

Committee to Review and Assess Zoning and Review the Town's Use of Regulatory Agreements

James H. Crocker Jr. Hearing Room 2nd Floor Town Hall Building
367 Main Street Hyannis, MA 02601

Councilor Jeffrey Mendes
Councilor Matthew Levesque
Councilor John Crow
Councilor Kristen Terkelsen
Councilor Charles Bloom
Catherine Ledec
Bob Schulte Chair
Ken Alsmann

September 20, 2024
3:30PM

MEETING MINUTES

Chair of Committee, Bob Schulte, opened the meeting of the Committee to Review and Assess Zoning and Review the Town's Use of Regulatory Agreements.

Administrator of the Town Council took Roll Call: Members present: Ken Alsmann; Catherine Ledec; Councilor Charles Bloom; Councilor Kristen Terkelsen; Councilor John Crow; Seth Etienne; Bob Schulte, Chair; Absent: Councilor Matthew Levesque; Councilor Jeffrey Mendes.

Chair of the Committee made the following announcement:

In Accordance with MGL, Chapter 30A, Section 20, I must inquire whether anyone is recording this meeting and if so, to please make your presence known.

Chair of Committee read into the record the purpose of this Committee:

PURPOSE: Work with the Town's Planning & Development staff to review and reassess recently adopted zoning changes, review the Town's use of regulatory agreements, and make recommendations to the Town Council.

Chair of Committee discussed the public comment portion, explaining to all there will be two opportunities today for public comment, in the beginning of the meeting, and then once Mr. Florence's presentation is complete.

Chair of Committee wanted to again thank the public for their interest in the committee and their participation both in person and via the zoom link provided for public comment. He encouraged the public to submit comments either in person or in writing as well, by sending the email to Cynthia.lovell@town.barnstable.ma.us and put in the subject line AD HOC Zoning Committee, and she will distribute to the members once she receives them.

Chair of Committee wanted to thank Brian Florence, Building Commissioner for joining the Committee today and for his presentation later in the meeting.

Chair of the Committee asked for any public comment from the individuals joining the meeting today, and wanted to remind the public that the Zoom link goes away once public comment is closed by the Chair, and individuals can view on Xfinity Channel 8 or <https://streaming85.townofbarnstable.us/CablecastPublicSite/?channel=1>

Chair of Committee mentioned the correspondence from Chris Kuhn, Mr. Kuhn was originally appointed by the Appointments Committee to be a member of this committee however, due to work

schedules he was unable to be a member, but mentioned he would continue to contribute as a member of the public

Good morning Cynthia,

Could you please forward this email to the members of the Zoning Ad-Hoc Committee and also to the members of the Housing Ad-Hoc Committee.

Thank you very much.

Regards,

Chris

Dear Members,

I apologize if my comments seem harsh, but I find the current situation and how we've arrived here more than a little concerning, and I truly hope I'm wrong.

Here is a breakdown of the apartment applications that have been filed with the Town since 2017. This information is gathered and provided by the Planning and Development Department. It's not very good news for the Hyannis Downtown Business District, or for affordable housing either. In fact I think this very clearly shows just how disgraceful our efforts really are. Affordable housing which is coercively created through greed is not only disingenuous, but a disgrace and we will suffer the consequences of our actions. I've apparently been under the very mistaken belief that our goal and in fact our responsibility is to provide affordable housing for those individuals who are not fortunate enough to be able to provide it for themselves. Instead it would seem those individuals are merely being used as pawns to allow developers to circumvent our zoning requirements and build huge numbers of high rent luxury apartments, which we clearly don't need.

Here are some numbers.

Since the Town adopted the new zoning back in February of 2023, the Town has been inundated with applications for new apartments in the Downtown Hyannis District.

The "Prior To The Zoning Change" chart shows that from 2017 until the adoption of the new zoning on February 2, 2023, which was a period of 6 years or 72 months, the Town permitted and constructed 216 apartments in the Hyannis Downtown District, and of those there are 13 (6%) designated as affordable. That left 203 at full market rent. If you divided 216 by 72 months that is 3 apartments per month.

In the "After The Zoning Change adopted on February 2, 2023", chart, but before July 22, 2024, which was the last date these charts were updated, and which is a period of only 1 1/2 years or 18 months, there were 545 apartments applied for and of those, there were 232 still in the permitting process, with 55 (24%) designated as affordable. That leaves 177 at full market rent. The balance of the 545, is 313 apartments and they are now fully permitted with 48 (15%) designated affordable. That leaves 265 at full market rent. These 313 are now ready for building permits. If you divided 545 by 18 months that is 30.27 apartments per month, which is ten times the rate of the prior 72 months.

In the "Under Construction" chart:

There are 14 being built, with 5 (36%) designated as affordable. This leaves 9 at full market rent.

So, in the 6 years, or 72 months prior to the adoption of the new zoning on February 2, 2023, the Town had permitted and under construction, or constructed 216 new apartments, 13 or (6%) of which are affordable.

Then zoning changes on February 2, 2023, and by July 22, 2024, and within 18 months) the Town had received applications for 545 new apartments, with 103 (19%) designated as affordable, and 14 under construction, 5 (36%) of which are affordable.

That's 775 full market rent and 121 (16%) affordable rent.

The Hyannis Inn Motel is going to re-submit their application as well and there are more still to be applied for, like the Christian Science Church property on Stevens Street and I'm sure there will be others.

Those numbers do not include all of the apartments "outside" of the Downtown Hyannis District. There's another 673 with 82 (12%) designated as affordable. This leaves 591 at full market rent. These are all pretty much out in Independence Park and almost completely built and being rented.

Where will all these tenants come from and where are the jobs they will need to be able to pay the crazy expensive rent, and where the hell are they going to park. If they park on Main Street or in one of the Town's lots they can be ticketed and or towed. But if they park on private property they can only get towed, which requires the owner to have to police the lot for themselves and how will they possibly know whether the owner of a car that is parked isn't spending money in one of the businesses in the area. It's going to be a complete nightmare for property owners and merchants to now have to manage the whole parking issue. It will cost them.

It certainly doesn't seem as though this new zoning was well thought out at all. These tenants are not going to pay to park anywhere as long as there are empty spaces close to their apartment, particularly in the bad weather.

So, "121 affordable apartments" out of "775" in Downtown Hyannis. What a sham. How is that "affordable housing". How does that really help all the people who truly and legitimately need an affordable place to live. And, there are more apartment applications on the way. Supply and demand will absolutely rule the day and it will become a complete slum when the apartment owners start undercutting each other to try and keep their apartments fully occupied. There will be rent wars, which will make apartments cheaper so more people can afford them, which may be a good thing, but the quality of those tenants will be a lot different than the landlord's preferred tenants.

Can our Downtown Business District and the related infrastructure really handle a thousand new apartments???

I don't think so!!!

This is the absolute epitome of poor planning, which I believe was very naive and shortsighted and now we are completely screwed because there is no possible way to turn back. There is no viable exit strategy. We are at the entrance of the proverbial rat hole and there is no solution.

Ultimately everyone, the property owners, merchants and tenants, will be pointing their fingers at the Town to take care of the problems, because it's the Town that gave the permits which allowed and created them, so get ready to spend more money, because it's going to be a very expensive fix. Think multilevel parking garage and say good bye to Hyannis as we've known it.



Take a few minutes and go onto Google Earth, Street View and look at any Town in New England, not a City, but a Town. You will not find one Town with four story buildings on their Main Streets and in fact not anywhere within almost any Town. You won't find four story buildings on Main Streets pretty much anywhere other than in Cities, or industrialized Mill Towns. For the most part and in most cases these buildings were built before the adoption of zoning, so they certainly could have built as many stories as they wanted, but they didn't, either because elevators hadn't been invented, or most likely, because the cost of an elevator was way too expensive. Once you build above two stories your pool of tenants greatly decreases, just because of all the stairs to climb, so three stories is a little bit of a challenge, but four stories just never happened. The second floor was historically for the merchant and their family, or employees, not mass affordable apartments. These are some of the reasons why we actually have lots of very quaint historic Towns and villages, with wonderful unimposing buildings that create the beautiful character we enjoy when we visit. We typically don't go to Brockton to visit and enjoy the scenery. Our Main Street is one of our biggest and best assets and as such it provides a lot of extremely important jobs for some of our residents. It brings in millions of dollars annually, so why would we dare to jeopardize that? In contrast we should be doing everything humanly possible to improve and enhance all of the building facades, eliminating all the overhead wires and make changes that will add to the pedestrian traffic and improve their experience, so they will rave about how great a time they had and how wonderful Downtown Hyannis was on their vacation. It might be that the Town has to put up the funds to make it all happen, but it's an investment in our community and it's future. We obviously can't rely on the individual property owners to do this, so we need to get very creative and just make it happen.

Sorry for the length of this.

Chris

Chair of committee summarized Mr. Kuhn's email and encouraged anyone who has not read his email on this committee to do so, as he has pointed out the number of permitted projects for Hyannis, without knowing how much is needed for housing.

Chair of the Committee asked if any members had any comments regarding Mr. Kuhn's email, committee members will comment after public comment has been closed.

Chair of the Committee asked if any members of the public attending today had any comments: Eric Schwaab, resident of West Hyannis mentioned there was a new resident who has come tonight, she hasn't been to public comment since John Klimm, according to Mr. Schwaab, but is just as outraged as many of the Hyannis residents. Mr. Schwaab who had gone away for a couple days returned to his home to find a huge construction trailer parked in front of his house with a lot of debris in it. This is a property that Mr. Florence has dealt with in the past, and worked hard to clean it up, but its back again with the same issues as before, Mr. Schwaab feels it is back because of lack of enforcement, he believes Mr. Florence does not have enough people for enforcement, Mr. Schwaab stated he has looked at some of the codes regarding street parking, which he believes needs more tightening on the regulation, but he would like this committee to especially look at by-right zoning; this is causing issues in the neighborhoods, anyone can hang their shingles, and park their trucks in residential neighborhoods and go to work, by right zoning is not new to Hyannis, but has been extended to the western part of town, the idea behind it was to get pottery shops in the backyards, but that is not what is happening, we are getting industrial business with large trucks, and supplies delivered to back yards, landscaping trucks, there is not review process, a business goes and pulls a business license with the Town Clerk, the building commissioner is notified, but there is no review process of what that business is, or what it is going to be on that property, if it is a business with an LLC they go right to the State to file the name, and bypass the town, and there is no notification to the town, he would like to see this committee do away with by-right zoning, or at least pause it for a time to be able to create a process of the town's

choosing to approve business that want to set up shop in a residential neighborhood, if a business wants to open up in a residential area be regulated. This by right zoning has allowed lighting problems in residential neighborhoods to the point that the resident that lives behind Mr. Schwaab has a spotlight on that shines right into his bedroom at night. There are no noise restrictions, no lighting restrictions, he would like to see a pause on the by right zoning until the town has a handle on them.

Patty Murray, resident of Hyannis, spoke about her neighbor across the street from her the house has about 4-5 families living in it, with an RV parked out front with people living in it, there are at least 8 cars in the driveway with landscaping trucks as well, the other day she came home from work, and her driveway was blocked and she could not access her house until she asked them to move the vehicles blocking her driveway, the neighbor next door who also owns a fish market has had the same problem, he has put up no parking signs in his yard, there is no consideration of early morning landscaping, late night parties happen with no consideration of the neighbors, she has called the police several times, she would like to know how many families are living in the house, and is there anything we can do about that.

Larry Morin, from Cotuit, was not going to speak originally, but wanted to say something after Ms. Murray's comments. Mr. Morin discussed the issue of this problem is a common place in Hyannis, he sees it all the time, and it is scattered all over the Town, not only in Hyannis, if you drive up Old Stage you see it all along there. How do we get this under control, do you have someone drive around and jot down addresses, and then go back and see if these places actually have a license to operate these businesses in residential areas. He is happy to see Mr. Florence here to hopefully answer these questions and concerns that have been spoken about, he has known Brian for a long time.

Chair of Committee thanked the members of the public who spoke today, Chair of Committee asked for anyone on Zoom:

Heather Hunt, Osterville, first mentioned she apologized for not being there in person, as she is out of town, but appreciates the opportunity to zoom in and wanted to first thank the Committee for just really great discussions that are educational for the public and she appreciates that, there are two items on the agenda she would like to briefly comment about; the first being zoning enforcement, she had attended the Committee to Review the Town Council Rules and Code and made similar comments there and she would encourage at the end of the day in connection with zoning enforcement to have as an objective including clear in plain English explanation and in our Town Code and on the Town's web site of what residents who seek zoning enforcement are entitled to from the town and by when, so real people can understand their rights and the Town's obligation in plain simple words. Ms. Hunt is asking this based on her own experience with zoning enforcement regarding a letter she received from the Town saying the Town would take this up sometime, she had no idea when, and never heard back again from anyone in the town regarding her zoning problem, and spent money taking the question to court, and the court decided that the town must give an explanation to residents. Ms. Hunt's second concern is the discussion the committee will have about Form Based Code. Ms. Hunt mentioned the Site Plan Review meeting that was held recently, and encouraged this committee to watch it, it was very illuminating about the issue regarding public awareness and public understanding and support for the Form Based Code; in the beginning of the discussions of form based code way back, the town consultant mentioned that because development is by right its really critical to have full public understanding support and buy in from the public, because once its built its by right, it's a done deal, she respectfully suggests that really was not done in the beginning, the survey that went out only 1% of the Hyannis residents responded, and it was all about pictures, and nothing really about zoning, she believes residents are smart enough to be asked about zoning preferences and then answer questions about what they would like to see in zoning, the public outreach was attended poorly, it was not a broad base outreach, but encourages a stronger public outreach when dealing with by right zoning. She thanked the committee for listening to her.

The Chair of the Committee closed public comment. Chair of Committee asked the Committee members for any comments.

Catherine Ledec thanked everyone who commented today, she mentioned Zoning is a very difficult subject to understand, the public does not deal with it everyday like the workers do, so understanding it can be very difficult. Ms. Ledec suggested some sort of on-line tutorial be done for the resident to view regarding zoning and what it means, she has seen it in other communities, and it is something to think about.

Chair of Committee thought Ms. Ledec's comment regarding the tutorial was a good one, and if she is aware of another community that does this, if she would not mind providing that information so this committee could look at how it is done, and added in enforcement issues similar to what Ms. Hunt spoke about as far as process, to explain to the public what the process is for enforcement.

Councilor Crow agreed with Ms. Ledec, the by right zoning or home occupation does not have any restrictions on what is allowed to be stored, or the number of vehicles parked associated with that business, and it is really affecting our residential neighborhoods. He understands we have a shortage of construction bays, but that doesn't mean that the overflow goes into the residential neighborhoods. He has been dealing with this type of problem for years, but he can't seem to find anything on what is or what is not allowed anywhere in the Town ordinances. We need to be very clear about this, and the enforcement needs to be done on weekends when these businesses do not work, his neighbor puts everything he stores in the back yard, it may not be visible form the front yard, but if you walk around back you can see it. Councilor Crow would like to see more enforcement be done, if we need to hire someone who only goes around town on the weekends to see this, then we should suggest that, but this notion or idea from some individuals is they are going to do whatever they want until they are caught is really getting out of hand. Councilor Crow would like to see enforcement be the first thing we look at to be able to get the tools to enforce.

The Chair of the Committee sees one of the objectives as being to help understand what Mr. Florence's concerns are that might make his job easier, and some of the suggestions made here are ways we can do that, our goal is to provide suggestions to the Town Council they can look at to help provide solutions that are solvable.

Councilor Bloom had heard that Mr. Florence is going to be asking for a couple more people for his staff, and maybe he should ask for four; Councilor bloom admits he does not know a whole lot about zoning, but a person's home is their castle and when residents are subjected to early morning construction trucks and equipment operating right outside their windows, or the everyday parking issues of too many vehicles on a property, or late night parties, it really disrupts an individuals right to a quiet and normal way of life, if we do not consider, or when business move in and do not consider those that live next door to it, we are ignoring their rights as well, and there is not a good reason he can for it.

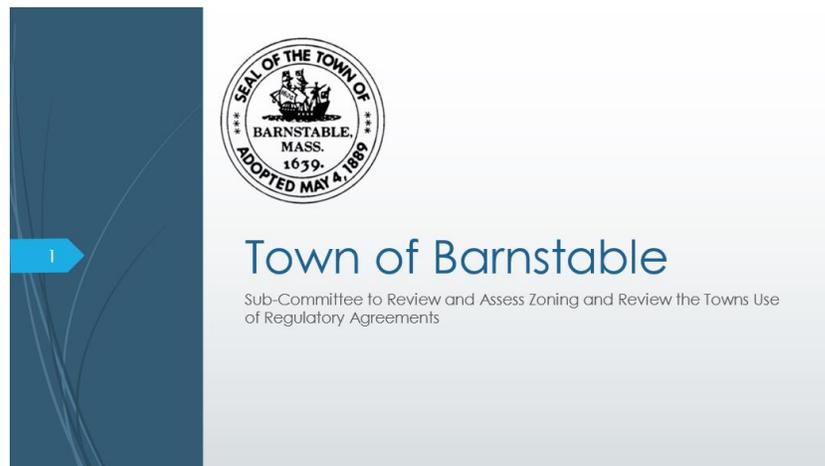
Councilor Terkelsen agrees with everything that has been said, what one person finds annoying, could be someone else's normal, there are business in some neighborhoods that are respectful, and we tolerate it, but to those neighbors who are not and seem not to care about the neighbor beside them, she believes that talking to the neighbor possible letting them know what it is that bothers them about certain things, but we also have to keep in mind we need to be respectful of how others live, and be careful about overregulating as well, is there a place in the Town that we can see what can be or can't be regulated, some sort of guide for the residents.

Chair of Committee welcomed Mr. Florence, but first wanted to mention for the members of the public joining today, that the discussion on the Form Based Code will be deferred

to the next meeting, because the Chair felt that Mr. Florence’s presentation was a bit longer than normal, however the topic is of concern and important enough and would like Mr. Florence to present the entire presentation tonight, and be able to answer questions if needed at the end of his presentation.

Brian Florence, Building Commissioner thanked the members of this Committee for all its hard work so far, and for volunteering for municipalities, it is something he did prior for 10 years on the Zoning Board of Appeals, and Chair of that Committee for 2 years, before taking the job as Building Commissioner, so he appreciates their time. Mr. Florence knows that enforcement is not part of the charge for this committee, however in the meetings he has watched since the beginning, enforcement has come up at least twice in those meetings, so he asked Mr. Schulte if he could do a brief presentation to this Committee as an explanation of enforcement process in Barnstable. (Below is the link to the video for the Committee meeting; fast forward to **0:28:30** of the video recording to start the Building Commissioner’s presentation)

<https://streaming85.townofbarnstable.us/CablecastPublicSite/show/11307?channel=1>



Enforcement Complications for Officials

3

- Code Enforcement
 - Complaints to regulatory agencies
 - Highly charged and emotional
 - Often originating from neighborhood disputes
 - Use the Town as a weapon
 - Lack of knowledge or misperception [Zoning Example]
 - Assumption and speculation
 - Complex
 - Misunderstood
 - MGL Ch. 143 Building Codes, MGL Ch. 40A Zoning, MGL Ch. 111 Health, MGL Ch. 90 Motor Vehicles
 - The Town is all one agency
 - Failure to read and understand
 - Do not understand limits on officials such as due process, probable cause and evidentiary requirements

4

Perception: Regulations are Not Being Enforced, staff work 9-5 only and regulations are unenforceable

- Lack of knowledge provoking questions is understandable, but allegations of misfeasance, malfeasance and nonfeasance don't play out
 - We received 652 Complaints in the building division 07/01/2023-6/30/2024
 - 396 or 60.73% have been closed because the violation was abated
 - The result is 60.73% Percentage resolved, 39.11% Percentage in process
 - This includes: zoning & building code requests for enforcement
 - Inspectors are authorized to request overtime to work during evening or weekends on cases and do so on an as-need basis.
 - They are responsible with their requests and do so only when necessary but are not otherwise restricted
 - Regulations are enforceable as they are written
 - Happy to review any regulation thought to be unenforceable
 - Happy to review any regulations thought to be missing
 - We always evaluate our practices and have some minor recommendations for the zoning ordinance

5

Perception: Regulations are Not Being Enforced

- Lack of knowledge is understandable
- Regulations are complex and people don't live that life
 - Exceptions on this committee: Two of your members and Council President Penn
- Discussions with Council President Penn
 - Institutional knowledge
 - President Penn's Letter and the Intent

Question 1 was: What is required to enforce zoning in residential Areas?

- Zoning enforcement is authorized by the State statute (Ref. M.G.L. Ch. 40A §7)
 - Therefore, there isn't anything that needs to be added to the ordinance but
 - It is important to understand how a request for zoning enforcement works
 - And to know the checks and balances in place to seek redress for a zoning enforcement officer who gets it wrong

The Law

- ▶ M.G.L. Ch. 40A § 7: Enforcement of zoning regulations; violations; penalties; legally nonconforming structures; notice of action; jurisdiction of superior court
 - ▶ *The ... building commissioner... shall be charged with the enforcement of the zoning ordinance or by-law and shall withhold a permit... and no permit... shall be granted for a new use of a building, structure or land which use would be in violation of any zoning ordinance or by-law.*
 - ▶ *If the officer or board charged with enforcement of zoning ordinances or by-laws is requested in writing to enforce such ordinances... and such officer or board declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within fourteen days of receipt of such request.*
- ▶ The reason: So that the petitioner can appeal
- ▶ Appellate process:
 - ▶ ZBA
 - ▶ Court

The Real Issue with Enforcement

- ▶ The Real Issue
 - ▶ Education
 - ▶ There is an inaccurate perception by citizens and officials that zoning is not being enforced...it is
 - ▶ Councilors who educated themselves
 - ▶ A systemic misunderstanding within the community of what zoning is
 - ▶ Some of our citizens incorrectly associate all neighborhood concerns with zoning
 - ▶ Council President Brought A Follow-up Question Forward Posed to Her:
Specifically: the long-time accumulation of trash, junk, and unregistered vehicles or boats and the expansion of commercial uses in residential neighborhoods
 - ▶ This is an excellent example of the systematic misunderstanding of zoning
 - ▶ Two thirds of the items in this list are not zoning matters.
 - ▶ Trash, Junk, Unregistered vehicles & Unregistered boats – are not zoning

What is Zoning?

- ▶ Zoning Defined - (Ref. M.G.L. Ch. 40A § 1A)

"Zoning", ordinances and by-laws, adopted by cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants
- ▶ Zoning is the regulation of land use
 - ▶ It is not regulation of behavior
 - ▶ Messy yards, overgrown vegetation, derelict cars, unregistered cars & decrepit houses are behavior issues. They are a failure to maintain.
 - ▶ Myriad reasons
- ▶ The last act of enforcement
 - ▶ Court
 - ▶ Build a case
 - ▶ Bringing behavioral issues to court as a zoning case it wouldn't make it past opening arguments

Zoning is Not...

- Unregistered Vehicles or Unregistered Boats & Boat Trailers
(Added Parking in Roadways as a related issue)
- The Path to Enforcement for Vehicles
 - Unregistered motor vehicles, boats, trailers and parking in roadways are all civil issues regulated by Barnstable Police and Marine & Environmental Affairs Departments under:
 - **Code Reference:** Chapter 228 - Town's General Ordinance - <https://ecode360.com/6558024#6558024>
 - MGL Title IV, Ch. 90 s. 20a (authorizes communities to identify enforcement agents/agencies for parking enforcement).
 - TOB Charter, located under The Code, Part I General Ordinances, Ch. 1 General Provisions, Art. I Noncriminal Enforcement of Violations § 1-2 A, (1) & (6)
 - M.G.L. Ch. 40 §21D
 - Fines – how they are assessed, are they ever collected, how are they structured, who gets fined, when do they get fined, what opportunities do you have to make corrective actions?

Zoning is Not... Continued

- Notes
- Unregistered vehicles
 - There is a misperception that it is illegal to store unregistered motor vehicles on private property
 - Ch. 288, unregistered motor vehicles are permitted on residential property as long as they are screened from view.
 - To prohibit unregistered vehicles denies citizens
- Vehicles parked in a roadway
 - PD regulates all roadway matters
 - I have been told by the PD that it is lawful to park in any roadway in Barnstable unless the roadway is not posted as: "No Parking".

Business Licenses and Home Occupations

What is required to enforce a business license? i.e. assure that the business owner is operating within their license and not engaged in uses that are not licensed.



Committee to Review and Assess Zoning and Review
The Town's Use of Regulatory Agreements - July 26, 2024

Business Licenses and Home Occupations

- Business Licenses and a Home Occupation Registration
 - Business licenses, called **Certificates** by law are not regulated by zoning or Inspectional Services; they are regulated by the Town Clerk's office
- M.G.L. Ch. 110 § 5 - Certificates of persons conducting businesses
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter110/Section5> which reads in part:
 - *Section 5. Any person conducting business in the commonwealth under any title other than the real name of the person conducting the business, whether individually or as a partnership, shall file in the office of the clerk of every city or town where an office of any such person or partnership may be situated a certificate stating the full name and residence of each person conducting such business.*
 - This is simply a mechanism for identifying the responsible party of a business
 - It is not a mechanism for obtaining a check book
 - Effectively – if a person operates a business under any name other than their own or other than the name of a corporation filed with the Commonwealth they must register with the Town Clerk.

Business Licenses Continued...

- In Barnstable, I as the zoning enforcement officer will as a courtesy to the Town Clerk and our Citizens, review Business License applications that have been submitted to the Town Clerk
- This ensures that the Citizen doesn't inadvertently open a business in violation of zoning.
- If a citizen doesn't file for a Certificate, then the Town Clerk has enforcement authority to compel them to obtain one
- This cooperative effort has been very successful
- To be clear: As the zoning enforcement officer, I review each and every Business License that comes into Barnstable

Business Licenses Continued...

- Note on Business Licenses (Certificates)
 - At your August 23rd meeting a member of the public was trying to explain business licenses.
 - Conflated business licenses and home occupations
 - Stated that Corporations and LLC's are a free-for-all and can operate unabated anywhere in Barnstable

That is incorrect and is an example of why education on this issue is so necessary.

It is true that persons owning a corporation, registered with the Commonwealth do not need a Business License (otherwise known as a DBA Certificate) - but that does not allow them to operate a home occupation without registering.... This is where Home Occupations under § 240 - 46 come into play.

Home Occupations

- Home Occupations §240-46 of the Zoning Ordinance
 - Not a business license
 - Very clear and concise rules
 - Required for ANY business in a home in any district including residential districts
 - Includes: Sole Prop., LLC, INC, DBA – any business
- In reviewing the question that Council President Pen submitted for you I think we can consider some revisions to the language:

What is required to enforce a [business license] Home Occupation Registration? i.e. assure that the business owner is operating under [their license] §240-46 - Home Occupation rules and regulations and not engaged in uses that are not [licensed] registered.

When did business operations in residential districts become illegal in Barnstable?

Home Occupations

- Background
 - Some of our citizens believe that business is not permitted in residential zoning districts.
 - This is not true and has never been true – 1639 – 385 years
 - The vast majority of businesses in Barnstable are located in residential zoning districts
- Zoning came to Barnstable in 1929
- The first legislative zoning act (Ref. Zoning By-laws 1929) was to distinguish between Non-Residential [zoning] Districts and Residence [zoning] Districts.

Subject to the provisions hereinafter stated, no parcel of land lying in any Residence Districts and not at the time this By-law becomes effective devoted to any business or industry, other than those hereinbefore specified shall hereafter be used for any business or industry, or for any purpose except for residence

- However, it becomes clear that the intent of the drafters was to prohibit business UNLESS
 - There was a public review and the Use was approved by the Town's Selectmen
 - THEN any business or any industry could be given a permit in any residence district.

A permit may be issued for the erection in any residence district of a building for the purpose of any business or industry or for the alteration or conversion of a building in such district for or to such purposes, if the Selectmen shall after a public hearing so order.

Home Occupations Continued...

- Business was never prohibited but had to undergo a review process
- At the time (1929) the population of Barnstable was 7,271
 - Selectmen would have been able to review proposals for the number of businesses being proposed in the Residence District in 1929.
- By 1956 the population increased to between 10,000 and 13,000
 - Barnstable completed a revision of the zoning by-laws
 - It started to become untenable for the Selectmen to review business proposals in the Residence District and still attend to the Town's other business.
 - The Selectmen delegated the review of businesses in residential districts to the Zoning Board of Appeals
 - Business uses were allowed in all zoning districts by special permit and did not require a variance
- In 1989 Barnstable adopted a Charter and between 1990 and 2000 the population of Barnstable exploded to between 40,000 and 45,000
- It became untenable for even the ZBA to hear the number of cases for new businesses in residential zoning districts
 - In 1995 the then Town Council adopted a Home Occupation Registration (an even lesser standard than a Special Permit)
 - That Ordinance is very similar to the Ordinance in its current form which authorized the Building Commissioner to issue Home Occupation Registrations by-right except in RC-1 & RF zoning districts
- In 2022, the Town Council eliminated the requirement for a special permit in the RC-1 & RF Zoning Districts due to the reality that many people worked from home, but half of the Town was penalized just for living in 2 of the 14 residential zoning districts.

Home Occupations Continued...

- Current Home Occupation Requirements
 - Home Occupations – Reference Zoning Ordinance §240-46. <https://ecode360.com/6559568#6559568>
- The format of the ordinance has been around since 1989
 - There have been minor modifications
 - While no ordinance is perfect, Barnstable's ordinance is sensible and enforceable as written
- Despite what you have heard, I review each and every home occupation personally with Maggie our SPR coordinator weekly
 - It wasn't always like that in Barnstable
 - Staff were improperly allowed to conduct the reviews
 - I made corrections to ensure that the building commissioner conducted the review
- Maggie and I with the help I.T.
 - Created an online application that has tracking abilities
 - We very strictly review what is a home occupation or not
 - We deny home occupations all the time
- Here are the numbers that you have been told do not exist
 - Fiscal Year #'s- 6/30/23-7/01/24.
 - Number of business license applications: 395
 - Number of Home Occupation applications: 175

Home Occupations Continued...

- There are more businesses in Barnstable's residential districts than all of the store and business fronts in all of our zoning districts combined
 - literally thousands
 - Every district
- The vast majority are never heard from or about because they are decent, responsible law-abiding taxpayers who don't bother anyone
 - You have one sitting right at your dias
 - We have an amazing population of business owners in our Town
- The few bad apples

Business Operations in Residence Districts Continued...

- The Home Occupations that are the cause of complaints
 - Generally successful businesses
- Contractors
 - This is where the rubber meets the road regarding complaints against businesses in residential districts
- The second biggest industry on Cape is the service industry
 - Contractors are one of the largest segments of the service industry
- Barnstable has effectively outlawed being a contractor
 - Past legislators have unintentionally pushed contractors into the residential districts through zoning
 - There is no where in our zoning districts where one can have a contractors yard except IND
 - There is no land available in the IND for purchase or lease that is suitable for a small contractor
 - Inspectional Services has literally had to drive some of our businesses/tax payers out of the Town of Barnstable because of the ordinance

Summary and Conclusion

- *Do our ordinances need to be changed so that enforcement is easy for the town to impose, and easy for the residents/home and business owners to understand and comply?*
- Yes and No
 - Unregistered Vehicles – Not that I am aware of but PD should be consulted
 - Recognize that there will always be problems due to the sheer number of vehicles and the nature of automobiles - but understand that it is not a zoning problem
 - Educate the public on proper authorities and contact information
 - Unregistered Boats – Not that I am aware of but MEA should be consulted
 - Recognize that there will always be problems due to the sheer number of Boats on Cape Cod - but understand that it is not a zoning problem
 - Educate the public on proper authorities and contact information
 - Defer to MEA
 - Business licenses – This exists by State Statute and is not an issue that I can tell but the Clerk should be consulted
 - Recognize that this issue is not related to code compliance or zoning
 - Defer to Town Clerk
 - Home Occupations
 - There will be some regulatory changes proposed to the Town Council but are funding related

Permitting and Enforcement Software

- I came to Barnstable in August of 2017
 - Permitting program ViewPermit
 - Was all but abandoned
 - There was no enforcement component to the software
 - There was no organized enforcement program in Town
 - The result was:
 - Enforcement was haphazard
 - Case tracking and data collection was non-existent
- ViewPermit was acquired by OpenGov 2018
 - I began complaining to the vendor through I.T. that the enforcement module was ineffective
 - To their credit they listened and together we created an enforcement module
 - Barnstable's building division staff helped design, alpha and beta tested the program
 - Now the vendor sells it all over the country
- The vendor has recently asked if they could showcase Barnstable as a best-in-class example at OpenGov's user conference called Transform next month in Texas.

Permitting and Enforcement Software

- OpenGov software
 - Out of the box solution – it is not proprietary
 - Does not have reporting ability that will include:
 - Date Closed
 - Resolution
 - Category
 - Not something I.T. can create and the vendor is not interested
 - But that doesn't mean the information is not in our system
- Software Reporting
 - The intent
 - The software was intended to be used by staff as the end users
 - It was not intended to be used by outside users to collect data and critique staff
 - We categorize the information the way we want to, not the way Mr. Schwaab wants us to

Permitting and Enforcement Software

- Complaint priority - Categorization
 - All complaints are categorized by priority in the manner that we need it to be
 - Priority 1 – Confirmed or likely life safety, health or environment hazard
 - Priority 2 – Potential or capable to escalate to Life safety, health or environmental hazard
 - Priority 3 - Unless otherwise required by law: Non-Safety, health or environmental related Complaint
- Date of closure and resolution
 - The software is a tracking and communication tool designed for officials
 - To find the date of closure and the reason for closure you have to be a software user
 - Go into the system and read the case file
 - Not all information is public and open to scrutiny – client/attorney privilege, ongoing investigations, sensitive information like SSN's
 - There is a process for obtaining all publicly available information and we inform all complainants to contact our Code Compliance Manager anytime they like after 21 days

Thank You

Chair of Committee had a question regarding Assessors vs Building Commissioner. Why is it that an Assessor can access the property to assess value, but you can not without permission from the homeowner first. Mr. Florence answered in short, they operate under a different law than the Building Commissioners, Building Commissioners are enforcement officers, just like regular police officers, we need proof and probable cause to enter a property, without that we are violating someone's civil rights.

Councilor Terkelsen asked if each department in the Town operates together or in silos, what she means by that is if an Assessor goes out to a property and is evaluating the property, when the house was built it was only a three bedroom, but today the assessor is basing it on a five bedroom, two added on without a permit or with a permit, do they know that necessarily. Mr. Florence said no, they do not they are basing the value on what they see, so if some added on bedroom illegally, or built a deck without a permit, or added a shed without a permit, Assessing won't necessarily know that, Mr. Florence did say that there are instances where an Assessor has entered a home with permission from the homeowner, and found bedrooms in the basement without egress windows or second entry point, and it was reported back to us at the Building Department, and we addressed that issue, but its not typical they report back to us unless it's a flagrant violation. Councilor Terkelsen asked again so if a worker at the Department of Public Woks is doing work on a residential road, and they notice a homeowner doing work on their home without a building permit posted anywhere, do they report back to you that they saw this? Mr. Florence said no, because that worker does not know whether a permit was pulled, there isn't enough

staff to monitor this at any level, and not sure how you would. Councilor Terkelsen went on to explain that is why silos don't work for communication. It happened to her home, when the assessor went out to assess her house, it was assessed as a two story home, when in fact it was not a two story home, the design looks like it was, but she had not looked at the building card the building department had on file that said it was a two story, but in fact it's a one story, so if the assessor talked to building or building to assessor, it would not have happened. Councilor Terkelsen suggested that the Assessors should have a tool that allows them to see what was permitted and what was not permitted. Mr. Florence doesn't know how that could be monitored moving forward, he does not know how that happened to Councilor Terkelsen, but he can say according to Massachusetts General laws when he issues a building permit, it by law must go to the Assessors office, what the Assessors do with that copy after he sends it, he does not know.

Councilor Crow asked about the Barnstable Resource Line, and if it is still open, Mr. Florence answered he is not aware of it, Councilor Crow said it was designed for anyone to call at anytime to report an issue, it was first answered by Robin Anderson the Zoning Enforcement Agent for the Town, now he believes it is answered by the Town's Communication Director, Lynne Poyant, is that still operative, and if not it should be, it was designed just for that purpose, to report an issue that a resident saw, or had a question about, and depending on the problem, the individual that answered would get the complainant in touch with the correct person that could deal with the problem reported.

Assistant Town Attorney Connolly wanted to remind the Committee of its Charge and this discussion you are all having regarding enforcement, as Mr. Florence stated in the beginning of his presentation by saying enforcement was not part of this committees charge, and now we are asking questions about building codes, and that is not in this Committees Charge, so she asks that the Committee focus on what the charge of this committee is, Mr. Florence is here to answer questions only because the word enforcement kept coming up in prior meetings, and Mr. Florence wanted to give clarity on the subject.

Chair of Committee mentioned he did have a conversation with President Penn of the Town Council, and she felt that a little discussion on the enforcement was okay for this Committee to have, but if we need to discuss further about maybe adding it onto the charge, he can make that request if necessary. Councilor Crow had thought that Zoning and Zoning Enforcement was under the same umbrella, if you have zoning you have to have enforcement of that zoning

Mr. Florence mentioned the Citizens Resource Line, he knows that it is answered promptly, and he does receive the complaints that only pertain to his purview, he also can say he answers them promptly. Mr. Florence has invited the committee members to his office to look at the training module he has in place for Code Compliance and how the responses come in and how quickly they are answered, he would love for the committee members to see this in action and encourages them to all come and view it.

Chair of Committee thanked Mr. Florence for his overview, public comment was re-opened as promised by the Chair once Mr. Florence had completed his presentation.

Mr. Schwaab wanted to thank Mr. Florence for his presentation, but it took 5 times of complaining about it to receive a slide that might happen this year. Mr. Schwaab said he is willing to work with Mr. Florence, but to put some dates on it. Mr. Schwaab has a couple of neighbors that he has been battling the issue with for 4-5 years, he received a letter from the town saying he was to late to complain, that he couldn't complain anymore. If there are rules that we need to follow, they should be online for all to see, publish them so residents are aware of the process and procedures so they understand what resident can do to protect their property from degradation. He would like to see better reporting from the town.

Councilor Crow discussed when these businesses come into the residential neighborhoods just like the short-term rentals, it brings not only your value down on your home, but it also brings the value down on your neighbors' homes as well. The town needs to look at areas in the town where these commercial vehicles in residential neighborhoods can be stored, there needs to be a place to park maybe not in Barnstable per say, but in other Towns possibly, we need to look at options to relieve the residential neighborhoods of this problem. Parking is a real problem and needs to be enforced.

Mr. Florence mentioned that there have 600 complaints that have come in just this year, and 61% are completed, and the others are being worked on, he has tried to explain this to the committee, when a complaint comes in it is dealt with, we take this very seriously.

Councilor Terkelsen asked if there was a step-by-step process that he uses every time when a complaint comes in from a resident and what happens after that complaint. Mr. Florence mentioned his department is working on a code compliance manual, and it will be published online once completed. It will be a thorough report on the Towns web site for anyone to view. Councilor Terkelsen asked that when this manual is published make it as simple as possible for the residents to understand in a way that even the simplest mind can comprehend. Mr. Florence will also put together a brochure with quick highlights and bullets to understand the process and how to follow up on the complaint.

Chair of the Committee mentioned what he sees as needed:

- Education for the public
- Establishing a primer on the website or a brochure for understanding for our residents
- The compliance piece be broken out separately, formalizing it so Mr. Florence isn't receiving all the calls especially if it is not his department.

Chair of Committee mentioned he would be interested in looking at the Code Compliance program, as well as Seth Etienne; the Administrator will set up some times for the committee members after hearing from the town's legal department regarding the ability to do so with members of the public in attendance as well.

Ms. Ledec thanked Brian for his presentation, and understands the enormous pressure he is under all the time, but wants this committee to keep in mind something Councilor Mendes mentioned at the last meeting is we don't want to squash the entrepreneur businesses, we are talking enforcement actions, we have a really powerful entrepreneur business in our community, and there are a few bad apples, but the entrepreneur business is the backbone of our community, so in our recommendations we need to remember them, we also need to use technologies to our advantage, it sometime can reveal a lot of data and the community can feel what it is that our Town does for us. Mr. Alsman wanted to thank Mr. Florence for his presentation, as well as Councilor Crow.

Councilor Terkelsen mentioned that when we use technologies for reporting to please keep in mind that the information we release must be ok to release, there is certain info that should and can't be released and we are not putting information out there that is private.

Mr. Florence wanted to take a minute and thank his staff who work tirelessly everyday to make sure things are completed, His staff is very dedicated, and he truly appreciates their efforts every day.

Chair of Committee asked the members of the Committee to choose a date for the next meeting that is good for everyone.

The Committee chose October 4, 2024, at 3:30 in the James H. Crocker Hearing Room

Chair of Committee asked for a motion to accept the meeting minutes of September 06, 2024, as written, the motion was made by Ken Alsman, and seconded by Councilor Kristin Terkelsen, all members voted in favor of accepting the meeting minutes as written.

Chair of Committee asked for a motion to adjourn, this motion was made by Councilor Terkelsen, and seconded by Councilor Bloom, all members voted in favor of adjournment

ADJOURN: 6:03pm