

**ZONING BOARD OF APPEALS**

**MINUTES**

**Wednesday, April 28, 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:

<b>Join Zoom Meeting Option</b>	<b>Telephone Number Option</b>
<a href="https://zoom.us/j/92033907140">https://zoom.us/j/92033907140</a>	888-475-4499 U.S. Toll Free
Meeting ID: 92033907140	Meeting I.D. 92033907140

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](mailto:anna.brigham@town.barnstable.ma.us), so that they may be displayed for remote public access viewing.

Copies of the applications are available for review by calling (508) 862 4682 or emailing [anna.brigham@town.barnstable.ma.us](mailto:anna.brigham@town.barnstable.ma.us).

**Chair Rodolakis took roll call of members present and absent:**

<b>Member</b>	<b>Present via Zoom</b>	<b>Absent</b>
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	

\*\*Mr. Bodensiek joined the ZBA meeting later.

**ZONING BOARD OF APPEALS – Continuation – April 28, 2021**

**Taping of meeting**

No one taping.

**MINUTES**

To be approved this evening – minutes of January 27, 2021.

**Mr. Hirsch** moved to approve minutes as submitted with **Mr. Hanson** seconding the motion.

<b>Member</b>	<b>Acceptance of Minutes</b>	<b>Absent</b>
Alves E.	In favor	
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	

All in favor.

**OLD BUSINESS**

None

**NEW BUSINESS**

**Appeal No. 2021-018 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 Schulz asking for a continuance to May 12<sup>th</sup> meeting. **Chair Rodolakis** moved to take a vote for acceptance of request for continuance. Mr. Hanson seconded the motion.

<b>Member</b>	<b>Appeal No. 2021-018 Acceptance of continuance to ZBA May 12<sup>th</sup> meeting.</b>	<b>Absent</b>
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	

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

<b>Member</b>	<b>Appeal No. 2021-019 Special Permit</b>	<b>Absent</b>
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.

<b>Member</b>	<b>Appeal No. 2021-019 Special Permit</b>	<b>Absent</b>
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**.

<b>Member</b>	<b>Appeal No. 2021-020 Special Permit</b>	<b>Absent</b>
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 withdrawn without prejudice. – all in favor.

**APPEAL 2021-016**

**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. **Member Pinard** moved to continue this appeal to May 12<sup>th</sup> with **Member Dewey** seconding.

<b>Member</b>	<b>Appeal No. 2021-016 – Continue to May 12<sup>th</sup>.</b>
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 12<sup>th</sup>.

All in favor for continuance to May 12<sup>th</sup>.

**CORRESPONDENCE**

None.

**UPCOMING MEETINGS**

May 12<sup>th</sup> – May 26<sup>th</sup> - June 9th

**Adjournment**

<b>Member</b>	<b>Adjournment</b>
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