put in will shade to the top of the building. The developer is committed to putting in more to additional planting. Public Comment is now closed.

BOARD DELIBERATION:

SPECIAL PERMIT – Discussion

Member Walantis noted that in reviewing the site plans, 13 of these spots are behind the building and on grass. There is a wooden fence gate and all the vegetation areas. He has a concern. That leaves with the handicap spots (47) take those away leaving 43 (that's a pretty big limitation). Attorney Princi responded that the CCC asked that they use pervious pavers. They will be pavers that allow some drainage but they are going to be a hard paver with holes in it. **Member Walantis** asked about the grass free products. Mr. Ferrari noted that these are grass free products set in loam. Pavers that have loam in between that allow the grass to grow. The need to put the grass free products there is to satisfy storm drainage protection. **Member Dewey** asked about display areas using pervious pavers. Mr. Ferrari noted that display areas are something Tractor Supply is seeking. They have large products that they want to display outside. **Member Dewey** – that is all customer pickup/storage outside that is required. Mr. Ferrari affirmed. **Member Dewey** – there is no reason for that area to be cut back? Attorney Princi replied that this has been approved by the DRI process and it conforms for the tenant. It is a fenced in area that has been fully vetted and approved. There is an access to that area in the back of the building – customers can park in that area and go in the other way again we don't anticipate that the parking spaces in the front of the building will be used but should the back areas become necessary and the parking spaces become necessary, they are available. They are easily accessible – close to entry ways. During snow storms, they will have to be cleaned and taken care of. **Member Walantis** feel the congestion problem looks huge here. **Member Pinard** asked if the parking spaces as it was laid out with the 60 spots approved by the CCC and the town. Attorney Princi replied it was and with respect to the pervious construction that was recommended and requested by the CCC. And it's part of the approval. They rearranged some things and suggested we do this layout. **Member Bodensiek** would be in favor of some reduction in green space as long as it doesn't go against the Commission. More discussion ensued here regarding more parking versus bike path and how the plans have already been approved by CCC as they are. **Member Hanson** feels that this is not a high traffic business since they cater to farmers, farm animals and even at peak it will not be like a full parking lot. **Member Webb** questioning where the additional 13 spots were eliminated from. **Member Hirsch** added that he used to be in this business and around the country he has been in Tractor stores and has never seen more than 15 people at a time in the store on sites larger than this one. He thinks there is more than sufficient amount of parking. It's not a high traffic store. It is a very successful business. **Member Dewey** feels everyone's point is valid but should put in the conditions that if there is expansion or the use changes or goes to a different occupant; they need to come back to the board. **Members Pinard** and **Hirsch** agree with **Member Dewey**.

FINDINGS OF FACT

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-57 allows a reduction in parking where reduced parking appears to be adequate due to the specific use of the building.
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. A Site Plan has been reviewed and found approvable with conditions. (See letter dated April 16, 2021).

4. Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.
5. In granting a special permit that reduces the requirements of Article VI of the Zoning Ordinance (Off-Street Parking Regulations) pursuant to 240-57, the Board finds that lesser off-street parking is adequate given special circumstance

Member	Appeal No. 2021-019 Special Permit	Absent
Alves E.		
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.		
Hirsch D.	In favor	
Pinard P.	In favor	
Rodolakis A.	In favor	
Walantis T.		
Webb, Aaron		

All in favor for special permit on Appeal No. 2021-019 – Special Permit

Decision:

1. Special Permit No. 2021-019 is granted to Windmill Square LLC to allow a reduction of required parking spaces from 73 to 60 pursuant to Section 240-57 at 1174 Pitcher’s Way, Hyannis, MA.
2. The site development shall be constructed in substantial conformance with the preliminary site plans entitled “Tractor Supply Company Site Construction Plans 1174 Pitchers Way Hyannis MA 02601” Sheets C-001, C-100 C-200, C-300, C-301, C-400, C-401 by Down Cape Engineering dated May 8, 2018 with the last revision date of March 29, 2021 with the additional updated Tractor Supply Company Layout Site Plan with the last revision date of April 21, 2021, and the Tractor Supply Company Civil Layout Plan with the last revision date of April 27, 2021 by Down Cape Engineering.
3. The project shall comply with the Site Plan Review approval dated April 16, 2021, the conditions of which shall be incorporated as conditions of this decision.
4. No further additions or alterations shall be permitted without approval from the Board.
5. Special Permit No. 2021-019 is granted to Windmill Square LLC so long as the tenant is Tractor Supply Company and the use remains a low volume specialty retailer. Any alterations will require Zoning Board of Appeals approval.
6. 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 prior to issuance of a building permit. The rights authorized by this Special Permit must be exercised within two years, unless extended.

Member	Appeal No. 2021-019 Special Permit	Absent
Alves E.		
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.		
Hirsch D.	In favor	
Pinard P.	In favor	
Rodolakis A.	In favor	
Walantis T.		
Webb, Aaron		

All in favor on Conditions for Appeal No. 2021-019 – Special Permit

VARIANCE ON APPEAL NO. 2021-020

Attorney Princi has requested to withdraw the variance without prejudice. **Chair Rodolakis** so moves. Seconded by **Member Pinard**.

Member	Appeal No. 2021-020 Special Permit	Absent
Alves E.		
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.		
Hirsch D.	In favor	
Pinard P.	In favor	
Rodolakis A.	In favor	
Walantis T.		
Webb, Aaron		

Appeal 2021-020
without prejudice.

APPEAL 2021-

Appeal No. 2021-
RE-NOTICED
McDonough of

withdrawn
– all in favor.

016

016 McDonough
James
111 Mockingbird

Lane, Marstons Mills, MA has filed an appeal of an Administrative Official’s Decision. The appeal cites Zoning Ordinance §240-10 Prohibited Uses and states: “the nature of activity presently is not legal use, request is to end all non “by right” activities immediately by enforcing Barnstable Zoning bylaw against prohibited uses.” The Building Commissioner issued a ‘Notice of Zoning Ordinance Request for Enforcement Denial’ to Mr. McDonough on January 29, 2021. The subject property is located at 810 Wakeby Road, Marstons Mills, MA as shown on Assessors Map 013 as Parcel 052. It is located in the Residence F (RF) Zoning District. **Member Pinard** moved to continue this appeal to May 12th with **Member Dewey** seconding.

Member	Appeal No. 2021-016 – Continue to May 12 th .
Alves E.	
Bodensiek H.	In favor
Dewey J.	In favor

Hansen M.	
Hirsch D.	In favor
Pinard P.	In favor
Rodolakis A.	In favor
Walantis T.	
Webb, Aaron	

Brian Florence mentions emails and correspondence in his letter but they are not here and Member Bodensiek requests that they be made available for the next continuance of May 12th.

All in favor for continuance to May 12th.

CORRESPONDENCE

None.

UPCOMING MEETINGS

May 12th – May 26th - June 9th

Adjournment

Member	Adjournment
Alves E.	
Bodensiek H.	In favor
Dewey J.	In favor
Hansen M.	In favor
Hirsch D.	In favor
Pinard P.	In favor
Rodolakis A.	In favor
Walantis T.	In favor
Webb, Aaron	In favor

Respectfully Submitted

Elizabeth B. Silva
Temporary Scribe