

**MINUTES  
TOWN OF BARNSTABLE  
PLANNING BOARD  
OCTOBER 25, 2010**

A regularly scheduled and duly posted meeting of the Barnstable Planning Board was held on October 25, 2010 at 7:00 p.m. at the New Town Hall, second floor Hearing Room, 367 Main Street, Hyannis, MA.

The meeting was called to order at 7:00 p.m. by Chairman, Raymond Lang, with the following Members/Staff present:

**PLANNING BOARD MEMBERS**

Raymond Lang, Chairman  
Matthew Teague, Vice Chairman  
Paul Curley, Clerk  
Felicia Penn  
David Munsell  
Patrick Princi

**STAFF**

JoAnne Buntich, Director of Growth Management  
Elizabeth Jenkins, Principal Planner  
Ellen Swiniarski, Regulatory Review Coordinator

**APPROVAL NOT REQUIRED PLAN**

*The following was read into the record by Clerk, Paul Curley:*

**LEWIS**

"Plan of Land in Barnstable (Cummaquid), MA, 9 Wild Rose Lane", prepared for Priscilla B. Lewis, dated October 6, 2010, scale 1"=40 ft; prepared by Eagle Surveying, Inc., Yarmouthport, MA, Map 336, Parcels 085, 086 and 087. Zoning: RF-1. Received October 15, 2010 + 21 days = November 4, 2010.

Frank Whiting of Land Surveyor/Civil Engineer, of Eagle Surveying, Inc., Yarmouthport, MA addressed the Board. He stated that the ANR plan was created for Mrs. Lewis to straighten out property lines and to consolidate 3 lots into 2 lots.

**Motion was duly made by Felicia Penn and seconded by Paul Curley to approve the plan as an approval not required plan. So voted unanimously.**

**SECURITY AND LOT RELEASE REQUESTS**

**Subdivision #781 - Lawton Hills**

A request for release of security for Subdivision #781 Lawton Hills was received. A memo from Steven Seymour, Project Engineer, regarding same was read into the record. Mr. Seymour had reported that the subdivision has been complete for five years without any latent problems and advised that all security being held for the subdivision could be released.

**Motion was duly made by Matthew Teague and seconded by Paul Curley to release all security on file for Subdivision #781 - Lawton Hills. So voted unanimously.**

## **SUBDIVISIONS**

### **Subdivision #753 - Paving Modifications for Gonsalves Road**

Two staff reports from Steven Seymour, Project Engineer, regarding same were read into the record. Mr. Seymour reported that he did not have objections to the proposed paving modifications, including profiles, subject to the following conditions:

- Gonsalves Way will be maintained by the owner of the abutting property until such time as the road is extended through to Kidd's Hill Road.
- The wastewater pump station will be maintained by the owners of Lot 2 until such time as the access to the pump station paved and the pump station is accepted by the Town.
- The Town's drainage easement on Lot A is modified to reflect the changes in the drainage system proposed by the site and road plans and that the easement stipulates that owner of Lot A will maintain the easement.

Attorney Liza Cox from Nutter, McClennan & Fish; Mr. Ed Brown, Executive Director of Facilities and Support Services for Cape Cod Healthcare; and Mr. Matthew Eddy, Civil Engineer of Baxter, Nye Engineering were all present on behalf of Cape Cod Healthcare and Cape Cod Hospital. Attorney referred to her memorandum to the Board dated October 21, 2010 which describes the proposed modification that the hospital is requesting. Seeking to amend the Modification of Development Agreement and Covenant that were approved November 9, 2009 which allowed the partial construction of Gonsalves Road, a subdivision road that the Board had approved in 1998.

In November 9, 2009 when the Modification of Development Agreement and Covenant were approved, the hospital was planning to build a 30,000 s.f. structure and the Board agreed to partial construction of Gonsalves Road curving into the property. Seeking to reduce the linear length of pavement that was approved in 2009. As a result of the cost of construction, the hospital has reduced the size of the Wilkins Center to 23,500 s.f. The linear length of the road approved in 2009 was 370 ft. With the new building that the hospital is proposing to construct and because the orientation is slightly different, the curb cut is 76 ft. further to the south than it was in 2009. The road construction as approved extends beyond the curb cut leading into the property. Seeking to amend the prior modification to reduce the pavement length by 76 ½ feet and have the pavement end at the curb cut, thus eliminating the potentially awkward situation of passing the curb cut only to run into a dead end. There are no changes to the road layout or profile from what was approved in 2009.

Felicia Penn inquired regarding emergency vehicle access and Ms. Cox stated there is a gated secondary means of access and egress for emergency vehicles only through BJ's.

Raymond Lang stated that the center is a great thing for the Town. Ms. Cox stated that the building use is for physician office space and Women's Health Center. Mr. Lang asked if the drainage has changed, and Ms. Cox confirmed that there is a slight change in the drainage plan to make it less steep. Matt Eddy stated that the runoff is less than what was previously approved and the reduced drainage has been approved by site plan review.

David Munsell stated that original plan showed extensive landscaping and asked if there is a new landscape plan. Liza Cox stated that the new landscape plan also shows extensive landscaping and was reviewed by CCC and site plan review committee as well as Growth Management.

Mr. Ed Brown, Executive Director of Facilities and Support Services for Cape Cod Healthcare, thanked the Planning Board for their support.

**Motion was duly made by Matthew Teague and seconded by Patrick Princi to accept the amended plan dated October 21, 2010 for Subdivision #753 as presented. So voted unanimously.**

**Subdivision #305, Rue Michelle** - Planning Board entered into Modification of Development Agreement to provide a time extension of one-year to November 1, 2011 for completion of the subdivision.

**7:00 p.m. Continued Public Hearing -Special Permit 2010-09-La Petite France Café**

*Continued from 9/13 & 9/27*

Continued public hearing for a special permit for a Hardship Location Sign. A-frame menu sign is to be located at 349 Main Street, Hyannis, shown on Assessor's Map 327 as Parcel 114 in the Hyannis Village Business District.

Heidi Parent, co-owner of La Petite France Café, addressed the Board. Ms. Parent stated that she has an A-frame menu sign that she places on the sidewalk for a few hours a day, mostly during summer and on weekends.

Felicia Penn stated she understands that the applicant would want a menu sign, however, why would they not put up a menu on the outside of the building which is allowed without a special permit. Ms. Parent stated that she has a very small façade on the restaurant and if approaching towards Ocean Street, the regular sign is not visible because of a very large tree. There is also a trade figure in front of the restaurant. Staff had suggested that there should not be an LED OPEN sign and OPEN flag both, only one and Ms. Parent advised that the flag is an American flag not an open flag. The LED is being converted to a neon sign as requested. Felicia also noted that pictures provided by the applicant depict the menu posted in the window and questioned the necessity for the A-frame menu. Ms. Parent answered that when people are sitting in the dining chairs, the window menu is behind the seated customers and not accessible.

David Munsell stated that he felt that most people would like an A-frame menu sign for their restaurant as it does stand out, however this situation may not fit the guidelines that they were given. Ms. Parent responded that the proposed A-frame was approved by Main Street Historic and it uses composite materials and is tastefully and professionally done. She feels that the items that are on the menu board when used are what brings people inside to inquire.

Patrick Princi stated that approaching from the east end of Main Street there is a tree that blocks the regular sign and this is the more populated approach. There is also a telephone pole that could be blocking the front visibility from the street. There is a bit of a hardship.

Paul Curley stated that he is concerned that every other business on Main Street could make a case for an A-frame sign. He stated that he did not feel that there was much of a hardship for blockage of regular signage and would not support the granting of the special permit.

Matthew Teague stated that based on the location, he did not think the application qualified for a hardship location sign.

Felicia Penn asked Chairman Lang to review, for the applicant's benefit, the fact that if the application were to be denied, the identical relief cannot be applied for within two years. If applicant withdraws voluntarily, they could reapply any time. Special permit applications require 5 positive votes to be granted.

Public comment was invited, however no one from the public spoke regarding the application.

**Motion was duly made by Felicia Penn and seconded by David Munsell to close the public hearing. So voted unanimously.**

Based upon the Board members' opinions previously expressed, the applicant requested that the special permit application be withdrawn without prejudice.

**Motion was duly made by Paul Curley and seconded by David Munsell to allow Special Permit 2010-09 to be withdrawn without prejudice as requested by the applicant. So voted unanimously.**

**7:15 p.m. Public Hearing - Special Permit 2010-10 - Cape Cod Tours, Inc.**

*The following legal advertisement was read into the record by Paul Curley, Clerk:*

Cape Cod Tours, Inc., a/k/a Cape Cod Duckmobiles, has applied for a special permit pursuant to Section 240-71(E)(4) Signs - Hyannis Village Business District, Hardship Location Sign. A-frame sign is to be located on the sidewalk at 437 Main Street, Hyannis, shown on Assessor's Map 308 as Parcel 080 in the Hyannis Village Business District.

**Motion was duly made by Felicia Penn and seconded by Paul Curley to open the public hearing. So voted unanimously.**

Mr. Jon Britton, representative of Cape Cod Tours Inc., addressed the board and explained the reasons he applied for a hardship location sign. He stated that the office where the tickets are sold for the Cape Cod Duckmobile tours is setback 95 feet from Main Street where the Duckmobile itself is parked. An A-frame sign would be used to direct customers to that ticket office as this is the only place where tickets can be purchased for the tours. The A-frame sign would also inform customers of the daily schedule. In addition to the 95 ft. setback, the visibility of the entrance to the ticket office is further obstructed by the adjacent restaurant's outdoor seating area with opened umbrellas. Mr. Britton stated the regular signage would remain in place.

During discussion with the Board, the applicant stated that the operational season was from school vacation in April through October; the A-frame sign would be placed on the sidewalk only during ticket office hours. Mr. Britton clarified that the sign location was to be free standing next to the telephone pole and out of the way of pedestrians. Matthew Teague suggested that the existing signage should be enhanced, however most Board members expressed that a hardship existed.

Public comment was invited and no one came forward to speak for or against the application.

**Motion was duly made by Patrick Princi and seconded by Matthew Teague to close the public hearing. So voted unanimously.**

The following findings were read into the record:

1. Cape Cod Tours, located at 437 Main Street and shown on Assessor's Map 308 as Parcel 080, has applied for a Special Permit pursuant to Section 240-71(E)(4) *Signs, Hyannis Village Business District* to allow an A-frame sign to be located on the public sidewalk in front of their business.
2. Section 240-71(E)(4) *Location Hardship Signs* authorizes the Board to grant a Special Permit for display of additional signage where a business is located in a hardship location or a substantial obstruction is present.
3. That after evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected,
4. Formal site plan approval is not required for Location Hardship Signs. The Building Commissioner has approved a sketch plan displaying the proposed sign location.
5. [A permitted sign is not visible due to substantial obstruction\(s\) outside the control or ownership of the business owner including, but not limited to, other signs, awnings, trees in leaf, outdoor dining or other business appurtenances or where building facades are excessively setback.](#)
6. The applicant has obtained a Certificate of Appropriateness from the Hyannis Main Street Waterfront Historic District Commission for the proposed sign.
7. The applicant has received a license from the Town Manager for the sign and proof of insurance has been provided.
8. This Special Permit is subject to renewal so that the Planning Board has an opportunity to evaluate impacts to the neighborhood, abutting and adjacent business owners, and safe passage for pedestrians.

Based upon the above findings, the following motion and subsequent vote was made:

**Motion was duly made by Patrick Princi and seconded by David Munsell to grant Special Permit 2010-10 subject to the following conditions:**

1. This permit is issued to allow Cape Cod Tours to display one Location Hardship Sign on the public sidewalk in front of 437 Main Street, Hyannis, MA. The sign shall be consistent in appearance with the sign proposed in the Special Permit application dated October 7, 2010, and as otherwise recommended by the Hyannis Main Street Waterfront Historic District Commission.
2. The Location Hardship Sign shall be located as shown on the sketch plan approved by the Building Commissioner, signed and dated September 24, 2010.
3. The Location Hardship Sign shall be in conformance with the performance standards outlined in Section 240-74.E.4.b.
4. This Special Permit shall lapse on January 31, 2012, unless prior to January 31, 2012, the applicant applies for and is granted a renewal. Failure of the Planning Board to take action within sixty days of a timely request for renewal shall result in a

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renewal of said special permit for an additional two years until January 31, 2014. Any permit so extended may be renewed by the Planning Board upon application received prior to the lapse of the special permit.

5. This special permit must be recorded at the Barnstable County Registry of Deeds. A copy of the recorded decision shall be submitted to the Building Division and the Planning Board prior to submission of a sign permit application.
6. A sign permit from the Building Division is required prior to displaying the sign.
7. Prior to issuance of a building permit for the sign, the applicant shall submit a new certificate of liability insurance with the Town of Barnstable named as additional insured.

**The vote was as follows:**

Aye: Raymond Lang, David Munsell, Felicia Penn, Paul Curley & Patrick Princi  
Opposed: Matthew Teague

**Special Permit 2010-10 was granted with conditions.**

**Informal Discussion**

An Informal discussion with Attorney Ford and Mr. Wayne Kurker, property owner, regarding a Regulatory Agreement for 90 High School Road and 67 Winter Street, Hyannis (former Puritan Pontiac site) has been requested.

Attorney Ford and Mr. Kurker addressed the Board and reviewed the following:

- Wanted to include the Planning Board from the beginning of process
- Seeking approval for variety of uses for a portion of the existing premises
- Zoning is restrictive for prospective tenants
- Building is designed for a use that is presently not allowed
- Mr. Kurker provides year round employment to 59 persons because of indoor boat storage and indoor winter work.
- Property is in AP Overlay and structure has high ceilings and site has room to maneuver.
- Seeking flexibility through the regulatory agreement for variety of uses.
- As tenants come forward parking, infrastructure, etc. could be reviewed in light of that use.
- One nonconforming use cannot be changed to another nonconforming use in the Hyannis Downtown Zoning Districts. A regulatory agreement is the only option for desired uses.
- Contacts with abutters has been receptive so far including the Hyannis Fire Department.
- The trip route from the harbor is very short and easy and would be used during off season.
- The front tenant would be most visible for the use.
- There is no other place in Town where a boat can be stored and worked on outside of the Harbor District. It is difficult to avoid the WP and GP Overlays.

Board members:

- Interested in hearing what type of businesses would be proposed.

- Year round employment of 59 persons at a living wage and perhaps increasing that number of persons would be a favorable outcome.
- Bringing working persons closer to Main Street, Hyannis is also favorable for the downtown area.
- An example of questions are: route coming from the harbor to the site, conflicting access with the fire department, etc.
- One member expressed concern for a downtown location for marine use.
- May want to include Town Council earlier in the process to get their impression.
- Upgrades to property would need to be proposed.
- One more informal discussion will be held on November 8, 2010.
- A rough draft or outline of a regulatory agreement for this property to be provided by Atty. Ford.

#### **OTHER BUSINESS**

JoAnne Buntich, Director of Growth Management

Update on Sign Code:

- Barnstable Village Business and Osterville Business Associations are meeting and will provide results.

Comprehensive Plan Update:

- Annual Action Plan scheduled to be updated. Copies of progress report provided. Priorities will need to be looked at for next year.
- Mr. Lang appointed Paul Curley to be the Chairman of Committee for Annual Action Plan update and to work with staff on same.

**Motion was duly made by Felicia Penn and seconded by Patrick Princi to accept the draft minutes of April 12, 2010 Planning Board meeting. So voted unanimously.**

Correspondence received was reviewed:

Hyannis Country Garden, Special Permit 2007-016, annual report dated September 24, 2010, detailing output of the wind energy conversion facility will be forwarded to all board members.

Planning Board Schedule for 2011 was found to be satisfactory as presented.

**Motion was duly made and seconded to adjourn. So voted unanimously. Adjourned.**

Respectfully submitted,

Ellen Swiniarski  
Regulatory Review Coordinator, GMD