



Town of Barnstable

Zoning Board of Appeals



www.town.barnstable.ma.us/ZoningBoard

Board Members:

Alex Rodolakis – Chair David A. Hirsch – Vice Chair Herbert Bodensiek - Clerk
Jacob Dewey – Regular Member Paul Pinard – Regular Member
Todd Walantis – Associate Member Mark Hansen – Associate Member Emanuel Alves – Associate Member
David Bogan – Town Council Liaison

Staff Support

Elizabeth Jenkins – Director - elizabeth.jenkins@town.barnstable.ma.us
Anna Brigham – Principal Planner
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

ZONING BOARD OF APPEALS
MINUTES
Wednesday, January 13, 2021

Since a quorum was met, Alex Rodolakis –Chair noted “that before he did the formal introduction and other: POINT OF INFORMATION; there was a matter on McKinnon which is going to be continued for a date in the future. Is the date known? Elizabeth Jenkins indicated McKinnon matter will be on for January 27th. Chair continues, “later on tonight we will formally announce that but here for the McKinnon matter...it will not go forward for tonight. It will be continued. There will not be any formal testimony, public comment. All we will have is the applicant’s attorney asked for a continuance to January 27th at 7:01 PM.” Chair noted that if anyone wants to drop off from Zoom that’s fine just be sure that microphones are muted. “If anyone is on for the Beauregard case that is also later.”

This meeting was informally called to order by Chair Alex Rodolakis who explained that “The Zoning Board of Appeals Public Hearing will be held by remote participation methods as a result of the COVID-19 state of emergency in the Commonwealth of Massachusetts.

POINT OF INFORMATION: Mr. Gerry Madigan is taping meeting.

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:

Table with 2 columns: Join Zoom Meeting Option, Telephone Number Option. Row 1: https://zoom.us/j/96307091933, 888-475-4499 U.S. Toll Free. Row 2: Meeting ID: 963 0709 1933, Meeting I.D. 963 0709 1933

- 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.

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Chair - Alex Rodolakis formerly opens the hearing at 7:09 PM.

Table with 4 columns: Member, Present via Zoom, Present via Phone Call, Absent. Includes contact information for Elizabeth Jenkins, Director.

Roll call was

Alves E.	X		
Bodensiek H.	X		
Dewey J.	X		
Hansen M.			X
Hirsch D.	X		
Pinard P.			X
Rodolakis A.	X		
Walantis T.			X

taken:

The Chair noted, quorum.”

“We still have a

Minutes:

Mr.Hirsch moved to accept minutes of November 18, 2020. Motion was seconded by Mr.Dewey.

Roll call was taken on motion of minutes. Have quorum – All in Favor - minutes approved.

Member	11/18/2020 minutes	Absent
Alves E.	Yay	
Bodensiek H.	Hasn't had chance to read them. Wasn't in his packet.	
Dewey J.	Yay	
Hansen M.		X
Hirsch D.	Yay	
Pinard P.		X
Rodolakis A.	Yay	
Walantis T.		X

Chair Rodolakis read the

Appeal 2020-42 as renoticed.

Oyster Place Realty Trust is applying with Section 240-93(B) – structures not used as Single or Two-proposing to alter the pre-existing, approximately 3,000 square feet of the solid fill pier and constructing an elevated wooden pier with associated ramps and floats for shared use with the Cotuit Fire District and The Barnstable Clean Water Coalition. The subject property is located at 33 Oyster Place Road, Cotuit, MA as shown on Assessor’s Map 035 as Parcel 101. It is located in the Residence F (RF) and Dock and Pier Overlay Zoning Districts.

following into the record

Matthew J. McKinnon, Trustee of 33 for a Special Permit in accordance Nonconforming Buildings or Family Dwellings. The Applicant is nonconforming pier by removing

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Attorney Cox is here on behalf of the Applicant to request a continuance. For public notice Chair Rodolakis is recusing himself but he is not recusing himself from hearing a motion to continue.

Attorney Cox was introduced. She noted that just prior to tonight’s meeting she received a call from Ms. Jenkins (Director of Planning and Development) expressing that some members of this board would prefer that this matter initially go before the Conservation Commission before initially going before ZBA tonight. Attorney Cox spoke with her client and is asking for a two week continuance to January 27’ 2021 hearing of ZBA. Mr. Bodensiek moved to continue this matter Appeal 2020-42 to January 27th. Mr. Hirsch seconded the motion.

Roll call was taken on motion for continuance of Appeal 02020-042

Member	Appeal 2020-042	Absent
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.		X
Hirsch D.	In favor	
Pinard P.		X
Rodolakis A.	In favor	
Walantis T.		X

All in Favor – Matter to be 7:02 PM.

OLD BUSINESS

following into the record:

LLC. : 1000 Main LLC., has applied Section 240-20.B – West Barnstable Applicant is seeking relief in order to continue the pre-existing use of three

continued to January 27, 2021 at

Chair Rodolakis reads the Appeal No. 2019-050 1000 Main, for a Special Permit pursuant to Village Business District. The store small traditional sailboats and to residential units in the dwelling. The

subject property is located at 1000 Main Street, West Barnstable, MA as shown on Assessor’s Map 179 as Parcel 002. It is located in the West Barnstable Village Business District (WBVBD) and the Residence F (RF) Zoning Districts. **Continued from September 25, 2019.**

Members assigned: Alex Rodolakis, Herbert Bodensiek, Paul Pinard, Todd Walantis and Bob Twiss. Time Extension Signed and Time Stamped – Decision due January 3, 2020. Continued from December 11, 2019. Time Extension signed – Decision Due: 04-27-20 Continued from April 8, 2020 – Time Extension Continued to June 24, 2020 – Members assigned: Alex Rodolakis, Herb Bodensiek, Paul Pinard, Bob Twiss, Mark Hansen. Continued to August 12, 2020 – Members assigned: Herb Bodensiek, Jake Dewey, Todd Walantis, Mark Hansen, Robert Twiss. Continued to September 9, 2020. Members assigned 09-09-20: Alex Rodolakis, David Hirsch, Jake Dewey, Herb Bodensiek, Mark Hansen. Continued from October 28, 2020. Continued from December 9, 2020

This appeal has been continued many times so noted Chair Rodolakis. ZBA received a written request early yesterday from the Applicant's attorney that this matter be withdrawn without prejudice. Chair Rodolakis stated that "he understands that the property has been sold. We are going to do a motion/vote to allow the applicant to withdraw. Mr. Hirsch moved to allow the Applicant to withdraw without prejudice with Mr. Bodensiek seconding the motion. **All in favor.**

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Roll Call vote following applicant to withdraw without prejudice.

Member	Appeal No. 2019-050 1000 Main, LLC.	Absent
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.		X
Hirsch D.	In favor	
Pinard P.		X
Rodolakis A.	In favor	
Walantis T.		X

Appeal No. 2019-050 1000 Main,

Chair Rodolakis reads the following **Appeal No. 2020-040 Beauregard**:
 appealing the issuance of Building

2020 to David Parella for the construction of a new home at 101 Warren Street, Osterville, MA. The Appellant is claiming that 101 Warren Street, Osterville, MA, formerly 162 Washington Avenue, and 176 Washington Avenue, Osterville, MA, have merged and therefore are unbuildable as two distinct lots. The subject properties are located at 101 Warren Street (formally 162 Washington Avenue) and 176 Washington Avenue, Osterville, MA as shown on Assessor's Map 139 as Parcel 086 and 085. It is located in the Residence R-1 (RF-1). Todd Beauregard, as Appellant, is appealing the issuance of Building Permit #20-2073 issued on October 2, 2020 to David Parella for the construction of a new home at 101 Warren Street, Osterville, MA. The Appellant is claiming that 101 Warren Street, Osterville, MA, formerly 162 Washington Avenue, and 176 Washington Avenue, Osterville, MA, have merged and therefore are unbuildable as two distinct lots.

Attorney Penny was not in attendance but Todd Beauregard, Appellant was present via Zoom. Mr. Beauregard noted that "he (along with Defense Attorney Schultz) had emailed Ms. Brigham that the parties have negotiated the framework of the settlement of the matter" and Mr. Beauregard continued, "we are seeking a continuance to the January 27th date in order to affect the paperwork that is necessary to bind the parties to that agreement". He reiterated that we are looking for a continuance for that date." Chair Rodolakis asked if this would be enough time to prepare and Mr. Beauregard replied, "That was the date they agreed to." Chair Rodolakis indicated as long as a written letter is submitted within twenty-four hours of the meeting, ZBA can continue it further. Mr. Beauregard stated that if necessary we could get a hold of Ms. Brigham and let her know they needed more time. A motion was made by Mr. Hirsch to continue Appeal No. 2020=040 until January 27, 2021 at 7:02 PM. Mr. Dewey seconded. **All in favor.**

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Roll Call vote allowing applicant to continue case until January 27, 2021

Member	Appeal No. 2020-40	Absent
Alves E.	In favor	
Bodensiek H.	In favor	
Dewey J.	In favor	
Hansen M.		X
Hirsch D.	In favor	
Pinard P.		X
Rodolakis A.	In favor	
Walantis T.		X

Appeal No. 2020-041-Renoticed

Chair Rodolakis read the following
 As Appellant Natalie Pittenger, as of Building Permit #20-2626 issued

Square, LLC., for the construction of new commercial building and supporting outdoor features for a Tractor Supply Company store. 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.

Chair Rodolakis noted that sitting in on this matter will be Messrs. Alves, Bodensiek, Dewey, Hirsch, and himself. Attorney Michael Fee representing Natalie Pittenger as Appellant, who lives just across the street from the development. Attorney Fee: He states "that he had submitted to the ZBA a letter together with other material in November for the Board's perusal for consideration of the appeal. There are two arguments that are asserted by Ms. Pittenger:

- 1.)that the Building Inspector exceeded his authority in granting this building permit because the property is located in a water protection district and which prohibits the use of certain chemical materials within the district.
- 2.)still exceeds the 20,000 square foot minimum that triggers Cape Cod Commission review and as you may know the Cape Cod Commission granted direct impact decision earlier and we have appealed that and it is currently pending in the land courts.

LLC. Official withdrawn. NEW BUSINESS

into the record:
 Todd Beauregard, as Appellant, is Permit #20-2073 issued on October 2,

Pittenger:
into the record:

Appellant, is appealing the issuance on October 6, 2020 to Windmill

Attorney Fee would like to focus on water protection district because he thinks it is the most important. The stated purpose of this by-law is to protect health and safety by discouraging the use hazardous uses in the district. Article 3 Section 2-40-35 specifically prohibits a variety of uses. There are 5 provisions of the bylaw that are applicable. 1.) In Section F2G the bylaw prohibits the storage or resale of heating oil, gas and kerosene; 2.) F2J prohibits the storage of salt or other deicing material in any quantity; 3.) F2P prohibits the storage of any hazardous waste as defined by state statute or regulation; 4.) FU1 prohibits the storage of liquid Petroleum products of any kind except those that are incidental to household use;

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5.) F2V prohibits storage of commercial fertilizer. The Tractor Supply business model is well established. Attorney Fee indicates his Exhibit B has 15-20 pages of screen shots from the Tractor Supply website of products that they sell. The sale of each one of these provisions is in violation of the by-law. 1.) The first four pages of the exhibit show some of the deicing materials and it ranges in quantity from 11 1/2 oz to 30 gals. That violates F2J specifically because the storage of any type of material in any quantity is not allowed in the water protection district. 2.) Pages 5-8 of the attachment of Exhibit B show just a few of the different types of fertilizer sold and storage is prohibitive in the water protection district. 3.) Pages 9-11 on Exhibit B shows the type of kerosene sold. Again, storage or resale of this product in any quantity is of prohibitive use. 12-15 shows the weed killers that are carried by this chain including Round-Up Concentrate which Attorney Fee would argue is a hazardous chemical that is regulated by state statute and regulation and that is in violation in the provision of the bylaw as well. As I understand Tractor Supply argument the rationale that was during a meeting at some point they promised to limit the amount of quantity of materials they had at the store. Attorney Fee noted he was reading from the staff report dated January 6th, that they agreed to limit certain quantities of hazardous materials, store fertilizer indoors, to use kerosene only in household quantities and to use one only one waste disposal drum. Those restrictions are not anywhere in the building permit and are not anywhere in the plan. Attorney Fee indicated that this promise that was made he only read about in the staff report. When the bylaw is read and what Tractor Supply is saying they are going to do. The by-law doesn't say anything about quantity of the material the storage of oil, kerosene and deicing is prohibitive. The Building Inspector does not have the unilateral authority noted Attorney Fee to make an exception to the bylaw. The only entity that has the jurisdiction to make exemption to that bylaw provision I would respectfully suggest pursuant to a duly filed variance. The other promise they made the staff is to move the fertilizer inside and somehow that gives them an exemption from that provision from the bylaw which is F2V. Storage of commercial fertilizers is prohibitive unless such storage is within a structure designed and engineered to prevent escape or transport of commercial fertilizer to the ground water under any circumstances. Attorney Fee respectfully suggests that Tractor Supply's offer to leave fertilizer outside and move in inside at night in no way meets the spirit or the intent of this provision of the bylaw; that says you can't do it unless you enclose it in something that guarantees 100% it's never going to escape. They have not done this. This argument that they will only sell products in quantities suitable or incidental to household use is. The language in the bylaw they are talking about is in FU1 that says you can store liquid petroleum products if incidentals were normal household use. Attorney Fee would suggest that the bylaw is referring to a homeowner who wants to store liquid petroleum products in small amount incidental to that house. It's not trying to authorize that store who is selling hundreds or thousands of that chemical just packaged so it is incidental to a household use. Respectfully all of these arguments that will be asserted by Tractor Supply that somehow falls within an exception to the bylaws strict requirements, they don't pass muster. They won't pass ZBA and they certainly won't pass on appeal. The 2nd argument as you know we have appealed the Cape Cod Commission approval of this project when it was submitted over the 20,000 sq.ft threshold. Please read history and staff report. The most recent is dated June 6 of 2020 which is attached to my materials as exhibit F.

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That building shows the square footage of the building, 19,063 square feet.

As staff memo notes, outdoor storage and service areas must be included in that total square foot amount. On the plan there is an extensive service area indicated as the Customer Pickup Service area and it has no square foot delineation. No amount is shown. Attorney Fee would respectfully note to his eye (can't verify without Engineer Scale) it looks like this is enough area to put it over the 20,000 threshold. This means that the Cape Cod Commission decision is still in play because it is still under appeal. Attorney Fee would respectfully suggest that it would not be appropriate for this board to approve the issuance of a building permit which is subject to the Land court appeal. Attorney Fee wound up his talk by noting that he would be glad to answer any questions.

POINT OF INFORMATION: Chair Rodolakis welcomed members Messrs. Todd Walantis and Mark Hansen into the Zoom meeting, who explained he just got his Internet back.

Chair Rodolakis asked if anyone had any questions of Attorney Fee. Chair Rodolakis noted that he had one question of Attorney Fee about the Cape Cod Commission.....we don't really deal with this in our practice. It only comes to us when Cape Cod Commission has made a determination on their final approval. .

We don't deal with Cape Commission normally in our practice they did make a decision and you can disagree with decision, but to me it is not unlike the Building Commissioner to issue a permit and that permit is on an appeal. If the party goes ahead with the house they do it at their peril and so I kind of do that similarly if they proceed while this is pending and you are fortunately proven to be correct about this then Tractor Supply has an issue not withstanding if we were to grant them a permit. Attorney Fee agrees with Chair Rodolakis. He

noted that he makes the argument only because I was informed at an early stage that the town generally doesn't go forward with permitting request if they are under appeal for some other reason and just another way of saving resource. If that's not the town process then I respect it. Chair Rodolakis stated that he's been on ZBA board the longest and he can't recall any Cape Cod Commission matters that weren't resolved one way or another. But it can happen and he has no personal knowledge of it. Attorney Fee noted that his argument is only out of prudence. He doesn't have any legal authority to back that. Mr. Alves was recognized when asked if there was anyone else who had questions of Attorney Fee. Attorney Fee addressed here Mr. Alves concern by noting that the Building Inspector is only entitled to issue a building permit when he/she is satisfied when all the prerequisites are satisfied with the compliant operation of the building, the structure and the use are within the zoning parameters. If a building commissioner has any doubt whatsoever that there is compliance, it is her/his job to advise the applicant to go and get the permit from the applicable permit board or in this case I think what should have been done was a variance could have been filed or the building inspector should have advised the applicant that a variance was necessary was in order to conduct this type of operation. Attorney Fee summarized that it is incumbent upon the Building Inspector to refrain from issuing a building permit until he is satisfied that all zoning bylaws have been complied with. Further discussion continued regarding zoning by-laws for water protection district. Mr. Hanson was recognized.

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Mr. Hanson brought up when BJ's was going in many years ago...their normal business was they sold motor oil and they sold other things, who was the body at that time that was involved that determined what it was and wasn't that BJ's was going to sell? Chair Rodolakis indicated he wasn't on the ZBA at that time. It was noted that that was a good point that was brought up. The Chair recognized Herb Bodensick. I seem to remember that was quite a while ago. Would the Cape Cod Commission have made those rules or whatever. Home Depot is under same restrictions. Always assumed was Cape Cod Commission.

PUBLIC COMMENTS

The Chair recognized Attorney Princi for Tractor Supply. Attorney Princi: "for Windmill. The key word Mr. Fee uses was storage. I think that the bylaw depicts storage as a location where large quantities of product is being stored. In this particular case to the point that several of you already made is Tractor Supply has a model and that model is subject to modification depending on where they build. The project which was approved by the Cape C and Attorney Fee stated is under appeal had a substantial outside storage area which was a bone of contention with Attorney Fee and Mrs. Pittinger at the time. That storage area was completely removed and Dan Ojala still produced a plan with some variance requirements. Come June and we just had a full circle moment on how we were going to move forward on this and with accommodations from Tractor Supply with some modifications made by Dan's plan and he'll comment on that the plan was scaled down so that it is in complete conformance with the zoning by-laws as to the outside storage and the building. To that point back in May of 2020 I sent a letter to comment on that. The letter was addressed to Jonathan Ivan at the Commission because he was aware of a scaled down proposal he made and I cc'd Brian on it but it was very clear that the building was going to be 19,063 square feet and any outdoor display would not exceed 937 square feet which would keep the building within the 20,000 square feet. If we were to exceed that Brian would have the ability to come and enforce but the site plan, back when this was approved prior to the building permit being issued in October reviewed this again and found it to be in compliance under 20,000 square feet and the developer is going to develop it under 20,000 square feet. Ms. Pittinger didn't want anything built there at all and many comments she made at the public session at the Cape Cod Commission said she wanted to keep it as an open-space for the benefit for her sub division. The by-law is interesting to because there is no specific quantity limitation product and to the point to Attorney Fee was making every section of the by-law that he was referring to was storage. The one that was key here is "U" which is storage of liquid petroleum products of any kind except those incidentals of normal household use and outdoor maintenance for the heating of Tractor. Tractor Supply does not store the household product that it sells. It sells bug spray just like many drug stores; just like many convenience stores that are in well head protection districts let alone ground water protection districts. The ability of anytime we sell a product and by the way Tractor Supply sells some small quantity products that deal with lubricants that are for tractors and by the way these are for normal household use and outdoor maintenance. To the extent as far as Planning reviewed this on 6/8/20 we pulled together a conference call with at that time Paul Lathrop with Elizabeth (Brian, who is at this Zoom meeting) and Brian I can't remember if you (continued Attorney Princi) were on it or not Dan Ogdala was on it and we walked through the

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regulation and we walked through the CMRS and based upon this projected store and it is noted in the staff report the parties came to a resolution that there would be some small pallets of fertilizer that in the evening would be brought indoors and Dan will comment on how we comply with the by-law. We agreed that the items we would have would be for retail sale on shelves and with respect to the kerosene, the kerosene would be in quantities of no greater than a quart. So while other locations in the middle of Arkansas, Texas, and Kansas Tractor Supply might have large quantities of some items they can sell to the farming community there; the intent of this store is not to have that kind of product on display. We came to a resolution as to how we would accommodate the by-law and how we would accommodate the CMRS and the building permit then issued after a new site plan was produced. Attorney Princi called upon Dan to speak about the sizing and the layout and Brian as well. 4

The Chair was called upon so that Dan Ojala could speak. Dan Ojala introduced himself. Dan is a civil engineer and land surveyor with Down Engineering. Mr. Ojala – One of the things you have to understand about Barnstable. We'll talk about the tight tank and some of the special measures we made. There are three tiers as you know. 1) Aqua for Protection: all the areas not in Zone 2; the second one is the deep feed – which is the one we are in.....anywhere within the zone 2 which is the time in which a drop of water hits the ground it could possibly get into a well in Zone 2 condition which is 6 months without rain...a steady pumping of the well which is a pretty conservative measure and we are not particularly near a well by the way and the third one is the most strict one, the WP zone. That's a 5

year time of travel. Water enters the ground, goes through the catch basin, through a treatment system and into the ground. This will take about 5 years to get to that well point. That's a little bit more of a critical area because you have less time to react to a spill or a problem. So being in the Central Zone, the GP, which is almost the entire treatment plant with this particular site being a triangle with the north tip of the actual main waste treatment plant for the whole town. Were it not for it cut off for a fire station it years ago it might have leeching beds right where we are building. This one is a DP zone. You have to look at the regulations carefully. As framework the state set up back in the 80s the CMR which required all the towns (and if you look at all the towns on the Cape they are very very similar) all regulations went in which limits 15% impervious unless you recharge on site.... 50% all regulations on hazardous materials etc are promulgated through that pretense of CMR governing wellheads.....those regulations are pretty clear and Mr. Ogala looked at a bunch of different towns just to get an idea of what we are dealing with here. They absolutely allow a practice of applied type use of in a Zone 2 with the state level. What they say is if you are going to have petroleum type like oils they just have to be in a container, in a building on a concrete floor and they are fine with it. As long as the towns make that regulation to meet that type of security, it's fine and most towns do that. The town of Barnstable is a little bit ambiguous on that point but you have to look for the WB regulation; you can't just look at the GP regulation. You can't look at the WB regulation and stop. The important matter is in E where it reads, "any use where generates storage including racking for resale and that's a very important term because it implies you can rack for resale in our zone in the W you can't rack for resale toxic or hazardous material totaling at any one time 50 gals or 25# of dry weight. That is a hard and real on what you can do in a WP zone. In a GP zone then by implication you can rack for resale and the paint, etc. That is why the Building Inspector probably

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issued a permit because you can actually have this stuff in a GP zone. Having taken care of most of that Mr. Ocala summarized in full sentences what he said above. In BJ's case which was a Cape Cod Commission review they carefully caused a 4 drain system to go to a holding tank. In our case we upsized the holding tank to a 2500 gallon tank with the 4 drains connected directly into it and it doesn't even go into the sewer. It's a tank with another tank outside of that. Even if the 2500 gallon tank were to leak, it would go into a larger tank which was outside of it and there is an alarm in there that would go off. There is a dual alarm system, if anything goes in there, it's not going into the system or into the ground it's going into the 4 drains that goes into a double containment and that is licensed by the DEP as a non hazardous industrial waste water holding tank. The commission thought it was a good way to handling it. At this point Attorney Princi contributed that Jiffy Lube across the street had been approved by the Building Inspector when that was built. Jiffy Lube is doing things different then we are. We have smaller quantities in many respects; we have retail that is taken off the shelf and taken off the site. We have already agreed to have some things taken out that are found in stores as part of agreement with the Cape Cod Commission. Attorney Princi briefly summarized by noting that Tractor Supply in comparison to a hardware store or Cumberland Farms on a larger scale.

Chair Rodolakis asked at this time if anyone wanted to speak on this matter. Chair recognized Ms. Pittenger of 9 Schooner Lane. She noted first of all that they are talking about quantities, the Tractor Supply Business Model. She asked if this building was going to be subject to what Tractor Supply decides to sell there. I thought we had water protection regulations that would protect this area. It seems to me that it has to have some oversight, some limitations not endorsed by Tractor Supply. The other situation is I believe Ms. Pittenger continued (she noted she has no idea what site plan is being built) on the most recent site plan that was attached to our appeal there were extended outdoor storages and they were in excess of 937 square feet. There are several areas one is on someone's property, not even on that particular lot; it's the back of the lot on the Bearse's side. So who owns that...and how was that suddenly Tractor Supply land? There are other areas in front of the lot that are designated as permanent outdoor storage areas. If anyone wants to look at the plans, you can easily see it. It's not hidden anywhere. It is out in plain sight. The other thing is the property ofthey added storage in the latest plans. It looks like it is in town own land and she is not sure how that happens. All these other prohibitive products according to what Attorney Fee said, they are prohibitive. She noted that these products are prohibitive. They have to be transported to and from the store. She asks the question, "Are we saying there is no way that nothing can happen to them? She asked, "they're not going to fall on the ground?" "Well I don't know, she replied." Ms. Pittenger noted that the Cape Cod Commission did approve BJ's but they required them to put a plastic membrane under the entire building because of the quantity of products they were going to sell. There was no mention of that here for Tractor Supply. She also noted that if there is no decent water here, none of these properties are worth anything. Ending her conversation, Chair Rodolakis recognized Mr. Madigan.

Gerry Madigan 7 Settlers Lane in Hyannis: My question to the board is the various architectural engineers, mechanical engineers, plumbing engineers and the electrical engineers. If you look at the

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plan, they are all from Tennessee. I've been in the Construction field for quite a while (over 50 years) and I want to know how they are combining their plans with Down Cape plans and submitting to your board.....I want to know are these people certified and are they licensed for the state of Massachusetts and are they legally licensed to work in the Commonwealth. You can have different companies come out of different places with different plans and they don't always meet the town, city or state. I've worked out of state and I've seen a lot of discrepancies with plans.

Chair Rodolakis said that this is not really something on the matter for tonight.

Mr. Madigan: it should be for the future because somebody has to answer for these plans.

Chair Rodolakis noted that he sees the Building Inspector, Mr. Florence is in the Zoom meeting and is asking him to address that point.

Mr. Florence: I'll touch upon this one point and provide additional information later. The building code requires construction on this project which means there has to be engineers on this project for all the disciplines involved and all those disciplines must be registered with the state of Massachusetts. Even though the plans were designed outside they are reviewed by Massachusetts Design professionals. Mr. Madigan has one more question: this area you are working, your board years back probably accepted Chapter 40B over in this area. This whole area has about 60 houses in it. Now it shows a lot of Chapter 40B houses and it also shows a lot of federally funded HUD in this area. Now you are contemplating pushing this size store in this area with only 600 houses. He doesn't feel it's fair and it doesn't help the neighbors. Nothing is being explained with two sets of plans. Chair Rodolakis thanked Mr. Madigan and noted he understands his concerns.

Hearing no one else wanted to speak at public comments – the public comment portion of meeting is closed. Attorney Fee will be up to address what has been heard. Attorney Fee: very briefly Mr. Ojala's comments remarks are the wrong way for the board to be looking at this. The bylaw is written as it is written. You have to interpret it as it is written. It should not be subject to subjective analysis. It should not be subject to comparison with other projects in the area. We are talking about this project and whether it meets the strict language of the bylaw. The bylaw says, "prohibit". It doesn't say, "prohibitive in large quantities," it doesn't say, "prohibitive on Tuesdays". It says, "Prohibitive." I would respectfully suggest to the board that all of the examples that I went through...it's unambiguous.....that your bylaw does not allow this type of activity in this district. If Tractor Supply wants to say we won't sell any of this stuff; then that's a different conversation. But that's not what they are saying. Respectfully as the arbiter as well protector in the town you should err on the side of conservative approach to your own bylaws to make sure that you are enforcing them in a way that is true to the intent.

Chair Rodolakis – why don't we bring this back to the board to deliberate on this. Chair Rodolakis began by saying that we will start with the Cape Cod Commission. There is a letter from the Cape Cod Commission if the appellant here is ultimately successful with Cape Cod Commission and gets their appeal heard and the decision reversed then Tractor Supply has built the building and they have an issue but I don't think that pertains to us. I think the other one is a more difficult one for me I am not going to

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get into the business of someone else's business here in terms of why they chose this spot and why is this this way. The fact that they sell products at other sites that are prohibitive here in the state or at the site isn't what we are really looking at. We are looking at the building commissioner approved and that's what we hear. We are not here on a special permit to hear the overturn of the building inspector which is my recollection. I think we need a majority or a super majority to overturn the building inspector. So I would be inclined to not vote on that. But that is just me. Anyone else on the boardMr. Bodensiek is also disinclined to disagree with the building commission not because he is the building commissioner but I trust his judgment. The situations have been addressed.

I would make a motion that we uphold the decision of the building commissioner issuance of a building permit. I would find that the project was in compliance with the Zoning ordinance and therefore properly issued. Mr. Hirsch seconded the motion. No other board statements or questions observations were noted.

Roll Call vote following applicant decision of building inspector is upheld.

Member	<u>Appeal No. 2020-041-Renoticed Pittenger</u>	Absent
Alves E.	In Favor	
Bodensiek H.	In Favor	
Dewey J.	In favor	
Hansen M.	-----	
Hirsch D.	In favor	
Pinard P.	-----	
Rodolakis A.	In Favor	
Walantis T.	-----	

OLD BUSINESS

None

None

NEW BUSINESS

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NEXT MEETING

January 27, 2021 – We have continued a few things from this meeting. I don't know how many we have on there. Anna Brigham indicated there are four items on the agenda already. Tonight we have two additional.

Member	<u>Adjournment</u>	Absent
Alves E.	In favor	
Bodensiek H.	In favor	

Dewey J.	In favor	
Hansen M.	In favor	
Hirsch D.	In favor	
Pinard P.		X
Rodolakis A.	In favor	
Walantis T.	In favor	

Respectfully Submitted

Elizabeth B. Silva