



**Town of Barnstable
Planning Board
Minutes
July 22, 2013**

BARNSTABLE TOWN CLERK

2013 OCT 30 PM 1:27

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 Art Traczyk, Regulatory Review Planner.

Approval Not Required Plans: – None

Repetitive Petition:

7:00 PM

**ZBA Appeal No. 2013-035 - Ruggiero - Repetitive Petitions
Referred to the Planning Board for Consents on Material Changes**

In accordance with MGL Chapter 40A, Section 16 - Repetitive Petitions - the Planning Board will hold a public meeting to consider the findings made by the Zoning Board of Appeals regarding Appeal No. 2013-035. Appeal No. 2013-035 is a reapplication of Daniel and Mindi Ruggiero to demolition and rebuild a new single-family dwelling on a lot of less than 10,000 sq.ft., at 93 Circuit Avenue, Hyannis, MA.

It is a repetitive petition as an earlier petition (Appeal No. 2012-049), was not favorably acted upon and on March 8, 2013 the Zoning Board filed its decision to not grant the petition. As two years have not expired since the Zoning Board's unfavorable decision, this reapplication must be processed as a Repetitive Petition. Chapter 40A, Section 16 requires the Zoning Board make findings that specific and material changes in the conditions upon which the previous unfavorable action was based and that all but one of the Planning Board members consents to the findings made by the Zoning Board of Appeals on specific and material changes.

The subject property is located at 93 Circuit Avenue, Hyannis, MA as shown on Assessor's Map 324 as Parcel 052. It is in the Residence B Zoning District.

Patrick Princi recuses himself due to the appearance of Attorney Robert Mills and the fact that his father, Attorney Michael Princi works for the same firm, Wynn and Wynn, as this would be a conflict of interest.

Attorney Robert Mills in attendance, representing the Applicant, Daniel and Mindi Ruggiero. He gives a history of the ZBA procedure and the reapplication done/modifications to the Special Permit. Specific and material changes have been made to the plan.

Ray Lang asks what specific changes have been made?

Attorney Mills refers/explains the plans submitted (Exhibit A). Pg. 1 of 1 in the reapplication plan submitted. The patio was originally located about 5 ft. from the coastal bank, it has now been moved and is directly adjacent to the house, 20 ft. from the coastal bank now. Also modified the patio design so that the gas grill will be directly adjacent to the house so that the gas pipe will come right out of the house into the grill rather than extend the gas line closer to the coastal bank, significant change here. The utilities were removed from the flood plane. The house was moved 3.5 ft. northerly/further from the coastal bank.

He explains the mitigation plantings (Exhibit B). The plantings were increased by approximately 15 square ft. Eliminated some of the gravel parking area.

Ray Lang asks about parking, is the existing square footage equal to, more or less than proposed new parking? Is the parking being rearranged in the front of the house. Will there be parking off the road?

Attorney Mills answers that they have had discussions with the town, whereby they wanted there to be room for two vehicles on the lot.

Brian Grady in attendance. He answers/explains that this is the remains of the existing gravel parking area, what's new and what the ZBA requested is that parking be provided on site on the property/lot. Square footage approximately of equal area.

Ray Lang asks about the concern that ZBA had regarding intensity of the use of the property?

Attorney Mills answers that the size of the proposed structure conforms with the zoning in every aspect, nothing exceeds. They are not looking for any variance relief at all.

Ray Lang directs to Staff, if there is any special permit requirement for not building on the previous basement?

Art Traczyk answers that you do not have to build on the same foot print. You can change it to become more into conformity with zoning, which this would be.

Felicia Penn asks about the no votes in the ZBA report. Was Mr. Zevitas present at the June 27, meeting and did he vote? He was one of the negative votes in the first hearing.

Elizabeth Jenkins in attendance. She answers that Mr. Zevitas is an associate member, who was at the hearing and voted in the affirmative. He was the sixth vote and only five need to be recorded. It was a unanimous vote.

Felicia Penn asks what is the percentage of upland area here?

Brian Grady answers that the percentages/calculations they are working with are based on the upland area, approximately, 6500 feet

Matt Teague confirms that the existing lot coverage of the existing building is 12.8 percent and the proposed lot coverage is 17.3. This is a determination of floor area ratio and lot coverage. It does comply. Not part of our purview tonight.

Matt Teague asks/directs to Art Traczyk what type of vote is needed?

Art Traczyk answers that it has to be a vote of 6, all but one member of the Board in the affirmative.

Felicia Penn asks if the side and back yard set backs are still non-conforming?

Attorney Mills states yes, but less non-conforming, on the northerly side line.

Matt Teague reads the Repetitive Petitions from MGL Ch. 40A, §16 (Exhibit C) into record

“No appeal, application or petition which has been unfavorably and finally acted upon by the special permit granting or permit granting authority shall be acted favorably upon within two years after the date of final unfavorable action unless said special permit granting authority or permit granting authority finds, by a unanimous vote of a board of three members or by a vote of four members of a board of five members or two-thirds vote of a board of more than five members, specific and material changes in the conditions upon which the previous unfavorable action was based,....”

Are we using the term interchangeably?

Elizabeth Jenkins confirms, yes and reads on MGL Ch. 40A, §16 (Exhibit C) “and describes such changes in the record of its proceedings, and unless all but one of the members of the planning board consents thereto...” So there are 7 members of the Planning Board, meaning there would be a need for 6 affirmative votes.

Paul Curley states from what he’s read the ZBA has done this correctly. He thinks that the Planning Board should send this back to the ZBA and let them do their job.

Felicia Penn states that she thinks the fact that the Applicant has moved away from the coastal area is great, however there may be issues with any future building and issues with parking on side of the road.

Stephen Helman asks for confirmation of what exactly the Planning Board is supposed to approve? That the Applicant made material changes and that is it?

Matt Teague interjects/states that our question is, did the Applicant make specific and material changes? That is what the Planning Board is being asked to look at. It is allowed by ZBA law.

Ray Lang moves that the Planning Board inform the ZBA that the plan as presented has demonstrated that specific and material changes have been made to the initial plan as submitted to the ZBA, seconded by Stephen Helman.

Felicia Penn asks/confirms what the procedure would be if they do not get the votes needed at tonight’s meeting, two year wait to come back before the ZBA?

Matt Teague interjects/clarifies and directs to Attorney Mills that the Applicant could come back/reapply with another change and submit a different plan with changes.

Attorney Mills answers yes, and it depends on what the Applicant wishes to do.

David Munsell makes reference to the draft staff report and the language to be used in the proposed motion (Exhibit D).

Ray Lang withdraws his first motion and makes a new motion stating that the Planning Board concurs with the ZBA that the findings made constitutes specific and material changes in the conditions upon which the earlier unfavorable action was based, with the plan as submitted for consideration, seconded by Felicia Penn, so voted unanimously.

Subdivisions:

7:00 PM New

**Proposed Definitive Subdivision No. 822
Aberle Way – 2519 Main Street Barnstable - William A. Riley**

To all persons deemed interested in the Planning Board acting under the General Laws of the Commonwealth of Massachusetts, Chapter 41, Sections 81A, through 81GG, Subdivision Control and all amendments thereto and the Town of Barnstable Chapter 801, Subdivision Regulations of the Code of the Town of Barnstable you

are hereby notified of a Public Hearing to be held to consider Subdivision No. 822. The plan for this subdivision is entitled "Definitive Plan of Land in Barnstable, MA #2519 Main Street - Riley Subdivision" prepared for William A. Riley. The plan proposes the division of a 9.24-acre lot addressed 2519 Main Street, Barnstable, MA into six developable lots and creation of Aberle Way off Main Street (a/k/a Route 6A) to serve the new lots. The subject property is shown on Assessors Map 257 as Parcel 010.

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

Dan Ojala in attendance. William Riley in attendance. Attorney John Kenney in attendance.

Dan Ojala explains the application. He makes reference to the plan submitted (Exhibit E) and the changes made from the preliminary subdivision plan submitted previously. They are seeking a sidewalk waiver. Only six homes on the road. They are also seeking to reduce the right of way, in keeping with a greener environment, from 50 ft. down to 40 ft. and the pavement width from 22 ft. to 18 ft. Driveway lights are fine with them. Water Dept. is happy with the plan.

Paul Curley asks if Old King's Highway has approved the removal of both trees? Did Board of Health give a report?

Dan Ojala states yes, OKH approved the removal of the trees. Still need approval from Mass DOT.

Art Traczyk answers that they do not have anything formal from Board of Health as of yet. No issues with them.

Paul Curley asks about the footprints on the lots? Eliminated the shared driveway? Low level lighting at entrance?

Dan Ojala answers they would be willing to put driveway lights on pole near entrance. No footprints yet, no shared driveway.

Paul Curley mentions a sidewalk on at least one side of the road? Is there a homeowners association yet?

Dan Ojala answers maybe sidewalk on one side, but would like to keep like a country lane, dead end road, pros and cons, would like to avoid it.

John Kenney, Esq. in attendance. He has a draft homeowners association document that he can submit.

David Munsell states that he is concerned with safety in this area, because of the safety on Route 6A.

There is some blocked vision. A telephone pole at corner of drive which creates a blind spot. There is a school in the area as well. Reference is made to the video presentation (David Munsell, Exhibit F, electronic file; 2013-07-22 video of Munsell Sub. 822 from meeting)

David Munsell comments and points out the following:

Shows entrance of the road and the curves of the road. Trees to be removed. The telephone pole. The bridge. Shows where the subdivision would be coming out onto the main road. Different views of the road are shown.

Attorney Kenney interjects and points out that the site line can be clearly seen in this footage.

Matt Teague asks for confirmation that the telephone pole in the footage would be on the right?

Dan Ojala answers correct. The road does not allow high speed from the East, from the West it is maybe a little faster, but this is an impressive corner, people do slow down.

David Munsell asks if a traffic report was done?

Matt Teague asks for any Public Comment?

Ann Canedy, Town Councilor for Precinct 1. She replies/directs to David Munsell regarding his questioning if a traffic report was done for the area, and she does not recall if there was one done for this area. There is some concern about this proposed subdivision. She has spoken to the developer who is willing to mitigate/replace trees with flowering or autumn leaf trees setback from the layout, making a safer area for the site. She agrees with David Munsell about the dangers of the road. Sidewalks are being redone on Route 6A. Thinks adequate sidewalks in the area. She directs to the developer, would like commitment to have trees replaced in this area.

Patrick Princi states he has traveled this road and states that you cannot go faster than 30 mpg. The road slows you down. His concern is the stone walls and if there are any safeguards to protect these walls?

Dan Ojala answers that there is a note in the plan that the stone walls are not to be disturbed (Exhibit E, NOTES:). This was a key concern on the preliminary plan as well. He refers to the slope wall at the cul de sac.

Patrick Princi asks about front vegetation in the area. Will the homeowners association be responsible for cutting this back?

Dan Ojala agrees that this is important part of this. This will be put in the homeowners association documents.

Attorney John Kenney directs to Patrick Princi that language can be put into the deed stating that these stone walls cannot be disturbed without consent of Old King's Highway as well.

Felicia Penn suggests that maintenance for the cul de sac be listed as well. She agrees with no sidewalks here, keep the natural, rural nature of the road. She supports this waiver request.

Ray Lang states that he does not agree with no sidewalks and the waivers that are given. He has concerns about the proposed drainage. Is the easement, at the cul de sac, sufficient to handle a 100 year flood/storm? Lot 4 would have to take in the drainage.

Dan Ojala answers yes, this could handle a 100 year flood, if it overtops goes into 12,000 sq. ft. kettle hole area, no fill, natural drainage easement area. Staff had mentioned an issue underneath the underpass. They volunteered a large drainage easement.

Felicia Penn comments that because moving the driveway entrance to Lot 1, the existing bldg., she assumes they will be removing that curb cut, so this will be one less curb cut on Rte 6A.

Matt Teague is concerned with the retaining wall. Slope easement to be noted in homeowners documents for this to be reviewed annually. He asks for an explanation of the construction of the wall and utility easement noted on Lot 5.

Dan Ojala replies that he is fine with putting slope easement language into the homeowners documents. The slope would be built similar to a sea wall. This would be a 1.25 to 1 slope. This should be a pretty maintenance free feature for many years.

Matt Teague asks about/questions relocation of telephone wire going underground on northern telephone pole. Safety issue.

Dan Ojala answers that they have not talked to Verizon yet but they can inquire.

Art Traczyk suggests a continuance, in order to get all the documents together.

Matt Teague suggests/discusses coming in at 6 for medical marijuana workshop, if room available?
David Munsell asks if they got the curb cut from the State? Where's the power coming off of?

Dan Ojala states not yet, they usually don't like to see it until local permits are in place. The power will be coming from the pole in question and maybe the next pole back as well if needed.

Felicia Penn confirms what documents/reports, development agreement etc. are needed and would be reviewed by the Board before the Applicant comes before them again.

Matt Teague entertains a motion to continue this public hearing to August 26, 2013, at 7:15 p.m., so moved by Paul Curley, seconded by Ray Lang, so voted unanimously.

Regulatory Agreement:

7:00PM Continued Hearing

**Regulatory Agreement No. 2013- 03
Hyannis Harbor Suites Hotel, LLC or Nominee & Harborview
Hotel Investors, LLC**

Regulatory Agreement No. 2013-03 is the application of Hyannis Harbor Suites Hotel, LLC or Nominee & Harborview Hotel Investors, LLC, seeking to enter into an agreement with the Town of Barnstable to construct and operate at 213 Ocean Street, Hyannis, MA a new four (4) story year-round hotel with up to sixty-eight (68) rooms, each room containing its own kitchen facility. This proposed hotel building is in addition to the existing 136 room Hyannis Harbor Hotel situated on the 3.4 acre lot. The subject property is located in the HD-Harbor District of the Hyannis Village Zoning Districts and is shown on Assessor's Map 326 as Parcel 035.

The Regulatory Agreement seeks waivers from the Barnstable Zoning Ordinances, specifically:

Section 240-24.1.7.A – Harbor District, Permitted uses to allow hotel rooms with kitchens.

Section 240-24.1.7.C – Harbor District, Dimensional, bulk and other requirements, including maximum building height, to allow 4-stories where only a 2.5 story buildings are permitted, waivers of the 10-foot minimum side and rear setbacks, waiver of the 70% maximum lot coverage and waiver of the 10-foot front yard landscape setback.

Section 240-24.1.10 - Site Development Standards and Section 240-53 – Landscape Requirements for Parking Lots, including waivers from the following; the 6-foot minimum setback for parking lots, 10% interior parking lot landscaping, required minimum number of trees, dumpster setback from lot line and any other necessary relief.

Section 240-56 - Schedule of Off-Street Parking Requirements to allow a reduction in the required on-site parking.

In addition, the Regulatory Agreement seeks relief from the general ordinances of the Town, Chapter 112, Article III, Hyannis Main Street Waterfront Historic District seeking the Planning Board to act on behalf of the Hyannis Main Street Waterfront Historic District Commission.

- *Opened April 8, 2013, continued June 10, 2013, and to July 22, 2013- continued for further review and finalizing of a Regulatory Agreement.*

Matt Teague refers to Attorney Ford's letter/request dated July 22, 2013, whereby they have requested a continuance to August 12, 2013 (Exhibit G).

Matt Teague entertains a motion to accept the request for a continuance and continue this public hearing to August 12, 2013, at 7:00 p.m., so moved by Ray Lang, seconded by Paul Curley, so voted unanimously.

Nomination and Election of Officers

In accordance with MGL Chapter 41 Section 81A, Municipal Planning and Subdivision Legislation, Planning Board and MGL 40A Section 9, The Zoning Act, Special Permits, Special Permit Granting Authority, notice is hereby given that the Planning Board will consider nominations and election of officers for Chairman, Vice-Chairman and Clerk from its membership

Matt Teague asks if anyone would like to be on the nominating committee?

Ray Lang indicates by a raise of his hand that he would like to be on this nominating committee.

Matt Teague appoints Paul Curley and Stephen Helman to also be on this committee and asks for them to meet before the next meeting and report back as to what are their recommendations for new officers.
Continued to August 12, 2013, meeting.

Matt Teague states/updates the members that there will be some new information coming regarding the medical marijuana issue.

Correspondence: Cape Cod Commission notice of Amended Chapter A, Enabling Regulations Governing Review of Developments of Regional Impact (DRI), July 2, 2013

Cape Cod Commission Decision Barnstable Municipal Airport Modification of Development of Regional Impact, July 9, 2013

FEMA notification of revised report material re Flood Insurance Rate Map and Flood Insurance Study report for Barnstable, July 5, 2013

Approval of Minutes: Approval of March 11, 2013, Board Meeting Minutes.

Felicia Penn makes a motion to approve the March 11, 2013, Board Meeting Minutes as received, seconded by Ray Lang, so voted unanimously.

Future Meetings: Regularly Scheduled Board Meetings: August 12, 2013 and August 26, 2013, @ 7:00 PM.

Matt Teague entertains a motion to adjourn, so moved by Ray Lang, seconded by David Munsell, so voted unanimously. The meeting adjourned at 8:28 p.m.

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

Approved by vote of the Board on October 28, 2013

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

List of Exhibit Documents

Exhibit A - Site Plan revised, May 20, 2013 – Ruggiero, Reapplication, ZBA Appeal No. 2013-035

Exhibit B - Mitigation Planting Plan, revised June 17, 2013 – Ruggiero, Reapplication ZBA Appeal No. 2013-035

Exhibit C - MGL, Ch. 40A, §16 Repetitive Petitions, pg. 16-1-Ruggiero, Reapplication ZBA Appeal No. 2013-035

Exhibit D - Staff Report dated July 10, 2013 – Repetitive Petitions, ZBA Appeal No. 2013-035, Ruggiero

Exhibit E - Definitive Plan of Land, sheet 1, dated June 10, 2013 – William A. Riley, Subdiv. No. 822

Exhibit F - Video presentation from David Munsell, electronic file 2013-07-22 video f Munsell Sub. 822 from meeting – Subdiv No. 822, William A. Riley (Town of Barnstable T drive)

Exhibit G - Letter from Michael Ford, Esq. dated July 22, 2013 – Regulatory Agrmnt. No. 2013-03

APPROVED