



BARNSTABLE
TOWN CLERK

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**Town of Barnstable
Planning Board
Minutes
November 26, 2012**

Matthew Teague – Chairman	Present
Paul Curley – Vice Chairman	Present
Patrick Princi - Clerk	Present
Felicia Penn	Present
Raymond Lang	Present
David Munsell	Present
Stephen Helman	Present

Also in attendance were Elizabeth Jenkins, Principal Planner and JoAnne Buntich, Director Growth Management.

Approval Not Required Plans:

Stephen A. & Alicia Nye Crowell Furrer and James L. Pontifex Jr. - Plan entitled "Approval Not Required Plan of Land in Barnstable (Cotuit), MA located at: 694 & 666 Santuit Road, Prepared for Stephen A. & Alicia Nye Crowell Furrer" dated March 9, 2012, revised October 25, 2012, as drawn by MacDougall Surveying & Associates, has been submitted for endorsement as an Approval Not Required Plan. The plan submitted proposes a reconfiguration of the lot lines between two existing lots addressed 666 and 694 Santuit Road, Cotuit. (Precinct 7)

Greg MacDougall from MacDougall Surveying in attendance in representation of the Applicant, the Furrer's. He explains the ANR to the board and that the driveway of the Furrer's, of 694 Cotuit Rd., crosses over the lot line. They would like to trade equal amounts of land and the area basically does not change.

Ray Lang asks why was the driveway and sprinkler system installed on another person's property? When did the owners find out where the lot lines were?

Greg MacDougall responds when the mortgage inspection was done by the Pontifex's and there was a garage put up then they became aware.

Paul Curley moved to endorse the ANR plan, seconded by David Munsell, so voted unanimously.

Felicia Penn asks if there should be a notation made that this ANR and the ZBA decision be filed concurrently?

Matt Teague responds that he doesn't think this can be done.

Elizabeth Jenkins interjects that the ZBA decision is referenced on the plan itself.

Lot Releases:

Subdivision No. 395

Release of Lot Under Covenant – 64 Plant Road L. Paul Lorusso and Lila Lee Lorusso

A letter dated October 11, 2012, from Paul J. Attea, Esq. requesting a partial release of Lot 9 from the covenant executed by L. Paul Lorusso and Lila Lee Lorusso, recorded October 13, 1977, in Book 2606, Page 220. (Precinct 1)

Felicia Penn asks why is this listed as a partial release on the request letter dated October 11, 2012, from the Applicant's attorney? Is this because other lots in question have already been released?

Elizabeth Jenkins responds yes, that is correct. Because lot 9 is only a portion of lot 6 with the original covenant. Staff did recommend releasing all of lot 6 as opposed to just lot 9, beyond the request of the attorney.

Matt Teague mentions that there is a report in the file from Steve Seymour, stating that he has no issue with the release of this lot.

Ray Lang moved to approve the release of lot 6, (which has been sub-divided into lots 8 and 9), seconded by Paul Curley, so voted unanimously.

Public Hearings:

7:15 pm Public Hearing- Continued

Special Permit Application No. 2012-03 Cotuit Solar/Peck Wind Energy Conversion Facilities

The petitioners, Cotuit Solar LLC, and John T. Peck, are seeking a special permit pursuant to Section 240-44.1 Land Based Wind Energy Conversion Facilities. The petitioners seek to reuse the existing 100-foot mono-pole and reinstall a new wind turbine upon it to generate electrical power for use on the property. The subject property is addressed 3800 Falmouth Road (Route 28), Marstons Mills, MA and commonly known as "Peck's Boatyard". The property is shown on Assessor's Map 058 as parcel 001 and is zoned SD-1 Service and Distribution Zoning District. (Precinct 7, 12 & 5)

- *Opened April 23, 2012, continued, May 14, July 23, August 13, September 10, 2012, and to October 22, 2012, and to November 26, 2012 – continued for further review. Staff Report, Application and relevant materials previously distributed.*
- *November 16, 2012, request to continue Public Hearing to January 28, 2013, received from Attorney Caroline Schmittiel for Cotuit Solar*

Moved by Felicia Penn, seconded by David Munsell, so voted unanimously to continue the Public Hearing to January 28, 2013, at 7:00 p.m.

7:15 pm Public Hearing

Third Modification to Regulatory Agreement 2007-02, 89 Lewis Bay LLC - Property at 89 Lewis Bay Road and 42 South St., Hyannis

89 Lewis Bay, LLC has filed an application to modify and amend the existing Regulatory Agreement No. 2007-02, as modified. The applicant seeks to modify and amend the existing Regulatory Agreement authorizing the

rehabilitation and expansion of a structure at 89 Lewis Bay Road with related parking at 42 South Street, Hyannis. The existing Regulatory Agreement granted relief from density, parking, setbacks, building height and lot coverage requirements to allow 42 residential units in $\pm 60,000$ sq.ft and $\pm 20,000$ sq.ft of ground floor space for medical offices and all other uses permitted in the Medical Services District. A modification of the Regulatory Agreement was granted to allow educational uses, including culinary arts, in 8,000 sq.ft of ground floor space. The Applicant presently seeks to modify the Agreement to construct an accessory one-story 12-bay detached garage of $\pm 2,960$ sq.ft. The accessory garage is proposed to be located at the rear west end of the parking lot on 42 South Street. The subject properties are addressed 89 Lewis Bay Road and 42 South Street, Hyannis, MA as shown on Assessor's Map 327 as Parcels 223 and 241. The property is zoned Hyannis Village Medical Services District and Harbor District. (Precinct 9)

- *Staff Report, Application, Plan and Plan materials, copy of original Regulatory Agreement, letter of review from Site Plan Review Committee, enclosed.*

Matt Teague entertains a motion to open the public hearing, moved by Paul Curley, seconded by Felicia Penn, so voted unanimously.

Attorney David Lawler in attendance for applicant. He explains the history of the space and the proposed garages. The culinary school (previously proposed for this space) did not go through. He will be giving the town an audit report, he believes all the payments have been made. He thinks the mitigation portion will be up to date before this regulatory agreement is hopefully approved. He is coordinating with the condominium association/owners. He has spoken to a few of the abutters who have had no complaints. The proposal is based on requests from some of the owners.

The As Built was approved for 154, but it is actually 149 which drops it down by a couple of parking spaces, which is still sufficient.

David Munsell asks about the fire proofing and the suggestion of the block wall re Tom Perry's building report, would fire coding be approved on the inside of back wall rather than the block wall?

Attorney Lawler answers that the contractor had met with Tom Perry and the basis of their meeting is that it would not require fire block. They will be using another material, fire board and some other materials that fall within the code. Also this is cost prohibitive, and is more reasoning with construction.

Felicia Penn asks about the Staff Report, under the section entitled Background on the first page and it states that the site improvements there are "substantially complete". What does that mean?

Attorney Lawler redirects to JoAnne Buntich.

JoAnne Buntich responds that her and Attorney Lawler have spent some time reviewing the associated amendments re this Regulatory Agreement(s) and are trying to include all of the outstanding issues going forward to make clear what the permissions and the requirements are.

Felicia Penn responds that she does not think this deals with how many spaces, it looks like it is referring to the site improvement. Is there landscaping, lights or anything like this to be done?

Elizabeth Jenkins replies that this was not meant to raise a red flag, there were a few minor changes proposed with the culinary use plan, issues with the dumpster, but no major outstanding site issues.

Felicia Penn asks for clarification about what happened with the modification done for the for profit educational culinary school use. That was never executed, does this go away?

Attorney Lawler states that it was executed, it was never recorded. It would have expired by now. The business terms never happened.

JoAnne Buntich interjects that the regulatory agreements that are in effect right now are the original and the one that dealt with the mitigation, these are the only two. The culinary one is gone.

Felicia Penn refers to Waivers Requested on the bottom of the second page of the Staff Report, bullet number two, that mentions maximum of 164 parking spaces, this shouldn't be valid.

Attorney Lawler replies that he would rather be over inclusive than under inclusive of information. Housekeeping and update/cleanup of the file needs to be done with respect to this agreement and he is willing to work with staff to make sure it is completed.

Felicia Penn refers to several other points in the Staff Report under Waivers Requested, encroaching into existing landscape buffer, reducing total impervious surface, no exact square footage of existing condition, no reduction provided and the parking buffer. It is stated here that the code requires a minimum of 6 foot landscape buffer and 20 feet when parking abuts residential, that won't be happening here with a proposed buffer of 3 ½ feet. Is there any mitigation of landscape elsewhere on the property?

Attorney Lawler responds that even though reduced there has still been substantial mitigation paid for this project.

Felicia Penn asks why are only 12 garages requested, there are 42 units here? She thinks piece mailing modifications for a regulatory agreement is horrible. The whole project should be presented at one time.

Attorney Lawler answers because his client only requested 12. There are many variables to be considered, the economy etc. due to the timing of when filings/requests are made for a regulatory agreement. It is a productive property and is an improvement as to what was there before.

Felicia Penn replies that there are now less parking spaces here and that there's a possibility of having to file a waiver because of this.

Attorney Lawler states he cannot answer that. He doesn't know what the future will bring. He refers to previous agreements with this property and that everything was done that was told to the board.

Felicia Penn states that the corner was never landscaped.

Felicia Penn directs/asks staff if there is a limit as to how many modifications can be made to a regulatory agreement?

JoAnne Buntich answers that a regulatory agreement is a contract and like any contract it can be renegotiated provided that the parties are willing.

Ray Lang asks about dedicating space for the 12 garages.

Attorney Lawler answers that these still constitute a parking space. The regulatory agreement sets aside 53 spaces, so it doesn't effect that particular portion. These go towards the 53 parking spots

Ray Lang asks if they will be available for rent for others?

Attorney Lawler responds not to his knowledge, only to people who own units on the property.

Ray Lang asks about the mitigation.

Attorney Lawler answers he thinks all payments have been made, but there may be some outstanding, due to finalizing of paperwork. They are not delinquent.

Ray Lang asks if payment can be confirmed with the town treasurer/financial dept.?

Attorney Lawler responds, he assumes yes. He will be doing an audit to confirm.

Ray Lang asks who are the members of the condominium association? Do they have a one vote for empty apartments? Is the association in the hands of the builder/owner? Who are the neighbors to the property?

Attorney Lawler answers that his client has the controlling hand? The association is in the hands of the builder/owner. The neighbor(s) to the property are Jane Walsh of Red Fish Blue Fish and the Champ House.

Ray Lang asks about the culinary school and would this be of concern if removed? He refers to Tom Perry's building report regarding approval needed in order to remove the dumpster from the existing space and why is this listed as an issue, is it as a result of the garage? How many feet would be between the lot line and the garage, is it 3 ½ ft.? The building inspector is recommending 5 ft. Did the neighbors get notification?

Attorney Lawler responds he would not be concerned if the culinary school were to be removed, as stated previously it is no longer valid. The dumpster would be removed due to the building of the garage, which will be noted in the final agreement. The space was based upon a fire code regulation that has been cleared up and they have determined that they can use an alternative method that falls within the code that will allow them the 3 ½ ft. instead of the 5? They did this so as to not lose parking area. The neighbors (abutters) not only got notification he has spoken to them at length and they have been very positive.

Paul Curley asks what is the business plan? Are they deeded to individual condo's? Are they intended to be rented? This should be part of the agreement that the garages be sold with the condo units.

Attorney Lawler answers they will probably have their own separate, individual deed. They would be sold with the condo units. The intent is for it to be an accessory use. He assumes that will be something that will be ruled on by the board.

Stephen Helman asks why were 12 built, who determined that number and why? There was indication made that there may be a time when additional garages would be requested here in the future.

Attorney Lawler answers and refers to the plan, that it is what fits with respect to the property. He is not a builder/engineer and he does not know, things may change in the future.

Patrick Princi asks about taxes that may be applied. The garages will be sold to the owners of the condos as well so in turn it would be assessed to their taxes? Why did the engineer choose this particular area? Is there any additional lighting that will be put up?

Attorney Lawler answers that they would probably have their own title and restrictions within the regulatory agreement which may mandate that they be owned by the same entity that owns the condominium unit. He was not at the meeting with the engineer when the area that was chosen was discussed but he believes it was due to traffic flow, esthetics and parking. There may be additional lighting on the building themselves, but not any additional poles.

Ray Lang asks about the parking spaces in the middle of the plan, if there were more space needed in this area it would eliminate the need for a variance for those parking lot garages now. He's not comfortable with what he sees. Do the abutters know that this will eliminate the shrubbery here now?

Attorney Lawler states that the abutters have been notified and are ok with this. Accessory buildings are not placed in the middle of the lot, i.e., because of the traffic flow etc. He thinks the proposal set forth is more favorable.

Matt Teague states the size of the garage, 20 x 12, is very small. 14 x 22 is great, anything smaller than that there is no room. If this was to go forward there will be a need for a wall sconce, lighting and the gap between the fence and the proposed building needs something for light as well.

Attorney Lawler stated, he will speak with the contractor about the size. Sensor lighting, motion detector lights in this area is agreeable.

Matt Teague asks about the term of this agreement, would this be able to be done in a short/reasonable amount of time? This is not a large project. If your going to ask for 12 garages, why not ask for 16, why not do them all at one time? He thinks that there could be a couple more done and they should try to them all at once.

Attorney Lawler answers that he will speak to his client/engineers between now and the next meeting.

Ray Lang states that he thinks they need a significant amount of information in order to proceed with this. The members of the association or president/representative of the association should be here in order to confirm if these garages are going to be buy, sell or lease.

Attorney Lawler states that his client is the head of the association. He will have this information at the next meeting.

Ray Lang wants confirmation about the location of the dumpster. He is in agreement with the other board members that there should be more garages rather than less. How will this effect the public parking once these are done? What is going to be done about the landscaping here? Also, an update on the payment mitigation.

Attorney Lawler answers that he will have this information at the next meeting.

David Munsell asks how close is the housing for all to the property line? Reference is made to the Walsh owned property. There is 5 or 6 feet between building area which may create a problem for the emergency/fire personnel to gain entry. He thinks it would be a good idea to show that on the plan.

Attorney Lawler replies that this has gone through Site Plan Review. The Walsh property bldg. being referred to is a garage and he's pretty sure there is back yard space where the Champ House is located.

Felicia Penn mentions the roof/drain issue that is mentioned in the Building Commissioner's letter that has not been addressed yet.

Attorney Lawler states that this was agreed to at Site Plan.

JoAnne Buntich recaps/directs to Ray Lang's questions; we have the report from the Treasure's Office, there is \$55,000 of mitigation paid to date, there is some outstanding. The Regulatory Agreement states that payment is to be made two weeks after the closing date, which is mentioned in the Agreement and the first amendment to the Agreement as well. Further, clarification is made; Paragraph 35 of the original Regulatory Agreement states that each unit shall have at least one dedicated parking space, not one and a half.

Ray Lang interjects that he picked up on one and a half because it's 42 times one and a half.

JoAnne Buntich replies that this was due to the first Regulatory Agreement whereby medical offices were being contemplated and the parking spaces were to be designated/reserved one for each unit, not all consumed by commercial/mixed use. This plan may have been based on the plan that was sent in for the culinary school, which is no longer valid, this submission has to be based on the original site plan. It is 152 spaces that were shown on the original plan, not 154. There are 149 today. DIP compliance issues will need to be discussed, i.e., materials, lighting, etc.

Attorney Lawler replies that they will comply with the request re the DIP requirements.

JoAnne Buntich stated location has to do with what the Fire Dept. requires. Site Plan did not raise an issue with the location.

JoAnne Buntich explains that we need a detailed list of the relief requested, a draft regulatory agreement, and demonstration of compliance with mitigation. This contract and the amendment to the contract, are signed by Charles Doe/89 Lewis Bay LLC, he is the principal. The contract is not with any of the condominium owners. She is not sure that the condominium owners could be brought in now.

Attorney Lawler comments that under the condominium documents Mr. Doe is in control of the property at present. The conditions could be changed in the contract/regulatory agreement with terms relating to ownership of the garages. He does not see any objections to the association being kept informed.

JoAnne Buntich confirms that the board mentioned up to 42 garages would be given permission based on approval from Site Plan Review and DIP review by staff? Looking for increase in the garage size?

Matt Teague comments he was just making a suggestion on the size. The 14 x 22 dimension is a much better size for a garage. A suggestion would be to add as many garages at one time/request, so as to not have to keep returning to the board for additional requests.

Attorney Lawler replies this is a legitimate item.

Felicia Penn refers to No. 19 of the original Regulatory Agreement from 2007, "Developer shall provide an eight-foot high wood fence to screen the Development from neighboring residences, and shall provide landscaping to

abutting properties as shown on the Plans". They have provided landscaping right now, but this project will encroach on that. She would like to see that the property is somehow enhanced as an offset due to the amount of landscaping that will be lost due to the construction. She would like to see this added to the list of items, and would like to know what's there, what's leaving, what/where will be replaced.

JoAnne Buntich clarifies that what Ms. Penn is asking for is that she would like a detailed, square footage amount of the landscaping that is being built on and that it should be replaced somewhere else?

Attorney Lawler confirms not ripping up pavement, but what and where there will be replacement landscaping by square foot measurement, make the existing landscape more enhanced.

Matt Teague asks if there is any public comment?

Matt Teague entertains a motion to continue the Public Hearing, so moved by Ray Lang, seconded by Patrick Princi, so voted unanimously to continue the Public Hearing to January 14, 2013, at 7:00 p.m.

Correspondence: Cape Cod Commission Hearing Notice for Intent to File a Development Agreement for Barnstable Municipal Airport, November 29, 2012, for proposed Master Plan improvements.

Approval of Minutes: Approval of October 22, 2012, Board Meeting Minutes

Paul Curley moved to accept the minutes of October 22, 2012, as presented, moved and seconded to approve. Felicia Penn abstained because she was not in attendance at this meeting.

Future Meetings: Regularly Scheduled Board Meetings: December 10th 2012, and January 14th, 2013 @ 7:00 p.m.

The meeting adjourned at 8:13 p.m.

Respectfully Submitted 
by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on JANUARY 14, 2013
Further detail may be obtained by viewing the video via Channel 18 on demand at <http://www.town.barnstable.ma.us>