



# 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](mailto:elizabeth.jenkins@town.barnstable.ma.us)  
Anna Brigham – Principal Planner – [anna.brigham@town.barnstable.ma.us](mailto:anna.brigham@town.barnstable.ma.us)  
Carol Puckett – Administrative Assistant – [carol.puckett@town.barnstable.ma.us](mailto:carol.puckett@town.barnstable.ma.us)

## Minutes

### Wednesday, September 9, 2020

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/93240840468>

Meeting ID: 932 4084 0468

888 475 4499 US Toll-free

Meeting ID: 932 4084 0468

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).

### Call to Order

Introduction of Board Members

*Alex reads the above and then takes roll call attendance of the members:*

Member	Present via ZOOM	Present via Conference Call	Absent
Alex Rodolakis	x		
David Hirsch	x		
Jake Dewey	x		
Herb Bodensiek		x	
Paul Pinard			x
Todd Walantis	x		
Mark Hansen	x		
Emanuel Alves			x
Anna Brigham	x		
Carol Puckett		x	
Elizabeth Jenkins		x	
Andrew Singer, Esq.	x		
Jennifer Calder	x		
David Bogan – ZBA Liaison	x		

29 OCT '20 AM 10:36  
BARNSTABLE TOWN CLERK

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.

**Minutes**

None

Alex notes that he will be recusing himself from the Cape Cod Five , will table that appeal until the end of the agenda where David Hirsch – Vice Chair will hear those applications.

Alex reads the following into the record:

**Old Business**

**7:00 PM Appeal No. 2019-050 1000 Main, LLC.**

1000 Main LLC., has applied for a Special Permit pursuant to Section 240-20.B – West Barnstable Village Business District. The Applicant is seeking relief in order to store small traditional sailboats and to continue the pre-existing use of three 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 tonight: Alex Rodolakis, David Hirsch, Jake Dewey, Herb Bodensiek, Mark Hansen

Representative: Charles Sabatt, Esq. – Attorney Sabatt would like to ask for another continuance as the property is being marketed with Special Permit possibilities. It was under agreement in June and extended but unfortunately the buyer did not qualify for funding. He would again like to request another extension to a meeting in October.

Attorney Sabatt requests October 28<sup>th</sup>.

Motion to continue this to October 28, 2020 at 7:00 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			
Jake Dewey	x			
Herb Bodensiek	x			
Paul Pinard				x
Todd Walantis	x			
Mark Hansen	x			
Emanuel Alves				x

**CONTINUED TO OCTOBER 28, 2020 AT 7:00 PM**

Sarah Beal announces that Paul Pinard is here but would like to leave due to a medical issue. Alex polls the members if they need to recuse themselves. Todd Walantis and Jake Dewey disclose that they are customers of the Cape Cod Five. Alex asks Sarah to tell Paul that he can leave.

**7:02 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.. Opened August 26, 2020. Members assigned: Alex Rodolakis, Herb Bodensiek, Jake Dewey, Paul Pianrd, Mark Hansen. No other members present. Public comment closed.

**Members assigned tonight: Alex Rodolakis, David Hirsch, Jake Dewey, Mark Hansen**

**Alex informs Attorney Sabatt that there will only be four members sitting on this and asks if he is okay going forward with the four members:**

**Representative: Charles Sabatt, Esq., . Attorney Sabatt states that they have reviewed the changes and would like to go over them. As to the issue on the number of members, he thinks he might have to confer with his client on that question. Alex tables this to later this evening.**

**Alex reads the following into the record:**

**7:01 PM Appeal No. 2020-024**

**Elefante/Gardiner as Trustees Re-Notice**

Mark B. Elefante, Trustee of 25 East Avenue Realty Trust and Nancy B. Gardiner, Trustee of 45 East Avenue Realty Trust are appealing the decision of the Building Commissioner for denying their request for enforcement in suspending construction of the structure (foundation) extending from the dwelling into East Avenue and removal of said foundation as it exceeds the scope of the building permit, which permit was premised upon Special Permit 2017-071. The subject property is located at 8 East Avenue, Osterville, MA as shown on Assessor's Map 139 as Parcel 075. It is located in the Residence F-1 (RF-1) Zoning District. **Opened August 12, 2020. No members assigned. No testimony taken. Continued to September 9, 2020.**

**Members assigned tonight: Alex Rodolakis, David Hirsch, Jake Dewey, Mark Hansen, Todd Walantis. Herb has recused himself. Herb asks if he can participate in the discussion. Alex advises not to. Paul Pinard announces that he is back Alex advises him that he has already assigned members and to remain but mute his phone.**

**Representative: Michael Schulz, Esq. has submitted a memo (Exhibit A) which he wants as part of the record. Attorney Schulz gives a history of the conveyance for his clients. He notes that the Beaugard's, owners of 8 East Avenue, had been before this Board previously and that the plans filed at the hearing by the Beaugard's made no mention of a foundation that would be constructed from the dwelling past the property line and halfway into East Avenue. He notes that Attorney Michael Ford, the Beaugard's attorney at that time, stated at that hearing, that although it acted like a driveway, East Avenue was shown on a layout improved to their house but unimproved thereafter westerly extending thereon. Attorney Ford specifically stated that the other people had rights in East Avenue and additionally it was represented that the Beaugard's were not coming any closer than what was presently there. A building permit was then sought by the Beaugard's which was based on the relief granted by the ZBA. Again, no reference to the foundation on the building permit, application or plans. In April of 2020, his client's discovered a foundation being constructed into East Avenue and sought enforcement action from Brian Florence – Building Commissioner (BC). In a return letter, the BC denied the request for 4 reasons which Attorney Schulz reads from Brian Florence's letter dated May 7, 2020. (Exhibit A). Attorney Schulz states although he agrees that the foundation is a structure, he disagrees with the remainder of that reasoning. There is a reference to concrete pavers but no reference to a foundation or structure being constructed past the property line and into East Avenue. Also, the reference to the driveway, the response was that East Avenue was shown on a layout but that others have rights in that roadway. He talks about aerial pictures. As for it being untimely, he would suggest that case law is clear about what is required is fair and adequate notice which he notes in his memo dated 09-09-20 (Exhibit B). As for the 4<sup>th</sup> reason regarding pre-existing nonconforming structure (See Exhibit A).**

**Alex asks if Board members have any questions for Attorney Schulz. Alex clarifies that the use of the foundation is the problem. Attorney Schulz states that his clients own vacant land on East Avenue, they have access to that avenue, wrote to the Beaugard's asking them to move the foundation so that they could access their lot. That was unequivocally denied by Attorney Ford stating that they had no rights which is contrary to what he previously represented to the board. Therefore, they are in litigation. He states that this foundation impedes his client's access to their lot. Board members and Attorney Schulz discuss what existed as a patio, etc.**

**Mark Hansen notes that once a foundation is considered a permanent structure and doesn't see how they can use it since it is in the roadway. Attorney Schulz notes that if the Beaugard's needed to, they could've applied for a variance in order to place the foundation.**

**Alex asks for public comment: Gregory Sullivan who lives on 188 Washington Avenue knows the property and gives a history of that house. He recalls that the patio had been there for a long time.**

**Elizabeth Jenkins states that there is an issue of timeliness raised by the BC and one of the findings in the letter was regarding timeliness. The appeal was not within 20 days or 30 days within issuance of building permit. She talks about case law.**

**Attorney Schulz states that the case law was cited in his memo, was a decision in SJC and in his supplemental memo what is required is adequate and fair notice and they were not noticed that the foundation was going into the roadway. He refers to the Connors vs Annino case law 460 Mass 790.**

**The board deliberates. Alex has concerns and notes a case in Prince Cove about a structural retaining wall. Alex asks Attorney Schulz what Brian Florence said in reference to the foundation. Attorney Schulz states that Mr. Florence didn't address the foundation.**

Brian Florence is here if they have questions. Alex asks if they have a problem re-opening public comment. Alex asks Brian Florence if this is landscaping or a structure. Florence considers this a landscaping feature right from the beginning. A foundation is used to support a structure and this is not used for that. If you look at the ordinance they mention exemptions from the ordinance and how the Building Division looked at it.

Gregory Sullivan talks about the grade of the patio.

Brian Florence states that there are a lot of retaining walls attached to a house and they don't consider that they are attached.

Alex closes public comment.

Alex asks Attorney Schulz for comment. Attorney Schulz states that this is not a retaining wall to hold up dirt, this is a 4 foot half pour and doesn't agree with the Building Commissioner's reasoning.

Alex thinks it would be a timely appeal, the patio is on the plans and whether or not they are entitled to have it there is not before the Board, if they are not, there is another recourse for that. However, for the purposes of overturning the Building Commissioner on the cease and desist, he is of the mind to affirm the Building Commissioner. David, Jake, Alex and Todd are in agreement. Mark is not.

Alex makes findings:

- This matter involves an appeal of the denial of a request for enforcement filed with the Building Commissioner on April 23, 2020 by Attorney Schulz. The appeal seeks to suspend construction of a patio/foundation structure by the Beauregard's into East Avenue on the grounds it exceeds the scope of the building permit, which was premised upon Special Permit No. 2017-071.
- The Building Commissioner denied the request for enforcement by a letter dated May 7, 2020. The Appellants made a timely appeal and are requesting the Board reverse the Building Commissioner's decision.
- That under Massachusetts General Law, Chapter 40A Section 8 and 15 hear and decide appeals by "any person aggrieved by reason of his inability to obtain a permit or enforcement action" from administrative officers or other parties, and in this case to determine if the Building Commissioner properly determined that the patio was constructed as approved and does not violate the Zoning Ordinance.
- There has been an opportunity for public comment and have had public comment, his findings would be towards upholding the Building Commissioner's decision to deny enforcement.
- That the structure referenced in the complaint is not a structure but rather in the nature a feature of landscaping on a pre-existing patio that was included on the prior plans including a plan dated January 6, 2016.
- Looking at the historical aerials, which he did and when he did his site visit, that the patio existed in some are of that current footprint
- He would not find that the appeal is untimely with respect to as whether this is a structure but would find this untimely because the patio was shown on the plans
- The Building Commissioner's determination that the patio is pre-existing, nonconforming was proper

Roll Call Vote:

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

Alex makes a motion to affirm the Building Commissioner

Seconded by David Hirsch

MEMBER	AYE	NAY	ABSTAINED	ABSENT
Alex Rodolakis	x			

David Hirsch	x			
Jake Dewey	x			
Herb Bodensiek				
Paul Pinard				X
Todd Walantis	x			
Mark Hansen			X	
Emanuel Alves				X

## UPHELD THE BUILDING COMMISSIONER

*Alex recalls the Cape Resources appeal:*

**7:02 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.. Opened August 26, 2020. Members assigned: Alex Rodolakis, Herb Bodensiek, Jake Dewey, Paul Pinard, Mark Hansen. No other members present. Public comment closed.

**Members assigned tonight:** Alex asks if he is okay going forward with the four members: Alex Rodolakis, Jake Dewey, Herb Bodensiek, Mark Hansen. Attorney Sabatt agrees to four members. Alex confirms that they had previously closed public comment.

**Representative:** Charles Sabatt, Esq., states that they have reviewed the changes and need to go over the changes. As for Finding #18 regarding a buffer for abutter at 0 Old Falmouth Road, they originally drew it as a 30 foot buffer. However, after a discussion with Elizabeth Jenkins – Planning & Development Director, his clients have had a further discussion with the abutter and have agreed to expand the buffer to 50 feet and will provide language. Also, once the solar installation is constructed, ENGIE, will perform an assessment of the view shed from the abutter's property as to identify if any plantings are needed to provide vegetated screening from the solar installation.

Elizabeth Jenkins is asked if she is in agreement with the changes. Alex asks Sabatt to re-explain the second part. Sabatt explains the view shed and to provide any additional screening if necessary. Jenkins says she agrees with the conditions and that the Town Attorney's office will draft a covenant regarding screening and if should that solar array for any reason get discontinued or undeveloped they would look to have it to revert to the original restriction that is in place now which is that property act as a buffer from the Cape Resources site.

Alex asks if Attorney Sabatt is okay going forward with four members since Paul Pinard has left the hearing.

Alex asks if they can just reference the staff report. Elizabeth Jenkins recommends reading the findings into the record but cite the conditions:

**Alex reads the findings from Staff Report dated September 9, 2020:**

1. The property at 0 Old Falmouth Road and 280 Old Falmouth Road are abutting properties and each is owned by EAC Organics, Inc. The two properties are located within a Residence F (RF) Zoning District and Resource Protection Overlay District (RPOD). Each is also located within a Groundwater Protection Overlay District (GP) and Ground-Mounted Solar Photovoltaic Overlay District. Ground-mounted solar photovoltaic systems are allowed on each parcel as a matter of right. 0 Old Falmouth Road is approximately 17 acres in size. 280 Old Falmouth Road is 21.32 acres.
2. The property at 280 Old Falmouth Road has been the subject of variances and variance modifications beginning in 1975.
3. The first variance, Appeal #1975 – 34 issued to Lebcu Enterprises, Inc. on August 25, 1975 permitted the then owner to utilize the property for the removal of sand and gravel and the refilling of the excavated areas with wood and stumps. On June 7, 1978 in Appeal #1978 – 24, the Zoning Board of Appeals allowed Lebcu Enterprises, Inc. to accept for disposal on the site tires and demolition materials. In 1996, the Zoning Board of Appeals in Appeal #1996 – 14 further modified Variance #1975 – 34 and its modification, Appeal #1978 – 24 to allow the then property owner, namely EAC Disposal Inc., d.b.a. Cape Resources Company to continue its operation as a wood waste recycling center, replaced the prior variances, and pursuant to that modification imposed 29 conditions.
4. Appeal #1996 – 14 in its Condition #6 defined the permitted operational area on 280 Old Falmouth Road by the superimposition of the yellow hatched area on the site plan for the Cape resources operation at 280 Old Falmouth Road.

5. Appeal #1996 – 14 contained a further condition, Condition #10 that provided in part as follows:

At the time of the sale or development of the petitioner's abutting land [0 Old Falmouth Road] (located along the westerly boundary of locus), a 100 foot vegetated buffer along the boundary within the yellow hatched area shall be established. Petitioner agrees to execute a restriction running with the land, in perpetuity subject to the terms of this decision, in a form acceptable to the Town Attorney, encumbering both locus and the abutting land to effectuate the provisions of this restriction.

6. The meaning of Condition #10 was that in the event that EAC Disposal, Inc. (now EAC Organics, Inc.) developed its property at 0 Old Falmouth Road, it would be required to establish a 100 foot vegetated buffer along the westerly boundary line of 280 Old Falmouth Road and within its operational area defined by the yellow hatched area shown on the then approved site plan.

7. In accordance with Condition #10 EAC Disposal, Inc. the petitioner in Appeal #1996 – 14 recorded a Declaration of Restrictions and Covenants (the "Covenant") at the Barnstable County Registry of Deeds in Book 10940, Page 148, and registered the Covenant as Document #703897 that was approved by the Town Attorney. The Covenant states the following: (Alex does not read the following into the record©

*Prior to the sale or other conveyance of, or the construction of any improvements on (other than improvements for utility services such as water, sewer, electric and similar utilities), any portion of the Adjacent Parcel [0 Old Falmouth Road] located within 100 feet of the CRC Site, Grantor agrees to establish and maintain a 100-foot vegetated buffer along the westerly boundary of the CRC Site (inclusive of the 100 foot buffer along the westerly boundary of the CRC site outside of the hatched area shown on the Site Plan that Grantor is currently required to maintain under the Modified Variance).*

8. In 2009, EAC Disposal, Inc. d.b.a. Cape resources Company applied to the Zoning Board of Appeals for a modification of Appeal #1996 – 14 seeking to modify the existing approved site plan and to extend the expiration date of its variance from December 31, 2015 established by Appeal #96 – 14 to December 31, 2030. In this 2009 appeal, namely Appeal #2009 – 025 the Zoning Board of Appeals granted the requested modification with a series of new conditions. The Decision was modified by a Settlement Agreement dated September 22, 2015.

9. Among the conditions contained within Appeal #2009 – 25, Condition #5 provided as follows: (Alex does not read into the record:)

*To prevent undue intensification of the operation on the site, this variance does not allow any other by right principal or accessory use or conditional uses on the Property [280 Old Falmouth Road] without further approval from the Board. While the rights authorized by this variance are being exercised, uses permitted by the underlying zoning are prohibited on the Property.*

10. The Applicant proposes to condense its operation from approximately 18 acres to 5.6 acres to be located on the south end of 280 Old Falmouth Road fronting on Old Falmouth Road. The Applicant operating as Cape Resources will continue to receive vegetative waste material consisting of stumps, tree limbs, branches, leaves, and grass and will process these materials into mulch, loam, wood chips, and firewood. The Cape Resources operation will be organized and sited in accordance with the CRC Conceptual Site Plan.

11. Currently, there are three structures located on 280 Old Falmouth Road that are used by Cape Resources consisting of an office building, a small warehouse building, and a larger warehouse/maintenance building. As a part of its reorganization, Cape Resources proposes to demolish the two warehouse structures and replace them with one 3200 square foot warehouse/maintenance building to be located in the southeast corner of 280 Old Falmouth Road as shown on the CRC Conceptual Site Plan. The office building will remain.

12. The Applicant proposes to enter into a long term lease with a solar photovoltaic company that will construct the Solar Installation to be located both on 280 Old Falmouth Road and on 0 Old Falmouth Road, all as shown on the CRC Conceptual Site Plan. The proposed Solar Installation is a by-right use on both properties as each is located within the Ground-Mounted Solar Photovoltaic Overlay District.

13. Cape Resources provides an essential and unique service to the residents of the Town of Barnstable. It is the only facility within the Town of Barnstable and one of the very few within the mid-Cape area that will accept natural wood waste materials for processing into usable landscape products. In the event of a hurricane or severe weather conditions that can cause significant tree damage, the Cape Resources facility will be invaluable.

14. The new layout and design will reduce the size of the CRC operation from approximately 18 acres to 5.6 acres, all of which will be located on the south end of the property at 280 Old Falmouth Road. There are several residential dwellings located to the north and northeast of 280 Old Falmouth Road. By relocating the CRC operation to the southerly end of 280 Old Falmouth Road, the impact of the CRC operation upon the residential dwellings in those northerly neighborhoods will be significantly reduced.

15. The placement of the Solar Installation between the northerly lot line and the northerly line of the CRC operational area on 280 Old Falmouth Road will provide further insulation from the impacts of the CRC operation upon the residents of the neighborhoods to the north and northeast of the two sites.

16. According to the Applicant, since the modification of the pre-existing variances in Appeal #2009 – 025 there have been no complaints from the public made to the Building Commissioner’s office with respect to the CRC operation.

17. The proposed Solar Installation and the proposed reconfiguration of the CRC operation have been reviewed by the Site Plan Review Committee as follows:

**2017:** Site Plan Review No. 44-16 approved January 5, 2017 for proposed solar facility and associated improvements.

**2019:** Site Plan Review No. 31-19 for a renewable 20 year lease with SunRise Development LLC, a ground mounted solar array operation, approved June 28, 2019, with revised approval on November 22, 2019.

**2020:** Site Plan Review No. 78-19 for a second principal use (the Solar Installation) and reduction of the Cape Resources use and demolish the existing structures, except the office, and construct a new maintenance facility. The Site Plan Review Committee reviewed the proposed plans and found them to be approvable on March 5, 2020, subject to the modification of the variance conditions by the Zoning Board of Appeals. Additional review of the outstanding comments in the March 5, 2020 Site Plan letter and the conditions of this decision shall be required by the Site Plan Review Committee.

18. The Applicant has agreed to establish a 30 foot wide vegetated buffer zone to be located on 0 Old Falmouth Road around the boundary lines of the property at 588 Route 149, Marstons Mills [Parcel 100-006-001] that abuts the Applicant’s property at 0 Old Falmouth Road. The buffer will only be in effect so long as the Solar Installation is present and operating. Additionally, the solar array is permitted to maintain a 100 foot shade management buffer at its westerly side, the terms of the buffer zone do not permit clearcutting and, as a result, significant natural vegetation will be retained. Combined with the 30 foot wide vegetated buffer proposed by the Applicant, there will be approximately 130 feet between the edge of the Solar Installation on 0 Old Falmouth Road and the property lines of 588 Route 149.

19. The Applicant is requesting approval to amend the Covenant now on record requiring the maintenance of a vegetated buffer on its site along the westerly boundary line of 280 Old Falmouth Road, on the grounds that the enforcement of such a requirement would inhibit the construction of the Solar Installation, which is designed to traverse across the common boundary line dividing 0 and 280 Old Falmouth Road.

20. In addition to a modification of the two central conditions, namely Condition #10 from Appeal 1996-14 and the resulting recorded Covenant and Condition #5 from Appeal 2009-025 prohibiting two uses on 280 Old Falmouth Road, the Applicant has requested and will require modification of other conditions imposed by Appeal 2009-025 relating primarily to its site layout which are now rendered inapplicable by virtue of the proposed new smaller layout for the Cape Resources operation.

21. Conditions in Appeal 2009-025 monitoring and regulating potential nuisances resulting from the land use, namely noise, dust, and odors are incorporated into this decision. These conditions were informed by testimony provided by abutters, recommended by outside consultants, and based on guidance documents issued by the Massachusetts Department of Environmental Protection for Leaf and Yard Waste Composting, Grass Composting, and Utilization of Shredded Brush, and OSHA standards. Restrictions on height of shredded brush piles intended to address risk of spontaneous combustion are included. These performance based restrictions are intended to limit negative environmental impacts from the operation and prevent nuisance conditions for the protection of adjacent residential property owners and protection of public safety.

22. The proposed modifications may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the bylaw. The combination on the 280 Old Falmouth Road property of the Solar Installation with the pre-existing CRC operation, which will now be condensed and located entirely southerly, will result in the reduction of impact upon the neighborhoods to the north and northeast of the site. The recent history of the CRC operation since issuance of 2009 – 25 demonstrates that the Applicant has responsibly managed its operation. The reconfigured operation will make the wood recycling business more efficient and therefore less intrusive upon the abutting neighborhoods.

**Roll call vote:**

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

**Motion to grant the relief being sought in accordance with conditions as outlined in staff report dated 09-09-20, Conditions 1 through 10. Seconded by Jake Dewey**

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

## GRANTED WITH CONDITIONS

*Alex reads the following into the record:*

**7:05 PM**

**Appeal No. 2020-031**

**Garvey**

Joshua Garvey has have applied for a Special Permit in accordance with Section 240-91.H – Nonconforming Lot. The Applicant is proposing to demolish an existing single-family dwelling and construct a new, 2,503 square foot, single-family dwelling on a lot consisting of 8,392 square feet, less than the required 10,000 square feet. The subject property is located at 111 George Street, Barnstable, MA as shown on Assessor’s Map 319 as Parcel 052. It is located in the Residence B (RB) Zoning District.

**Members assigned tonight: Alex Rodolakis, David Hirsch, Herb Bodensiek, Jake Dewey and Todd Walantis**

**Representative: John Kenney, Esq. gives summary of relief being sought. Also with him tonight is the owner, Josh Garvey, and Erik Tolley from ERT Architects who are here to answer any questions. Attorney Kenney notes that the new structure will be serviced by town sewer, has also been before Old King’s Highway and approved,**

**Attorney Kenney states that this property has less than 10,000 square feet of upland and two front yard setbacks. He gives the history of the nonconforming structure and how the Special Permit findings apply to this request. He states that the new dwelling will not comply with existing required setbacks, however, they meet the front yard on George Street but not on Harbor View Drive. He notes that the new structure will fit in with the neighborhood and will comply with current state building code. This will not derogate from the intent of the ordinance and will not be more be more detrimental.**

**Alex asks about the square footage of the floor area of the unfinished room on the second floor. He asks if that is included in the calculations for maximum lot gross floor area ratio. Erik Tolley says that area is not deemed livable and was not counted in the calculations. Alex asks why isn’t this considered livable space. Mr. Tolley states that it is unfinished and will be just for storage.**

**Alex asks for public comment. No one speaks. Alex states that they did receive an email from Anthony Denski dated 090220? and questions square footage of the lot as it does not include deeded beach rights... also there is a letter from the BSC group responding to that letter and disagrees to use the beach do not constitute a dedication to the total square footage of the lot.**

**Alex closes public comment. Attorney Kenney notes that Mr. Denski cited a plan showing top of the bluff and he was arguing that it should be the 1945. ConComm says it is upland. Whether or not does not impact the ownership and is included in the calculation.**

**Mark Hansen asks for clarification as to where the unfinished area is. Tolley says that the upper left of the second floor plan is half of the space that is labeled unfinished storage. Hansen asks if this space were to be finished, if it would make them over their allowed calculation. Tolley says yes. Alex and Hansen have an issue . Attorney Kenney states that Mr. Tolley had spoken with Brian Florence – Building Commissioner (BC) who says it is unfinished. Mr. Tolley says that the BC would not have issued a permit because it would put them above the allowed square footage. Tolley says that they could raise the floor so that it would not have head space, decrease the floor height and that scheme has been approved by this board in the past. Tolley says windows in this area were added for aesthetics and Garvey has no intention of finishing that space. Jenkins is asked about it... she says there could be additional conditions if the board so choose.**

**Jake Dewey makes findings:**

### Special Permit Findings

- **The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-91(H)(3) allows for the complete demolition and rebuilding of a residence on a lot under 10,000 square feet.**
- **Site Plan Review is not required for single-family residential dwellings.**



- 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.

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

- The proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building. The proposed setbacks will comply with the requirements of the Residence B Zoning District except the front setback from Harborview Drive is becoming more conforming.
- The proposed lot coverage shall not exceed 20% or the existing lot coverage, whichever is greater. The proposed lot coverage is 19.8%.
- The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished, whichever is greater. The proposed FAR is 29.8%.
- The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 ½ stories. The proposed height is 20 feet to the top of the plate and the proposed dwelling is 2 stories.
- The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.

**Roll Call Vote:**

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

*Attorney Kenney notes that there were errors on plan /references in the Staff Report. Anna Brigham notes that the corrections will get into the final decision. Mr. Tolley reads that from an email to Attorney Kenney Item #2 of the Staff Report proposed conditions references BSC Site Plan dated February 5, 2020 and the supporting documents provided by Mr. Kenney, the BSC Plan is as dated – revised February 25, 2020 with the most recent revision date June 25<sup>th</sup> of 2020. It also does not reference any date on his plans. His plans submitted were dated July 1<sup>st</sup> of 2020.*

**Conditions:**

1. Special Permit No. 2020-031 is granted to Joshua Garvey for the demolition of an existing dwelling and construction of a 2,503 gross floor area dwelling at 111 George Street, Barnstable, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled “Plan of Land 111 George Street in Barnstable Massachusetts (Barnstable County) Proposed Dwelling” prepared by BSC Group, dated February 5, 2020, and design plans by ERT Architects
3. The total lot coverage of all structures on the lot shall not exceed 19.8% and the floor-area ratio shall not exceed 29.8%.
4. The proposed redevelopment shall represent full build-out of the lot. Further expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
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/Land Court and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of the building permit. The rights authorized by this special permit must be exercised within two years, unless extended.

**Roll Call Vote:**

MEMBER	AYE	NAY	ABSTAINED	ABSENT
Alex Rodolakis	x			
David Hirsch	x			
Jake Dewey	x			
Herb Bodensiek				

Paul Pinard				X
Todd Walantis	x			
Mark Hansen			x	
Emanuel Alves				X

## GRANTED WITH CONDITIONS

*David Hirsch reads both appeals into the record:*

### New Business

**7:03 PM**

**Appeal No. 2020-029**

**Cape Cod Five Cents Savings Bank**

The Cape Cod Five Cents Savings Bank has petitioned for relief in accordance to Section 125 and Section 240-126 of the Zoning Ordinance and M.G.L. Chapter 40A Section 10 from the following provisions: 240-65 (A) Number of Signs, 240-65 (C) Additional Square Footage, 240-65 (D) (G) Number of Signs, 240-75 (A) (B) Allowance/approval of (4) larger Directional Signs. The Petitioner is seeking additional signage at the Cape Cod Five Cents Savings Bank Headquarters. The subject property is located at 1500 Iyannough Road, Hyannis MA as shown on Assessors Map 253 as Parcels 020-B00 and 020-T00. It is located in the Highway Business (HB) Zoning District.

**7:04 PM**

**Appeal No. 2020-030**

**Cape Cod Five Cents Savings Bank**

The Cape Cod Five Cents Savings Bank has petitioned for relief in accordance to Section 125 and Section 240-126 of the Zoning Ordinance and M.G.L. Chapter 40A Section 10 from the following provisions: 240-65 (A) Number of Signs, 240-65 (C) Additional Square Footage, 240-65 (D) (G) Number of Signs, 240-75 (A) (B) Allowance/approval of (4) larger Directional Signs. The Petitioner is seeking additional signage at the Cape Cod Five Cents Savings Bank Headquarters. The subject property is located at 1550 Iyannough Road, Hyannis MA as shown on Assessors Map 254 as Parcel 014. It is located in the Highway Business (HB) Zoning District.

*Members assigned: David Hirsch, Jake Dewey, Herb Bodensiek, Mark Hansen, Todd Walantis*

*Andrew Singer, Esq., is here. Also with him is Senior VP of Real Estate – Christopher Raber, Andrea Ponte – Chief Operational Services Officer and Burt Talerman – Co-President of Cape Cod Five..*

*Attorney Singer gives topo features of the lots and describes the curb cuts. He states that they are only here for sign relief and what is shown on the plans are the specific relief requests. He summarizes how the relief being requested fits with the 3 prong test. Both these properties have unique circumstances, the hardship is safety. Beyond the hardship, it can be granted without detriment to the public good or the neighborhood affected. It is compatible with the business zone and will provide safety and welfare. The lighting will comply and have no negative impact. It will not create any undue nuisance, etc and will be a benefit to the area. He asks that the board grant the relief as shown on the plans.*

*The board discusses. Jake asks about variances that run with the property and if there were to be new owners. Attorney Singer says that if the property was sold, the new owners might have to come back to this board to modify the signage because it would not be CC5 signage.*

*Elizabeth Jenkins reminds them to take public comment. Jenkins also says that as to Jake Dewey's concerns, that it could be modified in the future.*

*David Hirsch asks for public comment. Rob Wilson thinks it is appropriate for the area and in good taste, only small concern is that there are signs pointing up.*

*Chris Raber talks about the larger free standing signs and how they are lit. The fixtures can be fine tuned so that it won't affect the area.*

*David Hirsch 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;
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and
- 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.

An application for a variance that has met all three requirements "does not confer ... any legal right to a variance." The Board still has the discretionary power to grant or not to grant the variance.

*Jake Dewey asks to speak to the three prong test. Dewey suggests, as for the topography, there is land on both sides and the adjoining properties, that the hardship would be a financial hardship on the grounds that the signage is important for the business and for customers to find the part of the business they are trying to get to and for customer safety, and it won't be a detriment to the public good.*

**Roll Call Vote:**

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

*Motion is made by David Hirsch to grant the relief being sought with the conditions as stated on the Staff Report dated 09-09-20, Conditions 1 through 4*

*Jake Dewey would ask for a condition that variance will follow the current and will not transfer to the new owner unless they agree to come back before the Board. Attorney Singer says in case that the bank wants to transfer ownership to one of their own entities, that it follows the owner for whatever legal forms it would take. He thinks that what they are thinking is if it goes to a third party. David Hirsch no problem with it going to another bank. They discuss.*

*Jenkins suggests signage as proposed, being, that the modification shall be required to be reviewed and approved by the Board and upon transfer ownership to a new entity that it shall be a modification which will require further review by the board. Attorney Singer clarifies that if any signage is changed, that they will still be required to come back before the Board.*

**Roll Call Vote:**

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

## 2020-029 GRANTED WITH CONDITIONS

*Jake Dewey makes findings for 2020-030:*

### 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; again the topo of the lot including the wetlands and entrances and exits which allows them to give this variance
- a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and that it would be a hardship if they cannot direct customers where to go
- 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.

**Roll Call Vote:**

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

*Jake Dewey makes a motion to grant the relief being sought with the conditions as outlined on the Staff Report dated 08-31-20 being Conditions 1 through 4*

## 2020-030 GRANTED WITH CONDITIONS

### Correspondence

### Matters Not Reasonably Anticipated by the Chair

### Upcoming Hearings

September 23, 2020, October 14, 2020, October 28, 2020

### Adjournment

*Motion to adjourn is made by Jake Dewey and seconded by Herb Bodensiek*

*Roll Call Vote:*

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