



# Town of Barnstable Planning Board



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 John Norman – Town Council Liaison

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 Elizabeth Jenkins, AICP, Director  
 Anna Brigham, Principal Planner  
 Karen Herrand – Principal Assistant - [karen.herrand@town.barnstable.ma.us](mailto:karen.herrand@town.barnstable.ma.us)

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BARNSTABLE  
TOWN CLERK

## Town of Barnstable PLANNING BOARD Minutes April 24, 2017

Raymond B. Lang – Chairman	Present
Mary Barry – Vice Chairman	Present
David Munsell, Clerk	Present
Paul Curley	Present
Stephen Helman	Present
Mark Ferro	Present
Steven Costello	Present

Also in attendance were Karen Herrand, Principal Assistant, Growth Management 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:**

Thomas E. Driscoll - 900 Phinneys Lane, Centerville – Map 251 Parcel 104-H00 and T00 has submitted a plan entitled “Proposed 3 Lot Subdivision (Form A – Approval Not Required), 900 Phinney’s Lane in Hyannis, (Barnstable) Massachusetts, dated October 22, 2016” drawn by Matthew C. Costa, P.L.S., Cape & Islands Engineering, Inc.

Attorney Peter Freeman in attendance. He gives an explanation of the ANR, DPW is involved with this ANR. Adequate real frontage. He refers to the staff report, Exhibit A. They are in all four corners and they have the curb cut. He refers to the plan, Exhibit B. All prefer the common driveway. Zoning by law also allows access to lots by common driveway.

Elizabeth Jenkins states that an ANR has 3 standards in order to grant an ANR. The plan must front on, meet frontage, and vital access standard, meant to enforce the underlying premise that the process is there in order to ensure there is practical access. Enforce that all lots. Concerns, can there be access to the lot that is meaningful and adequate, up to landowners to decide about a common driveway. Is the access illusionary there is a guardrail that protects the slope, 6% slope. Currently no permit that would allow access. Pulio case talks about.

Peter Freeman takes issue comments that they have submitted a plan, it is not illusory, it can be done. We do have the road opening permit from DPW. It would be preferable to have just one curb cut. Argues that this would be legally correct.

David Munsell asks for clarification re Exhibit C, DPW, trench permit.

Elizabeth Jenkins refers to this and explains that the case law raises whether or ether or not can gain access for lot 2 independently.

David Munsell asks if our Legal Dept. has been consulted? One of the most unusual ANR's he's ever seen.

Elizabeth Jenkins replies that she did let Legal know/aware but a formal request for an opinion has not been asked for yet.

Chair Ray Lang asks about the frontage, is the shape triangular? Refers to the plan, Exhibit B (2 plans). Is the common driveway in existence or will it be in existence?

Attorney Freeman replies , not in existence.

Chair Ray Lang asks if only part of guardrail being removed. Attorney Freeman states yes, correct.

Elizabeth Jenkins interjects that there has been no approval to remove any part of the guardrail. It does not extend over lot 1. No contemplation of removal/flared out frontage, which narrows to 15 ft. panhandle, there is a guardrail there (perspective).

Stephen Helman asks for clarification about the driveway with guardrail in place, would he be making a sharp right turn onto this proposed driveway coming from Route 132 from Route 28, you are already at a sharp turn, police think this is a good idea?

Elizabeth Jenkins clarifies that the perspective plan has never been clarified by fire/police. Attorney Freeman explains that they do not want to use this plan. Fire and Police were satisfied.

Chair Ray Lang is not comfortable voting on this. This ANR that should come before Planning Board as a subdivision. He sees this as a subdivision plan.

Attorney Freeman replies that maybe he should discuss with project engineer and sign an extension. He would be willing to sign an extension for an ANR.

Chair Ray Lang suggests continuing this, check with Fire Dept. and make sure it is clarified for safety reasons also.

Elizabeth Jenkins confirms that we can extend this and not have it issued by a constructive grant.

Steven Costello asks who will approve removal of the guardrail.

Attorney Freeman replies that would be DPW if that particular plan is approved.

David Munsell states that he has a right of way from 6A to his lot and there are 2 lots, have driveway in common.

**Chair Ray Lang entertains a motion to continue to May 8, 2017, at 7 p.m.,**

**Subdivisions:**

*Continued Business*

**Road Rescission – Sub Nos. 362 & 658                      Offshoot Rd**

Beach Point, LLC has requested to modify Subdivision Nos. 362 & 658. The request is to rescind the southerly end of Offshoot Road and incorporate the road layout into Lot 12 of the subdivision. The plan for this subdivision modification is entitled "Definitive Plan of #127 & #133 Maushop Avenue and Modification of Offshoot Road, Barnstable, MA" prepared for Beach Point, LLC, dated October 23, 2016. The subject properties are shown on Assessors Map 278 as Parcels 046-002 & 046-003. *Continued from January 9, 2017, January 23, 2017, February 13, 2017, February 27, 2017, March 13, 2017, March 27, 2017, and April 10, 2017, to April 24, 2017.*

David Houghton, Assistant Town Attorney in attendance. Explains that they did provide an opinion, Legal memorandum, Exhibit D.

Attorney Peter Freeman in attendance, representing Marcy Dugas of Dorcas Ave. and Joe Dugas. He gives a brief history. Draft conditions just received last Friday, he refers to memorandum, Exhibit D. Key points what happened to the Development Agreement for lots, 10, 11 and 12. Sub. Approval from April of 2006 did require a Development Agreement, including covenant shall be recorded with plan and returned or decision shall be null and void. The legal memorandum doesn't address that. They were thinking they could work with/work out.

His client's objectives are to achieve:

One: They would like a condition of Planning Board approval – shall be no access between Offshoot rd. and the abutting Barrell Hill subdivision. No connection.

Second: The status of repairs of potholes, damage to /caused by heavy equipment . Require to do immediate patching of the potholes. Brian Burback /Andrew Maher

In addition thinks language should be broader to include that it be broadened for drainage/repair obligations. Wanted addresses to be Offshoot Rd. If there are other houses there, Mr. Maher did agree to that.

Subject to condition re Board of Health letter, all drainage be contained on site on each lot, her refers to this letter, Exhibit E. Make specific to all drain for lots 11 and 12. Supplement the covenant to state that notice be recorded at Registry that future owners of lot 11 and 12 to make the repairs as required as the conditions state. Makes more sense to work out details, rather than revoke the subdivision.

Also possibility of lot 12 not being developed? Discussion with Mr. Maher re this, not happened yet, in the works.

David Houghton states/replies that this issue the Planning Board is to approve the request for modification or not. This case went to Land Court. The matter couldn't be resolved. Resolution, key part was that the covenant was sufficient. No Development Agreement then. This should have been done back at that time. A court would decide this in that manner.

Paul Curley asks David Houghton if there is any pediment not to preclude the parties coming together to make resolutions on their own and not have to go to court.

David Munsell agrees. Get an assessment on the road and the work that needs to be done. A lot of wear on the road. Need some type of agreement done.

Andrew Maher in attendance. They have had a couple of draft agreements going back and forth. He will continue to work with them in order to get it done. They have an easement there already for utilities. Their plan is to sell the lot, he believes what they are asking for will take place with sale. Pothole issue; they will address that and will repair, they will not do anything futuristic for pothole repairs. He has spoken to Mr. Burbick. Intend to live there and have a nicely done road. Name: Offshoot Rd., they support whatever the Town would approve he cannot legally bind and put in a document. There were 7 open points: they made an offer to sign in advance of this meeting. Would like a vote tonight.

Chair Ray Lang asks for clarification, is there a bldg. permit?

Dan Ojala in attendance. He refers to the plan, Exhibit F. Lot 10, only aspect, lot released from covenant. Definitive Plan Beach Point LLC.

Mary Barry states that/refers to Andrew Maher, what is the one exception? Andrew Maher, they did not agree to utility access.

Steven Costello, clarifies the whole road, Maushop to be repaired?

Dan Ojala replies yes, they will do a before and after look at the road. Erosion and construction. They are comfortable with the Board of Health letter, but this is unrealistic to think that no water will run down. They cannot stop all the run off. There are many aspects of this, it would be a civil matter.

Lot 11 no concern over that, isn't a concern. Lot 12 will never be developed. 12 if left natural not a problem, civil matter.

Chair Ray Lang asks to clarify the parties working together? Suggests coming back.

Elizabeth Jenkins states that it can be statutorily issued as a constructive grant. We would need consent of the applicant.

Stephen Helman reiterates that this has been continued many times.

**Public Comment:**

Marcy Dugas in attendance, 45 Dorcas Drive. She disagrees with the parties having a lot of opportunity to come. A lot of money spent on issues that should have been done by the Planning Board. There is building being done on a lot that doesn't exist.

Chair Ray Lang states that she is out of order, asked Marcy Dugas to please sit down.

Richard Carrol, 61 Maushop Ave., he is asking for clarification about why are we not considered abutters? Construction is being done aggravates the situation of a passable road.

David Munsell asks if one of the Planning Board members could sit in on the next meeting of negotiating?

Elizabeth Jenkins replies that it is up to Applicant to sign an extension?

Attorney Freeman and Town Attorney Houghton state that this is acceptable to them.

Andrew Maher states that he would not like to extend this matter any further.

**Chair Ray Lang entertains a motion to close the public hearing, moved by Mark Ferro, seconded by Mary Barry, so voted unanimously.**

Stephen Helman reads into record the Draft Motion and Conditions to Endorse Modification:

- a. Definitive Plan of #127 & #133 Maushop Avenue and Modification of Offshoot Road, Barnstable, MA prepared for Beach Point, LLC dated (last revised) February 5, 2017 drawn and stamped by Down Cape Engineering; and
- b. Sketch showing pavement extension per meeting with Fire Dept, Dated February 5, 2017 by Down Cape Engineering. The Barnstable Deputy Fire Chief and the Town Engineer find that the proposed turn-around will provide adequate access for the development of Lots 11 and 12.

This approval is inclusive of waivers to the Subdivision Rules and Regulations previously granted and requested in the memorandum from Down Cape Engineering, Inc. dated November 10, 2016, a copy of which shall be attached hereto. The Board finds granting said waivers will not adversely affect the development of Lots 11 or 12 for single-family homes.

This approval is subject to the following conditions:

1. The development shall be subject to all Subdivision Rules and Regulations, except those waived by the Board as stated herein.
2. Lots 11 and 12 remain subject to a covenant recorded in Book 22043 as Page 323.
3. The development shall be subject to all requirements of Board of Health letter dated December 22, 2016.
4. Prior to the endorsement of the subdivision plan, the Applicant shall:
  - a. Complete and endorse a Development Agreement with the Planning Board for completion of Phase II of the subdivision as approved herein.
  - b. Submit a Form S – Road Maintenance and Repair – requiring the Developer and successors in title to be responsible for all maintenance (including snow removal) and repair for Phase II of Offshoot Lane.
  - c. Road inspection fees as applicable.
  - d. A returnable check for \$1,000 to ensure recordation of the development agreement.
5. The developer shall comply with condition No. 7 of the 2006 Development Agreement that any potholes and damage to Maushop Avenue caused by erosion from construction of Offshoot Road shall be repaired.
  - a. Prior to issuance of any permits or commencement of any site work for Lots 11 and 12, the Developer shall submit a report, including an “existing conditions video” to the Town Engineer detailing the condition of Maushop Avenue.
  - b. Prior to issuance of Certificate of Occupancy for each dwelling on Lots 11 and 12, the Developer shall submit a subsequent report to the Town Engineer detailing any changes in the condition of Maushop Avenue, including, but not limited to a report of any new or further deteriorated potholes or erosion.

- c. The Developer shall be responsible for repair of any damage to Maushop Avenue as determined necessary by the report. Work completed in fulfillment of this condition shall be completed under the supervision of the Town Engineer.
- 6. This request modifies Condition No. 5 of the Board's Definitive Plan decision dated April 6, 2006. All other conditions of the decision dated April 6, 2006 shall remain in full force and effect.
- 7. The Development Agreement and Form S shall be recorded at the Barnstable County Registry of Deeds together with the approved Definitive Plan Modification. A copy of the recorded documents shall be returned to the Planning Board within 30 days of the endorsement of approval.
- 8. **Chair Ray Lang entertains a motion to approve the Draft Motion/Conditions, moved by Paul Curley, seconded by Steven Costello, so voted unanimously.**

**Regulatory Agreements:**

**Application No. 2017-01**

**Shoestring Properties, LLC**

Shoestring Properties, LLC seeks to enter into a Regulatory Agreement with the Town of Barnstable to redevelop the properties 110 School Street and 53 South Street, Hyannis. The properties are shown on Assessor's Map 326 as Parcels 121 and 125. They are zoned HD – Harbor District. The Applicant proposes to demolish all existing improvements and construct a multi-family residential condominium complex consisting of 33 market rate units in nine buildings. Parking will be located in underground garages, with street-level guest parking. Proposed accessory improvements include a fountain area, swimming pool with pool deck, courtyard area and trash sheds. The Applicant seeks multiple waivers from the zoning ordinance and general ordinances. *Continued from February 13, 2017, and March 13, 2017, to April 24, 2017.*

Attorney John Kenney in attendance, representing the Applicant. He gives a history of the last time they were here. Makes reference to the new. He has been to a couple different Commissions, also back to Hyannis Main Street Waterfront Historic District Commission (HHDC) on May 3, 2017. Still asking for a waiver in order not to have to go before them. Went to Civic Assoc. It seemed to be favorably received by them. They may take a formal position at the next meeting. Housing Committee tomorrow for workforce housing, inclusionary. They are still seeking this waiver. Density, height, mitigation, use of public way. Steamship Authority has some input. Workforce Housing, inclusionary zoning. The project is becoming cost heavy. Density: Project, Height: offset by the terrain of the property. - There is mitigation, utilities will be placed underground. New water main to be installed. ADA compliant sidewalks to the property. Grant an easement for public sidewalks. Parking for both public and private. Workforce Housing: Hyannis has done it's share.

Mark Ferro asks what the total value would be for the development?

Stuart Bornstein in attendance. He replies that the units are market in Hyannis. Doesn't think they'll get more than a million dollars, for the best unit. \$25 to \$27 million margin. This is a guesstimate with the construction prices rising. Hyannis doesn't have a high price range. Would like to bring up the level of Hyannis, higher end market that would benefit all.

Mark Ferro clarifies and agrees with development, but a lot of opposition here as well. There are some issues, the view and some others.

Stuart Bornstein replies we do not block any views.

Mark Ferro comments that the 10% of workforce housing should be done. There is a need. Stuart Bornstein replies that we cannot, as a seasonal economy can't pay .

Elizabeth Jenkins clarifies that his inclusionary zoning obligation would be 3 units.

Stephen Helman clarifies that the affordable housing needs are for year round citizens, we need affordable housing here. We are obligated to do this. He's having difficulty with this waiver and the height.

Paul Curley asks about mitigation, density. Who's looked at the water supply and the sewerage for this? How arrive at this mitigation amount?

Attorney Kenney states that Stuart Bornstein crunched numbers.

Dan Ojala in attendance. Explains mitigation: streetscape to be improved, lowering beneath the ground the utilities, past Steamship Authority. Do have to keep transformer above the flood zone. Sidewalks, curb, granite to define street edges, street trees, he refers to the plan, Exhibit G.

Gravity sewer, main, reliable. water main aged, will be replaced, working with Hyannis water. Large pump station on South St., Does not anticipate any issues with the sewer.

Paul Curley asks about hydraulics/pressure. Traffic in area? Would like to see something re traffic analysis.

Mary Barry states that she thinks the design is much better, her concern is still the density, she agrees that traffic could be an issue. It may be to much for such a small space. Concerns with it fitting in the neighborhood as well.

David Munsell states that the Growth Incentive Zone (GIZ) is to bring contractors/developers in the area, to build, so they didn't have to go through the Cape Cod Commission (CCC). Incentives for growth. Most developments have waivers. Mixed use never happened on Main Street Hyannis. Comments about taxes to be collected from these properties. Describes what's in the area. Landscape/Streetscape improvements will look good, Bollard lighting. He doesn't think it's the responsibility of the Developer to provide affordable units.

Elizabeth Jenkins clarifies that it is Growth Management's (GM) responsibility to facilitate, bring the info to the Planning Board. We have provided information from the legal perspective.

Steven Costello comments/asks how many of the 33 units have true water views, unobstructed.

Dan Ojala replies, about 20 would have a direct water view.

Steven Helman— time frame for the project? Is it assumed that construction will be done , what happens if more people want a higher end unit, possible sold at lesser price? 33 units and the density - HHDC he doesn't see the harm in including them in the Regulatory Agreement. .

Chair Ray Lang asks about Site plan, Exhibit G, floor drain? Is/does this drain into sewerage? Parking spaces - part on town and developer's land. 4 parking spaces. Move bldg's around to see how many units can have water views. South St. water would come to School St. Garages underground, will water drain properly.

Atty Kenney responds to questions:

Parking: Give town easement for public use of sidewalks, in exchange be looking for license for the parking, to be used exclusively for people in condo units, this is not new concept, has been done before. An exchange.

Dan Ojala: Drain issue. School St is not wide enough for on street parking now, widening, utilizing a small part.

Floor Drains – plumbing code now calls for floor drains in case a leak in a vehicle, those go to a tank or sewer system. Discharged into sewer, it is allowed.

Grading: 2 ft. contours, water goes from 24 to 25 to 26, sheet 4. There will be water from the highpoint down. Strip drains, subsurface drainage. Some mitigation plantings as well.

Chair Ray Lang asks for Public Comment:

Laura Shufelt in attendance. She is speaking in opposition to the inclusionary ordinance, it would be unprecedented to waive it, never been done. The need for affordable housing has become increasingly more necessary. Agrees with 3 units of affordable, per median income, should be mandated off site. She's seen too many unfavorable outcomes where mixed income doesn't work well. She suggests to satisfy with for sale of homes, outside of Hyannis. Guidelines to be approved. Homes to have approved capital lease assessment, sold to buyers at \$210,000 price. Need children to keep the Cape viable.

Mary Ann Agresti, Architect, property owner near Main St. This size project needs a separate Historic review. This project needs this type of review.

Bud Breault in attendance, Airport Manager. They are concerned with the terms because it is a potential incompatible construction re air use. Ask to complete and file FAA and air space obstructions.

Ted Williams in attendance. He comments that Hyannis is right on the edge of making it or not in his opinion. He thinks this is a great catalyst project. There would have to be waivers. He thinks this is a great benefit for the Town.

Valerie Moore, behalf of Steamship Authority, in attendance. They have reached a tentative agreement with the issues they had in regards to the communications. They would like a condition to be placed in order to have this agreement.

Dominic Alessandra in attendance. He comments that he would like to see an image of the historical nature of the neighborhood.

Wayne Kurker in attendance, owner of Hyannis and Docksider Marina. He comments that aesthetics are extremely important here. In this case the relief being requested should be up to Historic. Doesn't agree with all the waivers being asked for.

Marian Thompson (Gleed her husband) in attendance. They are only 10 ft. from the hotel and the Docksider restaurant. She agrees that Historic needs to be involved. The height is a concern to them. This will be very shocking to have something that tall there. They rent seasonally. The proximity of the proposed pool may be an issue to them, right next to their house. Thinks it is definitely an improvement, thinks good use of space. These plans are an improvement. 33 units seems so massive of a request to ask for.

Chair Ray Lang comments that this is a major project and needs major consideration. He wants to see the GIZ do well. He would like a list of all the latest correspondence

Paul Curley asks if we will be looking at a draft regulatory agreement?



Elizabeth Jenkins replies that we can get a draft agreement from the Applicant, which will allow a starting place for the Board to go by.

Attorney Kenney is in agreement and they have provide with the application. He will work with Staff to refine it. The HHDC did like what was presented, they are asking for a waiver and a final decision from that Commission. We are treating this like a comprehensive permit. We are not asking for a waiver not to go the Historic Commission. They are looking for one decision, not multiple decisions.

**Chair Ray Lang entertains a motion to continue to May 22, 2017 (which will have draft reg. agreement) moved by Stephen Helman, seconded by Paul Curley, so voted unanimously.**

**Zoning Amendments:**

**Recreational Marijuana Moratorium - Town Council Item No. 2017-108**

The purpose of this hearing is to take comment on the proposed zoning ordinance amendment to add a new §240-129.1 establishing a temporary moratorium on recreational marijuana establishments and marijuana retailers and associated activities, as defined, through and including June 30, 2018.

(December 31, 2018)

This amendment was referred to the Planning Board for a public hearing by Town Council Item No. 2017-108.

**Chair Ray Lang entertains a motion to open the public hearing, moved by Stephen Helman, seconded by David Munsell, so voted unanimously.**

Elizabeth Jenkins gives an explanation of this proposed zoning amendment. Make amendment to extend to Dec. 31, 2018.

Stephen Helman asks what is the authority to override this.

Elizabeth Jenkins replies that this zoning amendment addresses the retail establishments that would be selling. Individual towns are also being considered to opt out. This is for the sale. State is grappling with this now. This will give some time to consider and respond .

Mark Ferro asks if this could be another extension?

Elizabeth Jenkins replies yes, zoning, so same process.

**Chair Ray Lang asks for any public comment – None.**

**Chair Ray Lang entertains a motion to close the public hearing, moved by Paul Curley, so voted unanimously.**

**Chair Ray Lang entertains a motion to recommend this Zoning Amendment moratorium extension to December 30, 2017, to Town Council, moved by Stephen Helman, seconded by Mary Barry, so voted unanimously.**

**Correspondence:**

**Request for review of proposed relocation of Way - 109 and 117 Eel River Rd, Osterville**

Request received from Attorney Albert Schulz - Request received to continue to May 8, 2017.

**Notice from Division of Fisheries & Wildlife – NHESP draft map of Endangered Species – comment until June 3, 2017**

**Environmental Notification – Erosion Control Project – 100 Cross St., Cotuit dated April 7, 2017**

**Matters Not Reasonably Anticipated by the Chair:**

**Future Meetings:** Regularly Scheduled Meetings: May 8<sup>th</sup> and May 22, 2017 @ 7:00 PM.

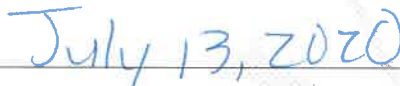
**Chair Ray Lang entertains a Motion to adjourn, moved by Paul Curley, seconded by Mary Barry, so voted unanimously.**

The meeting adjourned at 10:37 p.m.

Respectfully Submitted

  
by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on



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** – ANR – Driscoll, 900 Phinney’s Ln, Staff Report

**Exhibit B** – ANR – Driscoll, 900 Phinney’s Ln, - Plan

**Exhibit C**- ANR – Driscoll, 900 Phinney’s Ln, Trench Permit/DPW

**Exhibit D**- Sub. No. 362 & 658 – Offshoot Rd., Legal Memorandum

**Exhibit E** – Sub. No. 362 & 658 – Offshoot Rd., Letter from Board of Health

**Exhibit F** – Sub. No. 362 & 658 – Offshoot Rd.,- Plan

**Exhibit G** – Reg. Agreement No. 2017-001 – Shoestring Properties, LLC Dockside Project – Plans