



# 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 Robert Twiss  
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)

Oct. 1,  
2020

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BARNSTABLE  
TOWN CLERK

## Town of Barnstable PLANNING BOARD Minutes September 14, 2020

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

*Also in attendance via remote participation were Elizabeth Jenkins, Director, Planning & Development and Karen Herrand, Principal Assistant, Planning & Development, Town Attorney Karen Nober and Assistant Town Attorney Charles McLaughlin and Kate Connolly, Assistant Town Manager Andy Clyburn, Town Councilor, Paula Schnepf and Brian Florence, Bldg. Commissioner.*

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/95622671452>  
Phone: 888 475 4499 US Toll-free Meeting ID: 956 2267 1452

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

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.

**Roll Call Attendance:**

**Chair Steven Costello**  
**Vice Chair Jeff Swartz**  
**Clerk Patrick Foran**  
**Mary Barry**  
**Stephen Robichaud**  
**Aimee Guthinger**  
**Robert Twiss**

**Chair Steven Costello moves Agenda Items out of order:**

**Approval of Minutes**

July 27, 2020

**Chair Steven Costello entertains a motion to approve draft minutes of July 27, 2020, moved by Mary Barry, seconded by Jeff Swartz,**

**Roll Call Vote:**

**Chair Steven Costello - aye**  
**Jeff Swartz - aye**  
**Patrick Foran - aye**  
**Mary Barry - aye**  
**Stephen Robichaud - aye**  
**Aimee Guthinger - aye**  
**Bob Twiss - abstain**  
**The minutes are approved.**

June 26, 2017

**Chair Steven Costello entertains a motion to approve the draft minutes of June 26, 2017, moved by Mary Barry, seconded by Jeff Swartz,**

**Roll Call Vote:**

**Chair Steven Costello - aye**  
**Jeff Swartz - aye**  
**Patrick Foran - aye**  
**Mary Barry - aye**  
**Stephen Robichaud - aye**  
**Aimee Guthinger - aye**  
**Bob Twiss - abstain**  
**The minutes are approved.**

**Discussion**

CPC updates from Stephen Robichaud - This will be continued to the next Planning Board meeting, September 28, 2020 – placed first on the Agenda.

**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 -

**Clerk Patrick Foran recuses – leaves meeting.**

**Chair Steven Costello recuses – leaves meeting.**

**Vice Chair Jeff Swartz takes charge of the meeting.**

Town Attorney Karen Nober in attendance. She explains some procedural issues. Planning Board learned on Sept. 3<sup>rd</sup> that the Chair was involved with the report/ recommendation Town Council. Remanded back to Planning Board. Tonight /this is a redo. Good opportunity to discuss recusals. It covers discussion and actions taken outside the meeting relating to the matter. If amendment approved cannot participate in the final – if rejected may participate in the final. Cannot take action without a quorum. All votes taken tonight need to be a majority vote – need 3 affirmative to take any action. If vote is a tie no action can be taken. The report would reflect as such. Planning Board is advisory, for a recommendation to Town Council. Consider all view points. Gives a brief history. Our zoning is silent with respect to short term rentals - without regard to length of stay. Not entirely clear. This is an opportunity to clarify. Depending on specific facts - the Town is proposing to explicitly offer - in all residential zoning districts. General ordinance. If zoning ordinance is not adopted, ultimately decided by the courts.

Vice Chair Jeff Swartz - gives a review of all in attendance. (header lists all). Clarification regarding voting on an amendment.

Town Attorney Karen Nober states that the Planning Board is advisory. The Town Council can decide, Planning Board is not binding on the Town Council's decision.

Stephen Robichaud clarifies that any questions asked previously have no bearing.

Attorney Karen Nober replies, correct, this meeting is as if not before Planning Board previously.

Assistant Town Manager, Andy Clyburn in attendance. Here this evening with the Director of Planning and Development, Elizabeth Jenkins, Director of Inspectional Services and Building Commissioner, Brian Florence, Town Attorneys, Karen Nober, Charlie McLaughlin and Kate Connolly. We are presenting a zoning amendment for short term rentals proposed by the Zoning and Regulatory Subcommittee of Town Council. This sub committee of Town Counselors are the policy makers tasked with recommending how the Town of Barnstable should regulate short term rentals (STRs). The regulatory approach recommended by these counselors includes 2 parts; a General Ordinance establishing regulations for STRs and a Zoning Ordinance clarifying that STRs are a permissible use of a residential dwelling, which is the piece of zoning in front of you this evening. All of the Town Departments here this evening have provided staff support to these policy makers as they developed the proposed regulations.

These regulations are being proposed because there are currently 776 Short Term Rentals in the Town of Barnstable. Although vacation rentals have always been a customary use in our community those rentals are now part of what the State has defined as STRs. In January of 2019 the Governor signed an STR tax into law, this action is what brought the issue forward more than anything. If you rent your property for 30 days or less, you are operating a Short Term Rental in the State of Massachusetts. Renting your home is a property rights issue. Most people assume they have a right to rent their property. Every rental property in Barnstable is required to register with the Board of Health (BOH) and when they do so, there is currently no distinction made on length of stay or zoning district. There are rental properties registered with the town operating in every zoning district offering stays ranging from days to weeks to years. Unfortunately there IS NOT consensus as to whether these vacation rentals should be allowed in every zoning district. In fact there are some zoning districts that many believe should contain NO STRs whatsoever. Does that mean we have to change zoning in the Town of Barnstable to allow STR's? NO, we don't; many communities have simply allowed STRs to register as any other rental in Town, unfortunately if you take that stance you are not addressing STRs being operated in areas that some believe they are not allowed. Some believe that STRs are not currently allowed in some residentially zoned areas; while others believe because they have rented their property for decades in those very same areas that means STRs are allowed there. This question of where STRs should be allowed is one of many issues this group of policy-makers have discussed over the past several months. While the vast majority of community concerns are being addressed in the 3proposed general ordinance regulating STRs which is currently under deliberation by our Town Council and will only be reviewed here this evening for

purposes of context; the question of “where STRs should be authorized” is at the heart of this evening’s discussion.

Perhaps the Town should have never allowed rentals to occur in residential zones and now is the time to “phase them out” or perhaps the market has changed and Short Term Rentals as we see them today were never considered when Zoning was put into place and regulations are needed to address current concerns, perhaps both, either way any limits or bans will impact our residents and those impacts should be very carefully considered. Our zoning is currently silent on Short Term Rentals and that clarification is why we are here tonight.

Doing nothing is certainly an option. Banning STRs altogether is another option. As is banning them in certain zoning districts. If STRs were not currently here, perhaps the Town would consider “allowing” them in certain zoning districts and take a “let’s see how this goes” approach; unfortunately that approach in this situation would adversely affect many residents currently renting their homes and would not provide clarity to all home owners in those zoning districts, again, the group of policy makers tasked with working through this issue is proposing Barnstable regulate STRs in all zoning districts rather than banning them in any zoning districts. We will show you where STRs are currently operated; they are in and have always been in every zoning district.

Lastly I want to restate that the proposed regulatory framework is being put into place to address STRs, current and future, this effort IS NOT an effort to bring STRs to Barnstable, quite the contrary, STRs are here in Barnstable now and should be regulated. With that I will turn it over to our Director of Planning and Development Elizabeth Jenkins.

Elizabeth Jenkins in attendance. Approach – General Ordinance and Zoning Amendment (ZA) – slide presentation. General Ordinance requires all STRs to be registered, 24/7 contact information and provided for all. Regulations (as amended) – limits registration to 2 per owner, caps number of registrations issued by town at 1500, implements a 3 night minimum stay. Occupancy requirements, Inspection requirements. Provisions for complaints, violations and penalties. Right to local hearing. Judicial appeals process.

Proposed ZA – to identify and define STRs in residential zoning districts; shall be permitted within lawful dwelling units – residential portion or any portion of a dwelling for a fee for not more than 30 calendar days. This is from the State’s definition.

STRs are not cottage colonies, hotels, motels, lodging establishments, bed and breakfasts– these are regulated through other laws.

Parking – shall not be in any cultivated or landscaped area between a roadway and a part of the principal. No parking in front lawn.

Note on Amendment at council – during deliberations an affirmative vote to delete the words portion of a dwelling and clarify that it would read bedroom.

The Planning Board makes a recommendation, Town Council is the deciding vote.

Vice Chair Jeff Swartz states that he has a concern if someone lives on a boat and rents out a boat.

Elizabeth Jenkins replies that it would have to be in a lawfully established dwelling. This is only way can be permitted. We would look at on a case by case basis.

Vice Chair Jeff Swartz would like it to be taken into consideration that his comment be noted about boats.

Town Councilor Paula Schnepf in attendance. Clarifies that Town Council has deliberated on the General Ordinance already. Survey was created to get results of how all feel about STRs. Town meetings held at village associations to get their feedback. Has made every effort to get public involved. Sub Committee held several meetings with a lot of public comment, where there has been multiple times to make comment, also Town Council workshop. Zoning and Regulatory met and came up with the final. June meeting recommended come to the Planning Board. General Ordinance has come

before the full Town Council. Continued to Sept. 3<sup>rd</sup> amendments were made. No vote taken, as it is tabled to Oct. 1<sup>st</sup> 2020, meeting. This requires a majority/7 member vote to pass. A Planning Board recommendation tonight would likely go to Town Council on Oct. 1<sup>st</sup>.

Aimee Guthinger asked if there will be a wait list if one property comes available does it open up for others - a cap on this?

Paula Schnepf replies because currently at about half, we have time to put a lottery in place for.

Jeff Swartz asks if property sold does the STR transfer over?

Andy Clyburn replies that STR would not be transferred upon sale of property.

Brian Florence states that about 40% of STRs now, not worried about the cap. Most property owners don't do this for very long.

**Vice Chair Jeff Swartz entertains a motion to open the Public Hearing, moved by Mary Barry, seconded by Aimee Guthinger,**

**Roll Call Vote:**

**Aimee Guthinger - aye**

**Mary Barry - aye**

**Bob Twiss - aye**

**Stephen Robichaud - aye**

**Jeff Swartz - aye**

### **Public Comment**

Bob Schulte in attendance, 25 year long Centerville resident. Town info – 150 - 250 currently operating in residential zoning districts. Do not recommend. Opposed.

Ellen Nozzle of Centerville. Zoning restrictions were created for property owners. Proposing to look the other way. Limited to being by standers with Zoom meetings being done and limited time. Amendment is wide sweeping and dangerous, think about the Barnstable residents. Do not recommend. Opposed.

Vice Chair Jeff Swartz clarifies that the Planning Board did not have anything to do with the subcommittee or drafting of the proposed ordinance.

Matt Teague, former member and Chair of Planning Board. Here again re debating this issue. Should be some consideration granted by Chptr 40A, suggest reconsider event and the concept of the cap, i.e., could own many long term rentals in this town with no restriction – this is an unregulated use, preceeded zoning, there is no regulation at hand. Turnover rate/risk is great, doesn't think a cap is effective. Expedite, move the question and on to bigger and better issues, stop wasting people's time. Support.

Martin MacNeely from Marstons Mills. COMM. Supporting ordinance as written, been allowed for many decades/ Town Council addressed many issues at last meeting. The 1500 cap addresses a lot of concerns. Not reality to have year round. This will still be less than 6%. To allow as proposed and deal with through the regulations. STRs provide a lot of benefits, jobs, tax revenue, only dedicated stream of revenue to do with wastewater. Support.

Christian Teague in attendance. There seems to be some kind of perception that our neighborhoods will be destroyed. Occupancy rate here is 30 to 40 percent. Many other areas are 9 months a year with STRs. Zero data has been presented by citizens that want to not support this amendment. Many bogus complaints. STRs support our local economy. Support.

Don Megathlin, Cotuit resident. The Zoning ordinance is poorly written. Three types of short term rentals: owner on premises; owner absentee; investor owned property. Special permit for B and B's. Have to meet special requirements. Investor owned 5property should be prohibited and non conforming in residential zones. Zoning ordinance is vague and unclear, the term portions are vague and unclear.

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**Vice Chair Jeff Swartz entertains a motion to open the Public Hearing, moved by Mary Barry, seconded by Aimee Guthinger,**

**Roll Call Vote:**

**Aimee Guthinger - aye**

**Mary Barry - aye**

**Bob Twiss - aye**

**Stephen Robichaud - aye**

**Jeff Swartz - aye**

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On site parking should be re written. Opposed.

Dab Krau President Greater Hyannis Civic Association, resident West Hyannisport. Doesn't distinguish owner occupied from non owner occupied, current zoning allows owner occupied rental bedrooms to not more than three. Parking – not well defined, guests may come and could be many cars. RB, RB1 and RF2 zones - they speak specifically about parking, this is a better definition. Maybe modify – Chptr 240-11. Recommends putting into the zoning article. Hoping business will not be allowed into residential areas/commercial. How many visitors. Opposed.

Jennifer Lynch in attendance. Strongly opposed to the new amendment restricting guests staying to 3 nights or longer, this would not be good for a huge amount of short term rentals. This would be denying income to owners and local businesses to earn travelers income. Most people always stay one or two nights. This would eliminate, sadly, a lot of travelers if limited to 3 night stays. People will go to other towns. Does not like the 1500 cap either. Opposed to amendment for minimum 3 night stay.

Laura Cronin, Hyannis resident. Trying to protect the resident only neighborhoods. Short term rentals are a business. Keep residential areas protected. Are we opening up doors for all businesses if short term rentals come in everywhere. Consider areas where commercial/business already is. Will campers on property be considered, some owners rent their home and stay on the property in trailers/campers. Opposed.

**Vic Chair Jeff Swartz entertains a motion to close public comment, moved by Mary Barry, seconded by Stephen Robichaud,**

**Roll Call Vote;**

**Aimee Guthinger – aye**

**Mary Barry - aye**

**Stephen Robichaud – aye**

**Jeff Swartz – aye**

**Bob Twiss - aye**

Bob Twiss is in favor of the proposed zoning ordinance, he has read minutes of previous meetings and materials and correspondence that has been submitted.

Jeff Swartz directs to Bldg. Commissioner – is this the only use that would not allow/have abutters notified.

Brian Florence replies - Do not need to notify abutters for anything that does not need a public hearing.

Mary Barry clarifies that this would create a database.

Brian Florence – yes.

Aimee Guthinger clarifies that neighbors can get info 24/7.

Brian Florence – yes, this is an annual registration.

Elizabeth Jenkins states that we have a map, slide - picture that shows the 776 short term rentals that are currently registered with Dept. of Revenue, have in all villages, and all zoning districts within the Town of Barnstable, 26 percent fall within the districts that don't fall to renting a room. This is an existing widespread use in our community.

Stephen Robichaud asks if the Town were to differentiate between categories - Parking - should suggest to amend?

Brian Florence it can be discriminatory to treat a business any differently than an individual entity.

Town Attorney Charles McLaughlin confirms that zoning does not allow this, not able to do directly, maybe make a limitation to the number of licenses one can have with the Town.

Elizabeth Jenkins – the provisions are included in the proposed amendment. Speaks to limiting parking on the front yard of property.

Jeff Swartz has parking concerns.

Mary Barry asks about utilizing - language in 240-11, which includes language in regards to parking.

Elizabeth Jenkins for any single family use we do not have any parking regulations for single family homes. These in 240-11 are written specifically for bed and breakfast. Which is by special permit by review. Screening/fencing – oversight from ZBA that would allow parking in certain places.

**Motion made by Mary Barry to approve the zoning amendment as written without any amendments, seconded by Stephen Robichaud,**

**Roll Call Vote:**

**Mary Barry - aye**

**Aimee Guthinger - aye**

**Bob Twiss - aye**

**Stephen Robichaud - aye**

**Jeff Swartz - nay**

**The motion passes – 4 positive – 1 negative.**

Adjournment

**Jeff Swartz entertains a motion to adjourn, moved by Mary Barry, seconded by Aimee Guthinger,**

**Roll Call Vote:**

**Aimee Guthinger - aye**

**Mary Barry - aye**

**Bob Twiss - aye**

**Stephen Robichaud - aye**

**Jeff Swartz - aye**

Correspondence

Chapter 91 Notice – 398 East Bay Osterville – Rehnert – construct & maintain timber boardwalk

Matters Not Reasonably Anticipated by the Chair

Future Meetings: September 28, and October 26, 2020, @ 7:00 p.m.

The meeting adjourned at 8:42 p.m.

Respectfully Submitted

  
By Karen Herrand, Principal Assistant, Planning & Development

Approved by vote of the Board on September 28, 2020

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