



# 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)

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BARNSTABLE  
TOWN CLERK

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

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 Elizabeth Jenkins, Director, Planning & Development and Karen Herrand, Principal Assistant, Planning & Development.*

The Planning Board’s 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 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/95876309005>

Phone: 888 475 4499 US Toll-free   Meeting ID: 958 7630 9005

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 so that they may be displayed for remote public access viewing.

Application materials may be accessed by contacting [Karen.herrand@town.barnstable.ma.us](mailto:Karen.herrand@town.barnstable.ma.us) or calling 508-862-4064.

Application materials will be available at [www.townofbarnstable.us/PlanningBoard](http://www.townofbarnstable.us/PlanningBoard)

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

**Roll Call Attendance:**

- Steven Costello
- Mary Barry
- Jeff Swartz
- Patrick Foran
- Stephen Robichaud
- Aimee Guthinger

**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**

Robert P. Madonna has submitted an Approval Not Required Plan for 330, 370, 390, 400 & 420 Main Street, Route 6A, West Barnstable - plan entitled "Plan of Land in Barnstable MA (West Barnstable Fire District) prepared for Robert P. Madonna 330 Main St.- Parcel ID 134-026-000, 370 Main St. – Parcel ID 133-002-001, 390 Main St. – Parcel ID 133-002-002, 400 Main St. – Parcel ID 133-002-003 & 420 Main St. – Parcel ID 133-002-004 prepared by Bracken Engineering, Inc. dated March 5, 2020". *Continued from June 22, 2020 and July 13, 2020.*

No one in attendance in representation. Elizabeth Jenkins explains the proposed application/plan. 3 lots, each meet minimum frontage requirement in the zoning district. Lot shape factor currently. Staff is recommending endorsement as the lots are of vital access on an existing way.

**Chair Steven Costello entertains a motion to endorse/approve, 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.

**Zoning Amendments**

Town Council Item No. 2020-193 – Order Amending Chapter 240 Zoning Article II, Section 7 Adding Certain provisions pertaining to short term rentals. *Continued from July 13, 2020.*

Patrick Foran recuses himself, re conflict of interest.

Chair Steven Costello – refers to a memo/ email received, Exhibit A. States that it has inaccurate information about himself regarding 5 properties, also he is a co-host, that is also inaccurate, one factual thing is Registry of Deed information - that shows a property of Wianno Circle that was sold, the rest of the memo is inaccurate. As of May 20, 2020, he does not own any short term rentals/ income rental properties. He owns a single family residence and does not plan on renting. He explains this is due to paid lobbyists, Heather Hunt, spouse of David Bogan, these are very seasoned lobbyists/attorney's, with a different and aggressive opinion, politically active, savvy individuals . As a long term resident, 25 years, raised children here and wonderful life in Osterville, but ultimately things change.

Article in Cape Cod Times today regarding short term rentals (STR's), ultimately 77 complaint calls that they felt were of interest, which is a .0012% of overall number of calls as they relate to STR's. There is also a campaign against a Town Councilor, by Heather Hunt. He strongly urges Councilor Bogan to also recuse himself.

He will be recusing himself because he has family members in real estate, he will recuse in the best interest. He is sorry that he has to do this. He would rather let process play out and let it go to Town Council.

**Vice Chair Jeff Swartz takes over the meeting: Chair Steven Costello recuses himself.**

Elizabeth Jenkins reminds that public comment is closed.

Stephen Robichaud reads the article into record, Exhibit B.

*Ordered that the Code of the Town of Barnstable, Chapter 240 Zoning, Article II, Section 7 be amended by adding the following subparagraph (j) to Section 240-7:*

*Short term rentals. Notwithstanding any provisions to the contrary in this Chapter 240, short term rentals shall be permitted within lawful dwelling units in all zoning districts. A short term rental shall be defined as a residential dwelling or any portion of a dwelling rented out through the use of advanced reservations, for a fee, for a period of not more than 31 consecutive calendar days, excluding: Cottage Colonies, as defined herein; hotels licensed under M.G.L. Chapter 140, Section 6; motels licensed under M.G.L. Chapter 140, Section 32B; lodging establishments licensed under M.G.L. Chapter 140, Section 23 or under Chapter 506 of the Code of the Town of Barnstable; bed & breakfast establishments or bed & breakfast homes licensed under said Chapter 506. Cottage Colony shall be defined as a group of three or more detached dwellings, legally in existence at the time of adoption of this ordinance, located on a single lot, which are customarily occupied on a seasonal basis. When a property is in use as a short term rental, on-site parking shall not be in any cultivated or landscaped area between a roadway and the part of the principal structure nearest to the roadway.*

*Sponsor: Town Council Committee to Review Zoning & Permitting Regulations: Paula K. Schnepf, Chair, Councilor Precinct 12, Britt Beedenbender, Councilor Precinct 4, Kristine Clark, Councilor Precinct 11, Jennifer Cullum, Councilor Precinct 13, Gordon Starr, Councilor Precinct 1.*

Vice Chair Jeff Swartz wishes to thank Britt Beedenbender for her service as a Town Councilor.

No public comment - Vice Chair Jeff Swartz reiterates that public comment is closed.

Aimee Guthinger comments that public comment can be made at Town Council, we are just moving the item on. This Board has had no role with writing this amendment, but has become well versed on it. Very disappointed in her neighborhood in Osterville, she could never stop this amendment from happening. Disappointed in our residents.

Mary Barry asks for clarification that their vote tonight is only on the adding of section j, 1 pg. order amending .

Elizabeth Jenkins replies correct, to make a recommendation to Town Council, advisory recommendation on j 2020 – 193 to recommend as written, or with amendments or not to recommend. Can also add to the recommendation.

Town Attorney Karen Nober agrees that the Board can amend the recommendation. May be items within the regulatory ordinance, caution that if to include any, it would remove the ability to be flexible, all in the ordinance.

Stephen Robichaud asks for a summary re Staff memo, Exhibit C.

Elizabeth Jenkins explains that this was put together regarding calls made to the police re calls/complaints. Town Staff wanted to be up front and give the information around STR's and complaints/enforcement with

the Bldg. Dept. Also the idea that we should be using the data we have and make sure all departments work together. This is a working product, logs of calls/complaints. Resource of enforcement as needed. There was no data to show if property used as an STR, needed more refinement, draft exercise, could be a valuable tool. Wanted the Board to know working on these issues.

Stephen Robichaud confirms just making a recommendation to the Town Council. Thanks the public and encourages all to be heard at Town Council.

Town Attorney Charles McLaughlin in attendance. The zoning law in Massachusetts is long and it is very complicated. Any ordinance going forward may have created legal entitlements that cannot be interfered with. STR permits, i.e., may be grandfathered and have vested legal rights, may not be able to change that outcome. The consensus is that Staff needs flexibility to hear the community and react quickly and not having created vested rights – must be able to act quickly and effectively. At administrative level – best opportunity to be nimble and quick. His observation is that the process - best way to handle is to permit it town wide and then regulate it on the regulatory side very strongly. Full spectrum of opportunities. A lot of experience and thought has been put into this. Tweaking can be done at the Town Council level.

Vice Chair Jeff Swartz confirms that if voted down have to wait 2 years.

Attorney McLaughlin replies yes. Mentions a case that was defeated at Town Council level, they are now stuck for 2 years with inability to react/act.

Vice Chair Jeff Swartz thanks Town Councilors and the Legal Staff. Asks if the protected zoning people think they may have had, will be re written.

Attorney McLaughlin replies we are clarifying.

Town Attorney Karen Nober interjects, not re writing, clarifying existing conditions. People have been using already as STR's, this is to make clear what is being allowed.

Vice Chair Jeff Swartz believes that a homeowner should be able to have what he has when he buys a home.

**Vice Chair Jeff Swartz entertains a motion, moved by Mary Barry to recommend to Town Council, seconded by Stephen Robichaud,**

**Roll Call Vote:**

**Stephen Robichaud -aye**

**Aimee Guthinger - aye**

**Mary Barry - aye**

**Jeff Swartz -nay**

**The vote is 3 aye and 1 nay.**

Town Attorney Karen Nober states that it is a 2/3 vote, whereby would need 4 out of 6 to vote. States that they do not have a recommendation to vote as it stands. *Note: This was clarified after the meeting (next day) that there were enough votes/majority in order to recommend to Town Council.*

#### **Approval of Minutes**

July 13, 2020, Draft Minutes

**Vice Chair Jeff Swartz entertains a motion to approve the draft minutes of July 13, 2020, moved by Mary Barry, seconded by Stephen Robichaud,**

**Roll Call Vote:**

**Mary Barry - aye**

**Stephen Robichaud - aye**

**Aimee Guthinger - aye**

**Jeff Swartz - aye**

So voted unanimously.

**Correspondence**

None

**Matters Not Reasonably Anticipated by the Chair**

**Future Meetings:** August 10 and August 24, 2020, @ 7:00 p.m.

Unlikely we will have a meeting on Aug. 10 – no applications.

**Adjournment**

Vice Chair Jeff Swartz entertains a motion to adjourn, moved by Mary Barry, seconded by Stephen Robichaud,

**Roll Call Vote:**

Stephen Robichaud - aye


Mary Barry - aye

Aimee Guthinger - aye

Jeff Swartz - aye

The meeting adjourned at 7:55 p.m.

Respectfully Submitted

  
By Karen Herrand, Principal Assistant, Planning & Development

Approved by vote of the Board on

Sept. 14, 2020

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** – Zoning Amendment TC Item No. 2020-193 – memorandum, received July 27, 2020 – Schulte et al

**Exhibit B** – Zoning Amendment TC Item No. 2020-193 - Summary

**Exhibit C** - Zoning Amendment TC Item No. 2020-193 – Staff Report – July 24, 2020