



Town of Barnstable Zoning Board of Appeals



Board Members:

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

Staff Support

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

Minutes

Wednesday, August 26, 2020

: Alex opens the hearing at 7:02 PM and reads the following

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.

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

<https://zoom.us/j/98591082475>

Meeting ID: 985 9108 2475

888 475 4499 US Toll-free

Meeting ID: 985 9108 2475

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.

As a quorum has been met, Alex Rodolakis opens the hearing and takes roll call attendance:

Call to Order

Introduction of Board Members

Member	Present via ZOOM	Present via Conference Call	Absent
Alex Rodolakis	x		
David Hirsch			x
Herb Bodensiek		x	
Jake Dewey	x		
Paul Pinard	x		
Todd Walantis			x
Mark Hansen	x		
Anna Brigham	X		
Carol Puckett		X	
Michael Ford, Esq.	x		
Charles Sabatt, Esq.	x		
David Lawler, Esq.	x		
Rich Fenuccio from Raber Fenuccio	x		

29 OCT '20 AM 10:36
BARNSTABLE TOWN CLERK

David Bogan – ZBA Liaison	x		
Elizabeth Jenkins – Director of P&D	x		

Alex reads the following with no response:

Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Attorney Ford is here and Alex reads the following:

Discussion

Attorney Ford has requested to be placed on the agenda of the Board of Appeals for the meeting of August 26, 2020 for the purpose of the Board’s review and approval of the MOU required under Condition 7 of the above referenced Special Permit. Since the MOU, at the request of the DPW, provides for a contribution to the Town by the applicant for development of plans for expansion of the Town waste water system rather than the installation of sewer improvements as contemplated by Condition 7, Zoning Board approval of the MOU is requested. Per the MOU the paving of Rosary Lane, as required by Condition 8 of the Special Permit, which would have been undertaken in conjunction with the installation of the sewer improvements, will still be completed as part of the construction of the carwash facility. Since no modification of the carwash facility as approved by the Board is proposed or requested, the applicant believes a formal modification of the Special Permit is not required.

Attorney Ford gives a short background and thanks the board. Mr. Laham has demolished the building and applied the building permit and is to sign a Memorandum of Understanding (MOU). He states that a lot has changed and DPW thinks it will be a longer time before the design of the sewer system is complete. They would prefer that the applicant make a payment to the Town. Mr. Laham is willing to do that and there is a bit of info in Condition 7 and 8 of the previously issued Special permit about an unpaved section of Rosary Lane and there is an area that abuts his lot. At Site Plan Review (SPR) it was a condition. What they have worked out with DPW is to pave that section of Rosary Lane and take the balance and contribute that to DPW to be used for the overall design and planning in this area that is what the MOU is. Mr. Laham is willing to do that. However, they felt they should show it to the board since the relief was a ZBA decision. They are hoping to open the business in the first quarter of 2021. Attorney Ford notes that Mr. Laham is available online for comments.

Alex asks for board comments. Alex thinks this was a condition that the Town wanted, not the board.

Jake Dewey asks if town sewer does get there they would still have to hook up. Attorney Ford says absolutely and states that they would take the sewer line up Rosary Lane as far as it would go. It will be a huge undertaking for the Town to get the sewer in this area. From DPW’s standpoint, the money to start the plans is more important than building a few feet of sewer on Rosary Lane. Alex clarifies that this does not affect their obligation to the betterment. Also, Attorney Ford says that Mr. Laham will connect when available and will be on a tight tank until then. There is a lot of incentive to connect to the sewer and Mr. Laham is amenable to that.

Todd Walantis would want to make sure that those businesses that wanted to tie in would be able to do so. Alex clarifies that this is just moving the money for the time being and the Town will do the sewer at the appropriate time. Alex makes a motion to approve the MOU as submitted between the Applicant and the Town of Barnstable and heard tonight:

Roll Call Vote is as follows: to approve the MOU

MEMBER	AYE	NAY	ABSTAINED	ABSENT
Alex Rodolakis	x			
David Hirsch				x
Herb Bodensiek	x			
Jake Dewey	x			
Paul Pinard	inaudible			
Todd Walantis	x			
Mark Hansen	x			

MOU Approved

Alex reads the following into the record:

Old Business

7:01 PM

Appeal No. 2020-025

Cape Resources

EAC Organics, Inc, d/b/a Cape Resources have petitioned for a Modification to Variance No. 2009-025 pursuant to M.G.L. Chapter 40A Section 14 in order to enter into a long term lease with a solar company. The Petitioner seeks to modify the existing Variance to maintain two principal uses on site (the solar photovoltaic system and the wood waste recycling business, at 280 Old Falmouth Road, as well as enable the Petitioner to locate the proposed solar photovoltaic system at "0" Old Falmouth Road. The Petitioner seeks to reduce the area of the wood waste re-cycling operation. The subject properties are located at 280 Old Falmouth Road and "0" Old Falmouth Road, Marstons Mills , MA as shown on Assessors Map 100 as Parcel 008 and Map 100 as Parcel 007. Both lots are located in the Residence F (RF) Zoning District, Groundwater Protection (GP) and the Ground-Mounted Solar Photovoltaic Overlay Districts.

Opened August 12, 2020 and continued to August 26, 2020. No members assigned.

Members of Public: Tony Somers, Payson Titcomb

Members assigned tonight: Alex Rodolakis, Herb Bodensiek, Jake Dewey, Paul Pinard, Mark Hansen

Todd Walantis leaves the hearing

Representative: Charles Sabatt, Esq.

Attorney Sabatt is representing the applicant and gives summary of relief being requested. He states that the facility exists by a series of variances and runs through a few of them and a history of the site. They are here tonight looking to modify Variance No.2009-025. They are requesting to:

- **reduce the nonconformity that exists and allow them to make it more conforming**
- **permission to reduce the size of the wood waste recycling**
- **permission to allow the site to be used for a photovoltaic solar array facility**

This facility is located in the RF district and in the solar overlay district. The current use spans approximately 21 acres. Part of what they do now is to receive raw wood waste and process into usable byproducts which they sell on site. it is a unique facility and very few facilities of this nature exist. The only other closest facility of this nature is I Sandwich, Dennis or Falmouth. This facility provides a service to the public and landscapers and is the only facility of its nature in the area to accept downed trees. Even the Town's landfill does not accept wood waste and is also a frequent user of this facility which is why this facility is important.

He explains the residential/business component in the area and gives a history of the site. He notes that most of the issues in the past were resolved via the issuance of variances which set parameters of Cape Resources. The property has since then been sold and is currently the property of his client, Wes Gregory who is with him tonight. Mr. Gregory has vast experience with waste materials and runs this as a family business.

Attorney Sabatt notes that tonight, there are three main issues: one of which is found in Condition #5 in 2009-025 which does not allow any other or accessory use without further approval from the Board. The motivation for that was to prevent intensification of use. The 1996 variance, Condition #10, required the owner, at that time, to put restriction on 0 Old Falmouth Road that if there is any use development or structures, that Cape Resources is to prove a 100 vegetated buffer on the westerly side of this property and along 0 old Falmouth Road. They are also seeking permission to reconfigure the site and to address that restriction. They will reduce the size and reconfigure according to the plans submitted. The rationale with respect to the first issue: Solar use will be benign/passive use and is permitted in the area. By placing on the northern half of the site, they will insulate several single-family residences and will provide a natural buffer to the activities of Cape Resources. They are reducing the site down to 5.6 acres of operational area. The site will have five operational areas: Areas three and four will be where the public and landscapers can drop off their raw wood materials. Area two will consist of concrete bins with walls where there will be finished mulch products and a smaller drop off area for raw material from the public. Attorney Sabatt states there is a fire access road and has always been a requirement of this site. They have configured that roadway to Cape Resources and the solar arrays and has been addressed through Site Plan Review. To the south of the access roadway where there will where the drainage/retention pond and structures for water runoff and where a fence will be maintained as well. There are trees on Old Falmouth Road which will be maintained and enhanced and will provide a final landscaping plan as well.

He states that there are currently three structures on site: an office building, a maintenance building and a warehouse. The current maintenance and deteriorated warehouse building will be razed and new ones will be constructed on the SE part of the site. They have a more efficient layout and when trucks come in with materials, , there will be less dust. As for Item #3, they are asking for a waiver for the solar array because it will be across both properties and it would be unpractical to have a buffer.

As for the staff report, he submitted a memo and clarifies a number of issues they had. First, the staff report picks up on the best management booklet. He notes that there is a misstatement which leads you to believe that they are bringing off site materials to be sold which is incorrect. Everything that is sold on that site is processed on that site. He is not asking for a waiver for that and doesn't intend to change it. He will submit another management manual and will correct it accordingly. Secondly is the issue of the fence which will delineate the two areas. In the previous variance, there was a condition that there be a marked surveyed bound. However, having bounds might affect the solar panel area and thought a permanent fence will clearly demarcate that area. Thirdly, they have agreed to the language of the fire access road regarding materials to be used as per Site Plan Review and the Fire Department. As for odor control, there will be odors from the breakdown of grasses and in the existing process, they are stored on the northerly part of the site. However, this area will now be moved to the southerly part of the site. He asks in place of conditions 36 through 39, to have his proposed language that they are required to address any odors that emanate on site. That might require more conversation with staff. He runs through the variance conditions in regards to the existing soil and topography. Hardship would be that this client would be unable to use the site for a permitted use and they don't derogate

from the intent of the bylaw because the solar overlay is permitted. Also with him are two engineers: Tony Sommers and Nicky Marcus from SWCA. Also, with him is John Ganter from ENGIE.

The board discusses. Paul Pinard asks for clarification of what is on site now. Attorney Sabatt explains. Mark Hansen asks if anyone is aware what the tax revenue would be to the Town. Attorney Sabatt does not know but thinks that the evaluation would change but is unsure how Assessing would evaluate that. Hansen asks if there has been any complaints within the last 24 months? Attorney Sabatt states there has been one complaint about noise. However, Pat Gregory met with the complainant and resolved the issue immediately. As far as he knows there hasn't been any other complaints. Mickey Marcus works on the permitting and says that they will work with the Town and will be some contribution. Herb Bodensiek clarifies with Attorney Sabatt that the array will be on both lots. Herb also asks Sabatt if the existing business will be reduced. Attorney Sabatt says they are not intending to reduce the size of the business but instead make it more efficient. Jake Dewey asks if the newer buildings will be smaller. Sabatt says the proposed building will be larger, however, the combined square footage may be smaller but will check that. Jake clarifies that the use of the buildings will remain the same. Sabatt says that is correct.

Alex asks if, for a modification, they would have to make variance findings again. Sabatt says that a modification did not require any variance findings because the board had already found those previously. Attorney Sabatt refers to a court case (Huntington) regarding this issue and thinks that once variance conditions are made, it is unnecessary to have to make them again.

Alex Rodolakis opens public comment

Payson Titcomb lives at 588 Route 149, an abutter, has a concern about a buffer as he does not want to see a solar field from his premises. Thinks there is plenty of room to prevent this from happening. He would take issue with, if the solar field was to be pushed further towards his property. He asks for clarification about the vegetated 100' buffer. Attorney Sabatt states that the buffer in 1996, there was a plan prepared showing a yellow hatched area which is a buffer between 280 Old Falmouth Road and 0 Old Falmouth Road. He reads the 1996 condition regarding the buffer. Attorney Sabatt explains that what they want to do is to put the solar array on both properties and relieve them of this condition because the arrays will straddle both properties.

Tony Somers from SWCA, the landscape architect, was at neighborhood meeting and remembers Mr. Titcomb's concern. He notes that where the solar area is outlined and the lease area will not be modified once the array is in place and will not encroach and where shade management will be maintained and all the low trees and shrubs in the area will remain.

Mr. Titcomb asks if there is an area that is deemed a buffer zone. Mr. Somers says there isn't one from the property line itself because it is typical vegetation management. Matt Singer from ENGIE states that he isn't sure that there is an applicable setback and the vegetation that would act as screening would remain intact. Board members clarifies with Mr. Titcomb that he is asking if there is clear cut gap between the solar array and where this low level brush starts. Mr. Titcomb is concerned that they could mow it down right up to the property line if they wanted to which could be problematic for him. They discuss having a buffer zone with no clearing. Alex Rodolakis clarifies that there will be 120 feet from the solar array and Mr. Titcomb's property line. The next residents to the NW would be 172 feet.

Robert Wilson of 197 Old Falmouth Road has concerns about odor, noise all day and mud on the roads.

David Rosenow – no comment at this time.

Sabatt says Mr. Wilson's audio broke up some but isn't sure that he has contacted Cape Resources but should contact Mr. Gregory as he will be happy to go over his concerns. Sabatt just reminds them that there is another facility to the east that deals with waste recycling also.

Elizabeth Jenkins asks to go over concerns from the staff report submitted today. Alex asks what they need for findings and is hesitant to go into making variance findings. Attorney Sabatt thinks that findings over the years have been made and where this is a modification, the board need only find that this modification would not be more detrimental to the public good or the neighborhood affected. Elizabeth Jenkins recommends the findings as outlined in the staff report dated today. Alex polls the members for their opinion. Jake, Mark, Paul and Herb would be in favor. Attorney Sabatt talks about a buffer which would be located closest to where Mr. Titcomb resides.

There is a discussion about a vegetated buffer and if, in the future would not be needed.

Attorney Sabatt asks to close public comment. Alex closes public comment. They discuss and agree to a continuance in order to review buffer options.

Motion to continue this to September 9, 2020 at 7:01 PM is made by Alex Rodolakis and seconded by Mark Hansen:

Roll Call Vote:

MEMBER	AYE	NAY	ABSTAINED	ABSENT
Alex Rodolakis	x			
David Hirsch				x

Herb Bodensiek	x			
Jake Dewey	x			
Paul Pinard	x			
Todd Walantis				x
Mark Hansen	x			

CONTINUED TO SEPTEMBER 9, 2020 AT 7:00 PM

New Business

7:02 PM

Appeal No. 2020-026

Grady

Julie A. Grady has applied for a Special Permit pursuant to Section 240-47.1.B (4) Family Apartments and pursuant to Section 240-125C – Special Permit Provisions. The Applicant is proposing to convert an existing detached apartment unit, previously used as an accessory apartment unit in the Accessory Affordable Apartment Program (AAAP), into a family apartment. The subject property is located at 521 Main Street, West Barnstable, MA as shown on Assessor’s Map 133 as Parcel 033. It is located in the Residence F (RF) Zoning District.

Members assigned tonight: Alex Rodolakis, Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen

Representative: Julie Grady is here representing herself. Ms. Grady explains that the apartment has been there for about fifteen years and was part of the Accessory Affordable Apartment Program (AAAP) but would now like it to be a family apartment for her mother.

Alex clarifies with Ms. Grady that she is a part time resident in the main house and also live in Florida also and that this is not her primary residence. Alex thinks it might be an issue under the ordinance.

Elizabeth Jenkins states that the ordinance was amended to remove the requirement that the homeowner/property owner had to have this as their primary residence. Alex Rodolakis confirms with Ms. Grady that her mother will be living there full time. Alex reiterates the rules and regulations for a family apartment to Ms. Grady.

Alex asks for public comment. No one speaks.

Mark Hansen asks if they can put language to the effect that if her mother doesn’t live in the family apartment any longer that this would be automatically reversal back to an AAAP? Alex is not sure and knows that there is an application for AAAP.

Alex makes findings:

Proposed Special Permit Findings

For all Special Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

- 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 as it is already being used as an apartment.**
- 5. The single-family nature of the property and of the accessory nature of the detached structure are preserved.**

Roll Call Vote:

MEMBER	AYE	NAY	ABSTAINED	ABSENT
Alex Rodolakis	x			
David Hirsch				x
Herb Bodensiek	x			
Jake Dewey	x			
Paul Pinard	x			
Todd Walantis				x
Mark Hansen	x			

Alex makes a motion to grant relief being request with the following conditions:

Conditions

1. Special Permit No. 2020-026 is granted to Julie Grady to establish a family apartment in the existing accessory 1,644 gross area dwelling located at 521 Main Street, West Barnstable, MA.
2. The site development shall be in substantial conformance with the existing conditions as shown on the plot plan drawn and stamped by Yankee Survey Consultants dated May 26, 2000 and sketches provided by the Applicant.
3. The proposed development shall represent full build-out of the lot. Further development of the lot or construction of additional accessory structures in addition to the family apartment and garage is prohibited without prior approval from the Board.
4. The Applicant must comply with the restrictions in Section 240-47.1 Family Apartments C. Conditions and Procedural Requirements 1-4 of the Ordinance as follows:
 - 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.
 - 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.
5. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
6. 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.

Seconded by Paul Pinard

Roll Call Vote:

MEMBER	AYE	NAY	ABSTAINED	ABSENT
Alex Rodolakis	x			
David Hirsch				x
Herb Bodensiek	x			
Jake Dewey	x			
Paul Pinard	x			
Todd Walantis				x
Mark Hansen	x			

GRANTED WITH CONDITIONS

7:03 PM

Appeal No. 2020-027

Dumais

Virginia K. Dumais and Bruce E. Dumais, Trustee of the Dumais 1999 Irrevocable Trust have petitioned for a Variance to Section 240-14.E – RF Residential Bulk Regulations, Minimum Lot Area, Minimum Frontage requirements and Lot Shape Factor. The Petitioners are proposing to convey a small portion (Lot 6A) of land located at 42 Jenkins Lane, West Barnstable to 56 Jenkins Lane, West Barnstable in order to correct encroachments at 56 Jenkins Lane, West Barnstable. The subject properties are 42 Jenkins Lane and 56 Jenkins Lane, West Barnstable, MA as shown on Assessor’s Map 128 as Parcels 004-007 and 004-008. They are located in the Residence F Zoning District and the Resource Protection Overlay District (RPOD).

Members assigned tonight: Alex Rodolakis, Herb Bodensiek, Jake Dewey, Paul Pinard, Mark Hansen
Representative: Michael Schulz, Esq.

Attorney Schulz goes over the relief being requested. He states that JoAnne Dumais allowed the petitioners to construct a shed, patio and water feature on her property as it was unusable to her in exchange for the DiCenso's to perform work on her property. The petitioners would like to sell their property but in order to do so need a variance in order to legalize the shed, patio and water feature. He goes over the plan. Attorney Schulz states that the topography along that common property line is extremely steep, as for hardship, the petitioners would submit that the encroachment was allowed years ago in exchange for work on the house and would cause issues in trying to sell their property, the issuance to submit could be done without detriment to the public good and would not nullify or derogate from the intent of the bylaw.

Mark Hansen asks if there is an intent to mark these new boundaries with actual bounds or a fence in the future. Attorney Schulz says no, it is merely to create an unbuildable lot that has the proper offsets from the structures.

Alex asks for public comment. Alexandria DiCenso, who owns 56 Jenkins Lane, is in favor. Christine Taylor, who lives at 56 Jenkins Lane, is in favor.

Jake Dewey makes findings:

Variance Findings

The statutory requirement of MGL Chapter 40A, Section 10 for granting a variance is a three-prong test. The Board is required to find that each of the following three requirements has been met in order to consider granting the variance:

- owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located; **(topographical hardship)**
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and **(found it hard to sell the house)**
- desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.

Seconded by Alex Rodolakis.

Roll Call Vote:

MEMBER	AYE	NAY	ABSTAINED	ABSENT
Alex Rodolakis	x			
David Hirsch				x
Herb Bodensiek	x			
Jake Dewey	x			
Paul Pinard	x			
Todd Walantis				x
Mark Hansen	x			

Jake Dewey makes a motion to grant with the following conditions from staff report dated August 26, 2020:

Variance Conditions

Should the Board find to grant Variance No. 2020-027 to allow Lot 6A (42 Jenkins Lane) to be conveyed to the owners of Lot 6 (56 Jenkins Lane) West Barnstable, it may wish to consider the following conditions:

1. Variance No. 2020-027 is granted to Virginia K. Dumais and Bruce E. Dumais, Trustee of the Dumais 1999 Irrevocable Trust to allow Lot 6A (42 Jenkins Lane) to be conveyed to the owners of Lot 6 (56 Jenkins Lane) West Barnstable,, MA.
2. The site development shall be constructed in substantial conformance with the site plan entitled "Plan of Land in West Barnstable, MA" prepared for Christine Taylor, Angelo DiCenso, & Virginia & Bruce Dumais dated June 25, 2020, revised August 4, 2020 by Demarest Land Surveying.
3. The proposed development shall represent full build-out of the lot. Further development of the lot or construction of additional accessory structures is prohibited without prior approval from the Board.
4. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
5. 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 Variance must be exercised within one year, unless extended.

Seconded by Alex

Roll Call Vote:

MEMBER	AYE	NAY	ABSTAINED	ABSENT
Alex Rodolakis	x			
David Hirsch				x
Herb Bodensiek	x			
Jake Dewey	x			
Paul Pinard	x			
Todd Walantis				x
Mark Hansen	x			

GRANTED WITH CONDITIONS

Alex reads the following into the record:

7:04 PM

Appeal No. 2020-028

St. Michael the Archangel Orthodox Church

St. Michael the Archangel Orthodox Church, Inc., has applied for a Modification Permit in accordance with Section 240-8(3)(b)-Exempt Uses. The Applicant is proposing to reduce the pre-existing, nonconforming front yard setback from 19.3 feet to 16.5 feet in order to renovate and expand the existing vestibule and covered stairwell. The subject property is located at 62 Main Street, Cotuit, MA as shown on Assessor's Map 023 as Parcel 006. It is located in the Residence F (RF) Zoning District.

Members assigned tonight: Alex Rodolakis, Jake Dewey, Paul Pinard, Herb Bodensiek, Mark Hansen

Representative: David Lawler, Esq. Also with him tonight are Rich Fenuccio and John Abodeely. Attorney Lawler states that this an exempt use and a modification. What the plans submitted show is that they are trying to extend the nonconforming front use 2.5 feet and doesn't believe it has any negative impact on zoning. It will add aesthetic value to the property as well as safety purposes for people in and out of the church and believes that this is an appropriate request.

Alex asks if the board has any questions. No one speaks.

Alex asks for public comment. John Abodeely is in favor and explains that this extension adds an opportunity for people to stop and light a candle before coming into the church.

Alex clarifies that SPR gave approval and that there were no abutters opposed. Alex asks Attorney Lawler if he has seen the staff report. Lawler says yes and has no issues with it.

Alex Rodolakis makes findings:

Modification Permit Findings

For all Modification Permits, the Board is required to make general findings pursuant to § 240-125(C). The Board should review the evidence presented by the Applicant, staff, and members of the public and, after weighing such evidence, is encouraged to articulate if and how the evidence contributes to each of the required findings.

- The application falls within a category specifically excepted in the ordinance for a grant of a Modification Permit. Section 240-8 93) (b) allows for alterations for Exempt Uses.**
- Site Plan Review Committee found the project approvable (see letter dated July 29, 2020).**
- 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. (will increase use of the facility in the house of worship)**
- Pursuant to Section 240-92 (B), the proposed alteration or expansion will not be substantially more detrimental to the neighborhood than the existing building or structure. (talking about a little more than 2 feet).**

Seconded by Paul Pinard

Roll Call Vote:

MEMBER	AYE	NAY	ABSTAINED	ABSENT
Alex Rodolakis	x			
David Hirsch				x
Herb Bodensiek	x			
Jake Dewey	x			
Paul Pinard	x			
Todd Walantis				x
Mark Hansen	x			

A motion to grant the relief being sought is made by Alex Rodolakis with the following conditions:

Conditions

1. Modification Permit No. 2020-028 is granted to Saint Michael the Archangel Orthodox Church to renovate and expand the existing vestibule and covered stairwell thereby reducing the front setback from 19.1 feet to 16.5 feet at 62 Main Street, Cotuit.
2. The site development shall be constructed in substantial conformance with the plan entitled "Proposed Entry and Narthex Addition" sheets C1.0 - C4.0 prepared by Baxter Nye Engineering & Surveying dated July 16, 2020 and architectural plans entitled "Proposed New Entry & Narthex Addition St. Michael's Orthodox Church" prepared by Brown Lindquist Fenuccio & Raber Architects, Inc., Sheets A1.0 – A1.2, dated July 16, 2020.
3. The proposed redevelopment shall represent full build-out of the lot. Further alteration or expansion of the structure or construction of additional accessory structures is prohibited without prior approval from the Board.
4. All mechanical equipment associated with the dwellings (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
5. All Site Plan Review conditions set forth in letter dated July 29, 2020 are hereby incorporated in this Decision.
6. 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 issuance building permit. The rights authorized by this modification permit must be exercised within two years, unless extended.

Roll Call Vote:

MEMBER	AYE	NAY	ABSTAINED	ABSENT
Alex Rodolakis	x			
David Hirsch				x
Herb Bodensiek	x			
Jake Dewey	x			
Paul Pinard	x			
Todd Walantis				x
Mark Hansen	x			

GRANTED WITH CONDITIONS

Correspondence

Matters Not Reasonably Anticipated by the Chair

Mr. Twiss has been accepted on the Planning Board and Alex thanks him for his time and dedication.

Alex reminds staff that he will not be sitting on Cape Cod Five applications at the next hearing.

Upcoming Hearings

September 9, 2020, September 23, 2020, October 14, 2020

Adjournment

Motion is made by Mark Hansen and seconded by Paul Pinard to adjourn

Roll Call Vote:

MEMBER	AYE	NAY	ABSTAINED	ABSENT
Alex Rodolakis	x			
David Hirsch				x
Herb Bodensiek	x			
Jake Dewey	x			
Paul Pinard	x			
Todd Walantis				x
Mark Hansen	x			