



Town of Barnstable Planning Board

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Board Members

Mary Barry – Chair Stephen Helman – Vice Chair Steven Costello – Clerk Paul R. Curley David Munsell Fred LaSelva
John Norman – Town Council Liaison

Planning & Development Dept. Staff Support

Elizabeth Jenkins, AICP, Director
Anna Brigham, Principal Planner
Karen Herrand – Principal Assistant - karen.herrand@town.barnstable.ma.us

BARNSTABLE TOWN CLERK

2017 SEP 18 PM 1:59

Town of Barnstable PLANNING BOARD Minutes August 14, 2017

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|--------------------------------|---------|
| Mary Barry – Chairman | Present |
| Stephen Helman – Vice Chairman | Present |
| Steven Costello – Clerk | Present |
| Paul Curley | Present |
| David Munsell | Present |
| Fred LaSelva | Present |

Also in attendance were Elizabeth Jenkins, Director and Karen Herrand, Principal Assistant, Planning & Development Dept.

Notice of Recording: This meeting is being recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. The Chair must inquire whether anyone else is taping this meeting and to please make their presence known.

Approval Not Required Plans:

11, 25, 30 & 34 Gardiner Lane and 617 & 633 Main Street and 106 East Bay Road, Osterville, Nancy B. Samiljan, Trustee of Gardiner Lane and Main Street Realty Trusts and Niraj and Jill Shah, Map 141 Parcels 001, 104-002, 104-003, 104-004, 104-005, 105-001, 123-002 have submitted a plan entitled "Approval Not Required Plan of Land for Samiljan and Shah Various Lots on East Bay Rd., Main St., & Gardiner Ln., Osterville, MA – Plan Showing Re-Division of Lots Shown on P.B. 507, Pg. 2 & P.B. 563, pg. 44" dated July 31, 2017 drawn and stamped by John McElwee, P.L.S.

John McElwee of Coastal Engineering Co., Inc. in attendance. He explains that they are taking 7 lots and recreating them into 4 lots. The lots have frontage.

David Munsell asks for clarification about houses on each lot. Makes reference to the plan, see Exhibit A, reference to the two outlined plans.

Elizabeth Jenkins explains the existing and proposed colored plans that staff prepared. See Exhibit A (2 outlined plans). ANR does not have to meet zoning, just frontage and egress/access. This is to create a larger plan to restore this estate property.

Chair Mary Barry entertains a motion to endorse/approve this ANR plan, moved by Stephen Helman, seconded by Paul Curley. David Munsell abstains. The vote is: Mary Barry, Stephen Helman, Paul Curley and Fred LaSelva yes. The vote passes.

Subdivisions:

Subdivision No. 657. Request by Attorney Eliza Cox to release covenant for lots, 6, 7, 8 and 9. Address: 90, 110, & 130 Merchants Way and 20 Business Lane, Barnstable.

This item will be postponed to August 28, 2017, hearing per request from Attorney Eliza Cox.

Zoning Amendments:

Town Council Item No. 2018-014 Amending Chapter 240 of the Zoning Ordinance to Limit Land Clearance within the Ground Mounted Solar Photovoltaic Overlay District

Elizabeth Jenkins explains the proposed zoning amendment to the Board and history. Two different locations/land clearance regarding the installation of solar arrays.

There are currently two in place: The Transfer/Landfill in Marstons Mills and a joint project at the airport. There is a third at the stump dump site, but has not gone forward yet.

Previously Cotuit Water had proposed a solar array project, whereby there was considerable concern about this use/ wellhead protection areas and large amount of land to be clear cut. This did not move forward.

In response this is being presented, and suggestion to amend for zone 1. Land clearing within 800 ft. with primary radius around public water supply areas.

Reference to the proposed amendment, Exhibit B, and reference to small mapping showing zone 1 areas.

Steven Costello asks about the Cape Cod Community College solar array.

Elizabeth Jenkins replies that this was permitted with the use of the college, smaller accessory installation instead of large scale. This is a standalone utility project.

Fred LaSelva asks what was the final approval regarding the Cotuit project. Why /what was the driving force with the Cotuit project?

Elizabeth Jenkins answers that the project was withdrawn due to the concerns that were raised at this proposal at Town Council hearing. The Water District was looking to generate revenue, water tower to be replaced and to supplement their resources. Cost and benefit debate at Town Council with this.

Paul Curley moves to open the Public Hearing.

Don Campbell, Water Board Commissioner for Cotuit Fire District's Water Dept. He has just been notified about this. The Town Councilor did not mention this to him and there was no mention in Civic Association notes about this proposed zoning change/amendment. States that they had previously submitted project/process was for a revenue source, people having trouble paying bills. Town Council did not pass it through. So now we are requesting to have more time in order to review this. This proposal would restrict the use, and this will make it so it can never happen. This would not give us a choice. DEP says that they can do within the zone, zone 1, they had no problem.

Also, other water districts don't know about it. He would like to talk to other Commissioners about this.

Chair Mary Barry affirms that when it came back in the past the Planning Board did support it and they did recommend it to Town Council.

David Munsell also states that it did come to them previously.

Elizabeth Jenkins explains what happened, we had reached out to the 5 water districts and got their input about solar array installation, different feedback from everyone. A proposal to rezone does not require notice to abutters.

David Munsell confirms this and no opposition at that time. Trees were cut down and then a lot of people were concerned at that point.

Elizabeth Jenkins clarifies that this legislation (proposed amendment) would prohibit associated land clearing. This overlay is applicable to large scale installations – primary land uses, accessory uses would not be regulated with this.

Mark Robinson, resident of Cotuit. The original process Town did was for large scale land, any other would be spot zoning. Town of Barnstable has been opposed to spot zoning, what's to stop all from doing this type of spot zoning. This amendment should be vetted properly. Forest areas purify water, clear cutting for anything is the worst thing that can be done. He is in favor of this amendment.

Lee Connelly- Wild from Cotuit in attendance. She is in support of this amendment.

Janet Milkman, Executive Director of the Barnstable Land Trust. They were here previously with the Cotuit project. They were in opposition to this project. She is in support of this proposed amendment. She mentions comments that a Barnstable Land Trust Board Member made:

Forests on the Cape aren't as extensive as we remember, but it is important for maintaining natural forests which are a filter, and they help with pollution, also a future for clean water. Removing large tracts of forests for this doesn't make sense. We are burdened with enormous expenses to keep water clean.

Kristin Valiga of Cotuit in attendance. She is in support of this amendment.

Norm Wild of Cotuit in attendance. He is in support of this amendment.

Patty Kenny of Cotuit in attendance. She is in support of this amendment.

Ken Ridley of Cotuit in attendance. He is in support of this amendment.

Stephen Helman reads into record letter received from Jessica Rapp Grasseti, dated August 14, 2017: Exhibit C.

Dear Madam Chair and members of the Planning Board,

As I am unable to attend tonight's meeting, please accept this letter to be included into public record for item 2018-014.

The Ground Mounted Solar Photovoltaic Overlay District was adopted in 2010 to promote the creation of new large-scale ground-mounted solar installations. Areas included in the Overlay District were chosen to minimize impacts on scenic and natural resources; site selection was limited to areas that had been previously disturbed such as the capped landfill and the Municipal airport.

Given the recent proposal by Borrego Solar, on authority of the Cotuit Water District, to clear cut over 30 acres of forested bio habitat land that was to include acreage within a Zone 1 well head, I felt it necessary to offer an amendment to the GMSPOD zoning so as to prevent the type of development in the future. For the record, Town Council's hearing on item 2017-051 received public input from over a hundred residents of not only Cotuit but also the entire Town and the Town council withdrew the item. As presented, 2018-014 would adopt additional standards to minimize the impacts of new ground-mounted solar installations on natural resources and establish stronger protections for the public drinking water supply. The amendment would limit clear cutting or installation of solar projects within 800 feet of a DEP Zone I, tripling the radius of protection for any public drinking water well. The amendment would also prohibit land clearance of greater than two acres to reduce potential impacts to land with habitat and scenic value.

As sponsor of the proposed amendment to the GMSPOD I am requesting your full support of these critical amendments necessary to assure the protection of our water supply and water quality.

Thank you for your thoughtful consideration.

Jessica Rapp Grassetti

Steven Costello comments that when the Planning Board met previously about the Cotuit project, there wasn't a lot of outcry, until some land clearance had happened. Two things stick in his mind regarding ownership of the land, the water districts are their own entities and ultimately the citizens of Cotuit and the payment of the water bills, that's the impact, he understands that. Can other districts do land swap possibly or take credits elsewhere. Any project going forward would have public input regardless.

David Munsell comments that Planning Board did not have any objections with the Cotuit proposal. It made sense at that time. He states that he would support this amendment now.

Paul Curley states that he would support this amendment.

Fred LaSelva states that he would support this amendment.

Chair Mary Barry comments that other water districts were in favor of this previously when the Cotuit project came before the Planning Board. It seemed that the water districts would want what's best.

Lee Connolly-Wild comments (second comment) that she did not have any notification re the information about the Planning Board's meeting previously for the Cotuit project. This is a water quality issue.

Don Campbell comments that he doesn't disagree with any of the comments tonight, he is simply stating that there is already a mechanism in place and a right to say no, this proposed amendment would make it so that it can never happen in the future. We don't know what will happen in the future. This effects every water district in this town.

Chair Mary Barry clarifies/confirms that the Cotuit project has been withdrawn.

Fred LaSelva comments that he sees this amendment will protect citizens for and in the future to have safe water. This allows a stop gap/rule that everyone will have to follow.

Paul Curley moves to close the Public Hearing, seconded by Mary Barry, so voted unanimously.

Fred LaSelva makes a motion to recommend this proposed zoning amendment to Town Council, seconded by Paul Curley. Steven Costello is opposed. Five in favor and one opposed.

Special Permits:

Special Permit Application No. 2017-003 – Modification to Zoning Board of Appeals (ZBA) Appeal/Decision No. 2005-48 and 2001-107, of ZBA Special Permit No. 1994-56

259 North Street LLC/Stuart Bornstein seek to modify ZBA Decision No. 2005-48, to remove the commercial use restriction, and allow for residential apartments, 14 units. The subject property is addressed 259 North Street, Hyannis, MA and is shown on Assessor's Map 308 Parcel 073.02. Property is located in the HVB District – Hyannis Village Business District. *Continued from June 26, 2017*

Stuart Bornstein in attendance. He gives a recap of the project. This is a conversion of an empty office Bldg. to fourteen condominiums. The overnight parking issue had to be dealt with and the matter was continued. This has been resolved and overnight parking is allowed. Also added one affordable two bedroom unit, thirteen market rate and one affordable.

Chair Mary Barry opens the Public Hearing.

Fred LaSelva asks if the parking issue has been resolved?

Elizabeth Jenkins explains, refers to Staff Report, Exhibit D. There is a non exclusive easement for Town property. There are enough parking spaces on site to satisfy the project. Recommendation is that it is subject to some discussion regarding recommendation of a condition that outlines enough parking spaces per building permit process.

David Munsell is in favor.

Stephen Helman clarifies.

Paul Curley is in favor.

Chair Mary Barry entertains a motion to close the Public Hearing, moved by Stephen Helman, seconded by Paul Curley.

Steven Costello reads into record: Proposed Special Permit Revised Findings and Conditions, see Exhibit D.

1. Stuart Bornstein, 259 North Street, LP is seeking to modify Special Permit No. 1994-56, as modified, to allow for conversion of the northern office building to 14 residential condominium units.
2. Special Permit Nos. 1994-56, 2001-107 and 1995-56 carry conditions limiting the use of the property for non-office and residential uses, which the Applicant seeks to have lifted.
3. The subject property is addressed 259 North Street, Hyannis, MA and is shown on Assessor's Map 308 as Parcel 073-002. It is in the HVB - Hyannis Village Business District, which permits mixed use development as-of-right.
4. The parking requirement for the proposed residential land use is 15 spaces, pursuant to Section 240-24.1.3(D)(2).
5. The revised plan has been reviewed and approved by the Site Plan Review Committee under an approval dated May 24, 2017. The conditions of that decision shall be incorporated by reference as conditions of this Special Permit.
6. The residential conversion is subject to Chapter 9, Article I, Inclusionary Affordable Housing Requirements, which requires one of the fourteen units to be deed restricted affordable.
7. 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 neighborhood affected.

8. The proposal meets Sec.240-24.1.2(E)(1)(a) by providing for mixed use development in an appropriate location in downtown Hyannis and (g) by providing workforce housing units and the required and appropriate mix of affordability levels.

Chair Mary Barry entertains a motion, moved by Paul Curley to approve the Findings as presented, seconded by Stephen Helman, so voted unanimously.

Elizabeth Jenkins states that this would be subject to the inclusionary housing requirements, the obligation would be to provide one unit to deed restriction. These conditions were written somewhat flexible, *condition number e* was written if the development were to be rental, however the applicant will be making this a for sale project. Monitoring shall be required as per the tenure. Applicant can choose whether rental or ownership.

Draft Conditions

Should the Board find to grant the special permit, it may wish to consider the following conditions:

1. This Special Permit shall modify Zoning Board of Appeals Special Permit Nos. 1994-56, 2001-107 and 1995-56 to allow for the conversion of the northern-most office building into 14 residential dwelling units.
2. All other conditions of the previous Special Permits shall remain in full force and effect.
3. There shall be no division of the lot.
4. The use of this property shall remain in conformance with the definition of Mixed-Use Development in §240.24.1.12.
5. The conditions of the May 12, 2017 Site Plan Review approval shall be incorporated as conditions of this Special Permit.
6. Trash containers shall be screened in accordance with Section 240-24.1.10.
7. The residential conversion shall be in compliance with Chapter 9, Article I, Inclusionary Affordable Housing Requirement.
 - a. One Affordable Housing Unit shall be made available for a Qualified Affordable Housing Unit Purchaser or Tenant as defined by Section 9-2.
 - b. The Affordable Housing Unit shall be a two-bedroom unit.
 - c. The Applicant shall record a deed restriction, in a form and content approved by the Town Attorney, assuring the affordable unit will remain dedicated as such in perpetuity and that it is protected in the event of a foreclosure from loss of the affordable status.
 - d. The Applicant shall prepare a Regulatory Agreement and Monitoring Services Agreement in a form and content as approved by the Town Attorney. Said Agreements shall be recorded at the Barnstable County Registry of Deeds prior to the issuance of any building permits.
 - e. The Applicant shall retain a monitoring agent based on the unit tenure for this development. The monitoring agent shall provide an annual report to the Planning Board demonstrating the development is in compliance with the affordable housing restrictions of this decision. Any and all costs associated with monitoring for consistency with the Regulatory Agreement shall be borne by the Applicant.
 - f. The Affordable housing unit shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with the other units.
8. Prior to the issuance of any building permits, the Applicant shall show proof of the availability of 15 overnight parking spaces on the property and/or in the adjoining Town-owned lot.
9. If the resulting residential units will be offered for-sale, the Developer shall establish a condominium association. The form and content of condominium association documents, including the condominium master deed and association bylaws, shall be approved by the Town of Barnstable

Legal Department for the purposes of ensuring compliance with the terms and conditions of this agreement, prior to the sale of any condominium units.

10. This permit shall be recorded at the Barnstable County Registry of Deeds and copies submitted to the Planning Board and Building Division prior to commencement of the use.

Motion entertained by Chair Mary Barry, moved by Paul Curley to approve this Special Permit with the Conditions and Findings as presented, seconded by David Munsell, so voted unanimously.

Approval of Minutes: June 12, 2017 and August 26, 2016, September 26, 2016 and October 24, 2016

Chair Mary Barry entertains a motion to approve the minutes for June 12, 2017, August 26, 2016, September 26, 2016, and October 24, 2016, as presented, moved by Paul Curley, seconded by Stephen Helman, so voted unanimously to approve all.

Motion made by Stephen Helman to adjourn, moved by Paul Curley, so voted unanimously to adjourn.

The meeting adjourned at 8:19 p.m.

Correspondence:

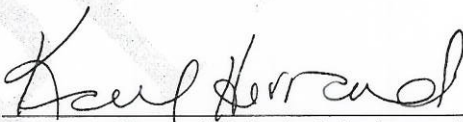
Chapter 91 Waterways License/Permit – Dept. of Environmental Protection - Issuance of License No. 14451 – 803 South Main Street, Centerville – Centerville River – 540 Main LLC

Chapter 91 Waterways License/Permit – 25 Heath Row, Mystic Lake, Marstons Mills – Atkinson.
Construct and maintain a fixed seasonal aluminum pier

Matters Not Reasonably Anticipated by the Chair:

Future Meetings: Regularly Scheduled Meetings: August 28 and September 11, 2017 @ 7:00 PM.

Respectfully Submitted


By Karen Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on

August 28, 2017

Further detail may be obtained by viewing the video via Channel 18 on demand at <http://www.town.barnstable.ma.us>

List of Exhibit Documents

Exhibit A – Plans highlighted/outlined – ANR Gardiner Lane and Main Street and East Bay Rd., Osterville – Samijan and Shah – Map/Par – 141-001, 104-002, 104-003, 104-004, 104-105, 105-001, 123-002

Exhibit B - Zoning Amendment TC Item No. 2018-014 – GMSPOD Land Clearance

Exhibit C - Zoning Amendment TC Item No. 2018-014 – GMSPOD Land Clearance – Lt from Jessica Rapp Grassetti, dated August 14, 2017

Exhibit D - Revised/Updated Staff Report – SP No. 2017-03- 259 North St., Hyannis – Map/Par 308/073/002