



# Town of Barnstable Planning Board



[www.town.barnstable.ma.us/PlanningBoard](http://www.town.barnstable.ma.us/PlanningBoard)

#### Board Members

Steven Costello – Chair    Jeffrey Swartz – Vice Chair    Patrick Foran - Clerk    Mary Barry    Stephen Robichaud    Aimee Guthinger  
Mathew Levesque – Town Council Liaison

#### Planning & Development Dept. Staff Support

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

### Town of Barnstable PLANNING BOARD Minutes April 27, 2020

20 JUL 27 P12:26

BARNSTABLE  
TOWN CLERK

Steven Costello – Chairman	Present
Jeffrey Swartz – Vice Chairman	Present
Patrick Foran – Clerk	Present
Marry Barry	Present
Stephen Robichaud	Present
Aimee Guthinger	Present

*Also in attendance via remote participation were Paul Wackrow, Senior Planner, Planning & Development and Karen Herrand, Principal Assistant, Planning & Development.*

In accordance with the Governor’s Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gathering of More Than 10 People issued on March 24, 2020 and extended on March 31, the April 27, 2020, the public meeting of the Planning Board shall be physically closed to the public to avoid group congregation.

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 Planning Board meeting is available utilizing the Zoom link or telephone number and Meeting ID provided below. Public comment can be addressed to the Planning Board by utilizing the Zoom link or telephone number and Meeting ID provided below:

Link: <https://zoom.us/j/97079207986>

Phone: 888 475 4499 US Toll-free - Meeting ID: 970 7920 7986

3. Applicants, their representatives and individuals required or entitled to appear before the Planning Board may appear remotely and are not permitted to be physically present at the meeting, and may participate through the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to [Paul.Wackrow@town.barnstable.ma.us](mailto:Paul.Wackrow@town.barnstable.ma.us), so that they may be displayed for remote public access viewing.

**Call to Order:** Introduction of Board Members and Staff Members

**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.

Regulatory Agreement No. 2019-03 – 451 & 467 Iyannough Rd., and 400 Barnstable Rd., Hyannis, Massachusetts, Map 311 Parcels 082, 081 and 030-001 - Airview LLC seeks to enter into a Regulatory Agreement with the Town of Barnstable to redevelop three parcels with two new retail structures. The development would also include an access easement over property shown on Assessor's Map 311, Parcel 030/001 (400 Barnstable Rd.). It is zoned HG – Hyannis Gateway District; Groundwater Protection Overlay District; and Well Protection Overlay District. *Continued from December 9, 2019, January 13, 2020, February 10, 2020, February 24, 2020, March 9, 2020, March 23, 2020 and April 13, 2020.*

Updated Application Materials available via this link:

<https://tobshare.town.barnstable.ma.us/link/sO1zXXBu62gklyCQJ0cZMp>

Paul Wackrow gives an update. Three updates made today. Recommendations from the Town's Legal Dept. reference to 168.3 of Regulatory Agreement ordinance, See Exhibit A, draft received today from Legal. First, the addition of a WHEREAS paragraph; "The Town of Barnstable is authorized to enter into a regulatory agreement with a qualified applicant within the Downtown Implementation District as Town's Local Comprehensive Plan has been certified by the Cape Cod Commission as consistent with the Regional Policy Plan and said certification has not been revoked, and the Town has adopted the enabling regulation contained in Section 168-1 through 168-10". This is an addition of a reference.

Next two changes – Pg. 11,

Condition 21; "The failure of this agreement to address a particular permit, condition, term, or restriction shall not relieve the qualified applicant of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction"

Condition 22; "This regulatory agreement may not be used to prevent the Town of Barnstable or other governmental agency from requiring the qualified applicant to comply with the laws, rules and regulations and policies enacted after the date of the regulatory agreement, if the Town of Barnstable or governmental agency determines that the imposition of and compliance with the newly effective laws and regulations are essential to ensure the public health, safety or welfare of the residents of all or part of the jurisdiction".

Also, received a Site plan update, Site Construction Plans, C3.0, Exhibit B. This is a new addition, that wasn't on plan before. Bldg. elevations, Exhibit C, SK-101.01, some changes to these elevation, facing Rte 28 and West. The signage is exterior lit. Bldg. B elevations, Exhibit D, Cedar shake shingles do not wrap around the building. Updated sign package, Exhibit E. Exterior gooseneck lights.

Attorney John Kenney in attendance. Matt Eddy in attendance. Stuart Bornstein in attendance.

Attorney Kenney - Signage updates, all externally lit, reference to sign package, Exhibit E. Explains each sign and sq. footage. Down to 134.06 sq. ft. Refers to the Staff Report, Exhibit F, Bldg. A redesign. Bldg. B, 100 Sq. ft., 4 signs, 2 on each of the pylons. 2 units, changed to retail and/or office usage, bldg. size, 4,000 sq. ft. and 2,000 sq. ft.

Willing to go with black awnings and cedar shingles and clapboard on the back of the bldg. If the tenant for Bldg. B would like another color scheme – request that Planning and Development be able to authorize without having to come back to the Planning Board. Condition for Bldg. B, Condition no. 20 in draft Regulatory Agreement, Exhibit A. Gone from 82 parking spaces down to 80.

**Chair Steven Costello asks for any public comment.**

Felicia Penn from the public in attendance.

Chair Steven Costello confirms that Felicia Penn's information has been documented and submitted.

Aimee Guthinger states that the windows broken up doesn't look as good as before. Ok with red awnings. No problem with tenant wanting to change a color scheme.

Felicia Penn makes comment. Disappointed in the signage, thinks way over what is allowed, this is not following the code and not being followed. Confused about Holly management and Supply Corp. being written into the Reg. Agreement, is this one of the tenants? Language should be corrected, regarding previous property/Mitchells having two stories, her submission, Exhibit G, clearly two stories in the previous bldg. The record should be accurate. Refers to Exhibit A, pg. 7, no. 6, doesn't think the tenants fulfilled the intent of Town by law for this. Pg. 9, no. 13, removal of construction materials, how does Town know that they've adhered to this? Drive through 24 hours, 7 days a week 7 window? What is Town getting for all the waivers being asked for, particularly the landscaping, no screening of parking, two rows for bldg. A and laws ask for zero parking in the front, doing two rows, would like to see some greenery here.

Chair Steven Costello replies that the 24 hour drive up was discussed/confirmed in previous meeting. The Site Plan has come a long way since the beginning.

Stephen Robichaud asks about the materials. The rendering of Bldg. A is colored and Bldg. B is black and white. Would like to see the brick on both bldg's match and be consistent with design elements.

Stuart Bornstein replies/confirms that they will mirror the same white wash brick, buildings will have matching, same material.

Stephen Robichaud, negotiation and mitigation - thinks Felicia Penn's idea of donation to Duffy Health Center annually is a great idea. This would be a Walgreen's commitment, not Mr. Bornstein.

Chair Steven Costello clarifies that in a regulatory agreement, mitigation should be with the Developer/Applicant.

Mary Barry thinks the access on Route 28 – would like to see how this would be working/in and out.

Matt Eddy states that the modifications were presented at the last February hearing. Right in and right out. Main entrance to the East is right in and right out also, no left westbound onto Route 28.

Mary Barry confirms/asks is it Holly Management for the other/second Bldg. B?

Attorney Kenney, clarifies/no. No tenants yet.

Patrick Foran thinks Applicant has done a nice job with the changes thus far, safety issues.

Jeff Swartz directs to Matt Eddy, would like to see what TJ Maxx did with crushed stone near curbing area, Route 28 side.

Matt Eddy we will tie into the existing concrete sidewalk on Route 28.

Jeff Swartz directs to Attorney Kenney. Proposed tenant, this is a much improved sign package. Clarifies signage size with what is existing, i.e., TJ Maxx. Mitigation ideas to be discussed.

Stuart Bornstein replies the TJ Maxx signage is much larger than what they are proposing.

Chair Steven Costello states this area has been a blighted area for many years. This would improve the area in many ways. A lot of negotiating for this project. Overall we are very close to finalizing the project.

Jeff Swartz states that the Town has collected very little revenue/taxes for this property.

**Chair Steven Costello entertains a motion to close the public hearing, moved by Jeff Swartz, seconded by Aimee Guthinger,**

**Roll Call Vote:**

**Steven Costello - Aye**

Jeffrey Swartz – Aye  
Patrick Foran - Aye  
Marry Barry - Aye  
Stephen Robichaud - Aye  
Aimee Guthinger - Aye  
So voted unanimously.

**Chair Steven Costello entertains a motion for a recommendation of this Regulatory Agreement to Town Council, moved by Patrick Foran to recommend the execution of this Regulatory Agreement to Town council, seconded by Aimee Guthinger,**

*Paul Wackrow interjects/confirms amendments - amendment design of Bldg. B. South elevation material to wrap around the building and be clapboard and shingle with elevations to be approved by the Director of Planning & Development, and awnings to be black, unless otherwise specified by Planning & Development.*

*Proposed Stated Amendment - Condition 2(d) - unified brick water table to create consistency – specify that Bldg. B plans will be consistent with Bldg. B, black awning, 19025A-400 and the south elevation shall be clad in clapboard and shingle with the elevations to be approved by the Director of Planning & Development and awnings shall be black unless otherwise approved by the Dept. Director of Planning & Development.*

Attorney Kenney confirms/clarifies, agrees with this amendment/changes.

**Chair Steven Costello entertains a motion for recommendation to Town Council, moved by Patrick Foran to recommend the execution of this Regulatory Agreement drafted April 27, 2020, to Town Council with the proposed stated amendments, seconded by Aimee Guthinger,**

#### Discussion

Mary Barry states that Regulatory Agreement guidelines should be negotiated per waivers being asked for. How can this benefit the community – looking to see if we can get a return for/to the community.

Stephen Robichaud states that the definition per a Regulatory Agreement, when waivers are requested there should be a public benefit, i.e., non profits who struggle to keep going.

Stuart Bornstein states that Walgreens does free testing and the company donates constantly. They are an asset for the Town.

Attorney Kenney, refers to paragraph 3 of the draft Regulatory Agreement. Lists improvements to the property, construction of sidewalk, underground utility connections, two new fire hydrants. Mitigation usually comes with density waivers. This is a vast improvement and redevelopment is a true enlightenment to the area.

Aimee Guthinger states she will never support a Regulatory Agreement with a tenant that we don't know whom is going into the bldg., i.e., Bldg. B.

Chair Steven Costello states that we should have mitigation discussions at the very beginning/start of the application process. This is at the last minute, and towards the end of the project.

Mary Barry agrees, should be raised at the beginning as the whole package. Wants it to be of record and with going forward as being part of the package with Regulatory Agreements.

Jeff Swartz – environmental impact re the wastewater improvements for the future. Thinks negotiating should be done with and by the Town.

**Chair confirms the motion on the table:**

Chair Steven Costello entertains a motion for recommendation to Town Council, moved by Patrick Foran to recommend the execution of this Regulatory Agreement drafted April 27, 2020, to Town Council with the proposed stated amendments, seconded by Aimee Guthinger,

**Roll Call Vote:**

**Steven Costello - Aye**

**Jeffrey Swartz – Aye**

**Patrick Foran - Aye**

**Marry Barry - Aye**

**Stephen Robichaud - Aye**

**Aimee Guthinger - Aye**

**So voted unanimously.**

Modification to Subdivision No. 367 – Hi-River Road, Marstons Mills – Arnold O. Johnson has applied to modify subdivision No. 367. The request is to modify the road covenant required by the 1976 subdivision approval in order to allow the release of Lot 8 subject to the installation of a road conforming to applicable Subdivision Rules & Regulations along the length of frontage of Lot 8. The existing covenant is recorded in Book 2365, Page 339 at the Barnstable County Registry of Deeds. The application states the release of Lot 8 would allow the applicant to operate a tree farm on Lots 8, 7, 6, and 5, but would not allow residential construction on any of the said four lots. *Continued from March 23, 2020 and April 13, 2020.*

*Link to Application Materials:* <https://tobshare.town.barnstable.ma.us/link/9bScd7esjQz3FTmt6tbIYY>

**Chair Steven Costello entertains a motion to open the public hearing, moved by Jeff Swartz, seconded by Mary Barry,**

**Roll Call Vote:**

**Steven Costello – Aye**

**Jeff Swartz - Aye**

**Patrick Foran - Aye**

**Mary Barry – Aye**

**Stephen Robichaud - Aye**

**Aimee Guthinger - Aye**

**So voted unanimously.**

Attorney Mark Boudreau in attendance. Representing Arnold O. Johnson and Johnson Tree Farm business. Business started in 1920 and have been in business 100 years. He gives an explanation of the proposed request/application. He gives a history of the property. Tree farm proposed. Looking for a negative determination so that they don't need a modification. Not looking for any variance per the road and the 1976 subdivision. Would like to build a road along Lot 8 with access to 7, 6 and 5 which would be used for a tree farm.

**Chair Steven Costello asks for any public comment.**

Attorney Jeffrey Johnson, representing John Hutchins, owner of Lot 3, in attendance. Proposed construction plan - there is a cut between lots 5 and 6 that go out to Hi River Rd., Exhibit H, copy of the plan. Areas between lots 5 and 6, looks like an interior path system.

Attorney Boudreau replies that they don't need a road at all. The idea of paving along the edge of Lot 8 was for emergency vehicles if they needed access to the property. Reference to the plan, shows where irrigation will be and planted trees, 10 ft. wide path is shown as part of the grid and would be going back out to River Rd.

Attorney Jeff Johnson asks if any other improvements being proposed for Hi River Rd.? Any other proposed drainage improvements?

Attorney Boudreau replies no other improvements on the road itself – Hi River Rd. They are building according to the 1973 standards/plan as approved previously by the Town.

Attorney Jeff Johnson confirms the section of drainage, frontage along Lot 8, drainage. Is this what the applicant would be doing?

Attorney Boudreau confirms and refers to the plan. Not going any further than Lot 8.

Chair Steven Costello clarifies the original approved plan 1976 and did not have drainage from lot 8?

Attorney Boudreau confirms not making any changes to what was previously approved by the Planning Board in 1976.

Jeff Swartz confirms Attorney Johnson just asking clarifying questions – no objection.

Aimee Guthinger asks if any existing drainage problems.

Attorney Boudreau replies that there are not. No issues. An area that is relatively rough.

Jeff Swartz thinks this is a good environmental impact for the land. Good that there are no septic systems going in here, ponds nearby and some infected areas. 1976 standards may not be applicable.

Attorney Boudreau replies that this is not intended for residences. They have met with the Fire district and the Bldg. Commissioner re the ability for fire truck and turn radius, they were satisfied. The Johnsons have run their business for 100 years and family still working it.

**Chair Steven Costello entertains a motion to close the public hearing, moved by Jeff Swartz, seconded by Aimee Guthinger,**

**Roll Call Vote:**

**Steven Costello - Aye**

**Jeff Swartz - Aye**

**Patrick Foran - Aye**

**Mary Barry - Aye**

**Stephen Robichaud - Aye**

**Aimee Guthinger - Aye**

**So voted unanimously.**

**Chair Steven Costello entertains a motion, moved by Stephen Robichaud to make the following findings:**

- 1. The Application for Modification or Rescission of Definitive Plan (Form D) was submitted by Attorney Mark Boudreau on January 29, 2020 on behalf of Arnold O. Johnson. Lots 8, 7, 6, and 5 are owed by Roze Meree Pina Marstons Mills Real Property Trust, Roze Meree Pina Trustee. Pina’s title to these properties is recorded in Deed Book 25750 Page 233 and Deed Book 27986 Pg 162. On behalf of the Owner, the application was signed by Attorney Matthew Terry, Attorney in Fact with Power of Attorney for Roze Meree Pina as Trustee of Roze Meree Pina Marstons Mills Real Property Trust.**
- 2. The 1976 Hi River Road Definitive Plan (Subdivision 367) was approved by the Planning Board on February 9, 1976. The Definitive Plan is recorded in Plan Book 305, Pages 79, 80 and 81.**
- 3. Lots 3-8 are subject to a covenant recorded in Deed Book 2365, Page 339, securing completion of the required improvements shown on the approved Definitive Plan.**
- 4. A preliminary review by the Town Engineer indicates that the proposed roadway improvements shown on the plan entitled “Site Plan Proposed Improvements at 53, 71, 87, 99 Hi River Road Barnstable (Marstons Mills) Mass.” prepared for Johnson Tree Farm, dated May 3, 2019 by Sullivan Engineering, are in substantial compliance with the 1973 Subdivision Rules & Regulations (amended in 1975). The applicant may confirm proposed roadway improvements comply with all applicable rules and regulations with the Town Engineer and Director of the Planning & Development Department prior to the commencement of any construction.**
- 5. The January 29, 2020 Application for Modification or Rescision of Definitive Plan by Arnold Jonson proposes to complete the roadway improvements shown on the May 3, 2019 plan by**

Sullivan Engineering and, once those improvements are completed by the Applicant and inspected and approved by the Town Engineer, request a release of the covenant on Lot 8.

6. Construction of the improvements as shown on the May 3, 2019 plan by Sullivan Engineering and release of the covenant for Lot 8 shall not constitute a modification of the 1976 approved Definitive Plan.” Seconded by Aimee Guthinger,

Roll call Vote:

Steven Costello - Aye

Jeffrey Swartz – Aye

Patrick Foran - Aye

Marry Barry - Aye

Stephen Robichaud - Aye

Aimee Guthinger – Aye

So voted unanimously.

Chair Steven Costello entertains a motion to determine that this is not a modification of a subdivision, moved by Stephen Robichaud, based on the information presented and findings of the Board I Stephen Robichaud move that the Board determine that the subdivision modification application for subdivision No. 367 submitted on Jan. 29, 2020, is not a modification of the subdivision under subdivision control law, for the Town of Barnstable’s rules and regulations, seconded by Aimee Guthinger,

Roll call vote

Steven Costello - aye

Jeff Swartz - aye

Patrick Foran - aye

Mary Barry - aye

Stephen Robichaud – aye

Aimee Guthinger - aye

So voted unanimously.

Revision of Development of Regional Impact Thresholds in the Industrial and Services Trade Area

The Town of Barnstable is seeking to revise Development of Regional Impact Thresholds within the Industrial Service and Trade Area, pursuant to Chapter H of the Cape Cod Commission Regulations of General Application. The Cape Cod Commission previously approved revised project thresholds in the mapped Economic Centers and Industrial Service & Trade Areas outside of the Growth Incentive Zone pursuant to Chapter H on April 4, 2019. The Town of Barnstable is seeking to revise the 2019 Chapter H Decision to amend the threshold revision applicable in the Industrial Service and Trade Areas, as mapped in that decision. The request is to allow the revised DRI threshold of 40,000 sq.ft to apply to a third category of land use, wholesale use. The Planning Board will hold a public hearing on the proposed revision of Development of Regional Impact Thresholds on Monday, March 23, 2020 at 7:00 p.m. at Town Hall, James H. Crocker, Jr. Hearing Room, 367 Main Street, Hyannis, MA and may vote to authorize the Town Manager to submit this application subject to Town Council approval. *Continued from March 23, 2020, and April 13, 2020.*

*Link to Previous Application Materials:*

<https://townofbarnstable.us/Departments/planninganddevelopment/pageview.asp?file=Projects\Cape-Cod-Commission-Chapter-H-Application.html&title=Cape%20Cod%20Commission%20Chapter%20H%20Application&exp=Projects>

Chair Steven Costello entertains a motion to continue this matter to May 11, 2020 meeting, moved by Mary Barry, seconded by Jeff Swartz,

Roll call vote

Steven Costello - aye

Jeff Swartz - aye

Patrick Foran - aye

Mary Barry - aye

Stephen Robichaud – aye

Aimee Guthinger - aye

So voted unanimously.

Paul Wackrow states that it appears the meeting will be at Town Hall, Crocker Hearing Room 367 Main Street, but should prohibition of group gatherings continue past May 4<sup>th</sup> date we will post remote participation details with Town Clerk's Office at least 48 hours ahead of the meeting.

**Approval of Minutes:**

April 13, 2020, draft minutes

**Chair Steven Costello entertains a motion to approve the draft minutes, moved by Jeff Swartz, seconded by**

**Mary Barry,**

**Roll Call Vote:**

**Steven Costello - aye**

**Jeff Swartz - aye**

**Patrick Foran - aye**

**Mary Barry - aye**

**Stephen Robichaud – aye**

**Aimee Guthinger - aye**

**So voted unanimously.**

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

**Future Meetings:** May 11, 2020; June 8, 2020 @ 7:00 p.m.

**Adjournment**

**Motion made by Jeff Swartz to adjourn, seconded by Mary Barry,**

**Roll Call Vote:**

**Steven Costello - aye**

**Jeff Swartz - aye**

**Patrick Foran - aye**

**Mary Barry - aye**

**Stephen Robichaud – aye**

**Aimee Guthinger - aye**

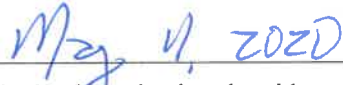
**So voted unanimously.**

The meeting adjourned at 8:36 p.m.

Respectfully Submitted \_\_\_\_\_

  
By Karen Herrand, Principal Assistant, Planning & Development

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 – Regulatory Agreement No. 2019-03 – Airview LLC – Draft Reg. Agrmnt Document**

**Exhibit B - Regulatory Agreement No. 2019-03 – Airview LLC – Site Constr. Plan – C3.0**

**Exhibit C - Regulatory Agreement No. 2019-03 – Airview LLC – Bldg. Elevations – SK-101.01**

**Exhibit D - Regulatory Agreement No. 2019-03 – Airview LLC – Bldg. B Elevations**

**Exhibit E - Regulatory Agreement No. 2019-03 – Airview LLC – Updated Sign Package/Walgreen's**

**Exhibit F - Regulatory Agreement No. 2019-03 – Airview LLC – Staff Report**

**Exhibit G - Regulatory Agreement No. 2019-03 – Airview LLC – Felicia Penn's comments – 4/27/2020**

**Exhibit H – Sub. No. 367 – Modification – Plan**