



Town of Barnstable Planning Board

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Board Members

Stephen Helman – Chair Raymond Lang – Vice Chair David Munsell – Clerk Paul R. Curley Mark R. Ferro Holly Brockman-Johnson Marry Barry
John Norman – Town Council Liaison

Staff Support

Elizabeth Jenkins, Regulatory Review/Design Planner
Anna Brigham, Principal Planner
Karen Herrand – Principal Assistant - karen.herrand@town.barnstable.ma.us

Town of Barnstable Planning Board Minutes May 23, 2016

Stephen Helman – Chairman	Present
Raymond Lang – Vice Chairman	Present
David Munsell – Clerk	Present
Paul R. Curley	Present
Mark Ferro	Present
Holly Brockman-Johnson	Present
Marry Barry	Present

Also in attendance were JoAnne Miller Buntich, Director, Elizabeth Jenkins, Regulatory Review Design Planner and Karen Herrand, Principal Assistant, Growth Management Dept.

Call to Order: Introduction of Board Members and Staff Members

Notice of Recording: This meeting is being recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. The Chair must inquire whether anyone else is taping this meeting and to please make their presence known.

Informal Discussion: Discuss the process for a Planning Board public hearing and vote to reconsider the Planning Board recommendation on the Hyannis Parking Overlay District Zoning amendment.

Assistant Town Attorney Charles McLaughlin in attendance. He gives a history/explanation of the Hyannis Parking Overlay District (HPOD) zoning amendment as it has come to this point. Explains what the criteria is for zoning amendments. This is a complex situation per which permits and licenses have to be issued for the particular lots in question. There are safety issues as well due to the overcrowding of parking in these lots, difficult to seek injunctive relief. Town Council has created a sub committee. Need a uniform and readily observable set of standards for enforcement and compliance.

Would like to get zoning thoroughly reviewed by the Planning Board and present it to Town Council.

Observation, we have received correspondence from Attorney Edward Kirk, for Felicia Penn, see Exhibit A. This letter was just received this afternoon and needs to be reviewed (letter dated May 23, 2016). We will not be in a procedural discussion tonight.

Chair Stephen Helman clarifies the current zoning for this area?

Town Attorney Ruth Weil in attendance. She replies that the zoning currently is the Harbor District. The area previously was zoned to have business with special permits, this changed in 1978. There may have been some confusion when this first appeared before the Planning Board. Enforcement has been big concern. The purpose of the Hyannis Parking Overlay District (HPOD) is to make this a more uniform area, easily enforceable and safe.

Stephen Helman asks if the HPOD as proposed will change any current residential zoning?

JoAnne Buntich replies that the parking lots are the subject, all but one are in the Harbor District. The theory would be to allow this use with stringent enforcement issues.

David Munsell comments that the Planning Board's biggest issue with this is that there is a parking study going on now which was brought forward during same time Town Council was doing their study on parking. Why did we have to have a separate study? Cost?

Ruth Weil states that her opinion is that these are pre existing uses at the Harbor, we are just trying to make them uniform. The parking study will have no effect on this. There is no relationship between this overlay district and the parking study. We felt this would enhance the enforcement issues.

JoAnne Buntich interjects that they did speak directly to the parking consultants, we tasked them to analyze, collect data to get Hyannis parking system information. These parking lots already exist so they are being analyzed as part of the system. Cost is \$69,000 and change.

David Munsell went to the parking lots the last four Sunday's. It is a bad situation down there. These are licensed parking lots. Why not enforce what we have in place now? Going forward with this won't do/change anything. Doesn't think there is control of how money is taken in. He has concerns with public image and safe parking. The Steamship is a nice, organized parking lot. Some of us Planning Board members went to Town Council meeting, twice. He is opposed to an overlay district, shouldn't have spot zoning, would like to wait until parking study is done and then bring regulations up to date.

JoAnne Buntich clarifies/reiterates to the Planning Board that the parking consultant is not tasked to look at individual parking lots, they are looking at the system. They will not have this information. Zoning is not the best tool when looking at a system.

Attorney McLaughlin states that the solution would be walking into litigation, precisely because zoning was used inconsistently in the past. Deputy Fire Chief Melanson's opinion is that public safety needs to be taken into consideration and a major concern. A lot of grandfathered pieces so no conformed regulatory enforcement is possible. Zoning enforcement is the key element and it is not there now. He thinks this overlay is well thought out.

David Munsell comments that when a license is taken out their must be some type of restrictions per regulatory?

Ray Lang comments that we receive information from many different sources.

He reads his "Notes for harbor parking zoning 5/19/16 Town Council meeting into record:

Exhibit B.

1. *This now is a jointly held public hearing which follows separate public hearings held by the Town Council and the Planning Board 2-3 weeks ago at which the Planning Board did not recommend adoption of this zoning change and shortly thereafter the same zoning change was not passed by the Council.*
2. *If there is no change in this zoning change since it was last voted on, the Planning Board should uphold its recommendation originally sent to the Town Council, since they are the final vote, they can agree with the recommendation of the Planning Board or change their vote and approve the change.*

3. *At this point in time, the proposed zoning change says that existing parking lots and licenses and special permits remain grandfathered as well as the lots themselves. What this means is that any changes that would occur if this legislation passed will be voluntary or agreeable to each lot owner. A disagreement may or may not be resolved by the Town and may end up in Court.*
4. *Until zoning regulations are part of the current legislation, we cannot know what requirements will or will not be accepted by the current owners. Without that knowledge, an agreement as to how long these lots have to complete renovation to satisfy a zoning by law change cannot be known. Someone has to determine how much time will be required to comply with the Town wishes.*
5. *Initially the zoning change we were asked to consider was to create an atmosphere whereby parking patterns and procedures could be enforced by our regulatory agency. Enforcement according to our own regulatory agency is not now possible and in some cases ignored. If the current parking lot owners have not followed any Regulatory Agency guidelines then what can we expect if after a zoning change we (the Town) writes new regulations that may or may not be enforced. Remember....Grandfathering may make this reaction moot.*
6. *Although we were told that lots outside of the harbor area would be considered as back up parking for the waterfront, the zoning of these spaces may or may not be included in this current legislation. Who supervises that step if regulations are placed on the outside lots?*
7. *If enforcement is the real reason we are zoning parking lots in the harbor area then we must determine whether or not a zoning change will work, I have been advised that the grandfathered licenses and special permits are part of the grandfathering interpretation meaning they can not be withheld or cancelled because of a regulation or an order to comply to new regulations that were not part of the license/permit when it was issued. Remember, in most cases we are talking about business owners who have run these parking lots for years! With the same license criteria.*
8. *My recommendation to the Town Council and to the planning Board is this: A. Assign the task of writing parking lot zoning regulations for the lots in the harbor area to the Planning Board and the Growth Management staff. When that is done and it should not take months, we, the Planning Board will have a public hearing and publish the zoning regulations for parking lots at that time. Existing owners will have to participate in this process as well as neighbors and businesses in the area. If at that point we have positive results from the hearings, the Planning Board can forward a recommendation to the Council for their input and approval. Since the harbor area is now zoned as a GIZ zone the Planning Board should be the agency involved in any changes in this zone including the task of writing the regulations to be followed. Remember, when we discuss zoning regulations they will be advisory to existing parking lot owners. Hopefully our public hearing will cause a willingness by these owners to cooperate with the Town's desire to solve the parking problems in this area.*
9. *We were advised by staff this morning that the current parking study now taking place in the town has no effect on the zoning change being considered or will it have at a later date. I think that the Council should know this fact and if they would want to verify this statement before the current parking study is complete, then this is the time to do it. I am disappointed that this staff statement was made to me this morning. If we get a parking study that does not deal with harbor parking then we should reconsider the study now and start again.*

The Planning Board did not recommend adoption and should uphold their decision

Paul Curley is concerned about the public safety issue, this is the overriding issue. He agrees that this should move forward. If we lost property and/or lives because we didn't, this is an attempt to put public safety in the for and enforce parking lots owners and people to act reasonably and safely. This overlay gives us the ability. If something happens then be ready to take the responsibility of it. We need to take

people into account. He directs to Chair Ray Lang and states if we need to do something, the parking study won't solve this problem, also anything with the parking study is far into the future, if we let this problem fester without doing something, shame on us as a Planning Board.

Stephen Helman comments that he had previously voted in opposition, his ignorance was that he thought the parking study would shed some light, now informed that the study will not give and/help with this, he agrees that there is an issue. Planning Board does not have the clarity to enforce the way we would like to. He is in support of this at this time.

David Munsell states that he thought most of the lots are grandfathered and will have the right to do what they are doing now and this spot zoning will not make a bit of difference.

Stephen Helman directs to Town Attorney's and asks is this is correct, about grandfathering of the lots?

Town Attorney Charles McLaughlin replies that there are some lots that have had the benefit of a license without the benefit of zoning, some have had both license and allotment of parking that is inconsistent.

By giving this a matter of right, everyone has something to lose if we do not have leveling of the playing field, most are in agreement, but not all. Some may push back with their rights. Most everyone will benefit from the certainty rather than the litigation, whereby nothing is guaranteed.

Mark Ferro asks if the people that own the lots currently will fight for their grandfathering rights for these lots or not?

Attorney McLaughlin replies that they may have less grandfathering rights than they think, it is a possibility.

Mark Ferro comments that the parking study looks at the entire problem. The parking study will have information for the entire problem/situation in Downtown Hyannis, this area is a sub set, part of a problematic situation as well. He wouldn't change his vote. He is not in support.

Stephen Helman asks for clarification of what the parking study will do.

JoAnne Buntich reiterates that the Harbor area is in the system for this study. The parking lots that are existing presently will not matter or effect the parking study work.

Ray Lang directs to Town Attorneys, asks if this will come for a Zoning Board hearing? Will this need to be a by law change?

Attorney McLaughlin replies that there is regulatory, parallel work going on at present. The overlay zoning would lay out parking boundaries/lanes to point out/clarify/prove what is allowed and allow enforcement to happen.

JoAnne Buntich states/directs to Town Attorney Charles McLaughlin – re: Site Plan Review Agenda - the Shores are looking to permit a parking lot in the B District where it is an as of right use.

Presentation on five-year Multi-Hazard Mitigation Plan update: implementation progress since 2011, update process, questions or comments on plan update

Elizabeth S. Jenkins, Design/Regulatory Review Planner in attendance. She gives an update to the existing Multi-Hazard Mitigation Plan, adopted 2010 plan, Exhibit C. Prescribed by FEMA, need to do every 5 years - Mitigation and preparedness response and recovery. How rebuild, purposes and goals, increase public awareness, increase access to funds.

Accomplishments since 2010; Coastal flooding storm surge. Growth Management partnered with MIT and Waquoit Bay Reserve.

Adaptation plan. Growth Management working with community rating system application CRS, program flood insurance offers - Great recommendations.

Two other grants coastal zone grants, looks at erosion and sedimentary occurrences. Partnered with Cape Cod Commission for a NOAA grant to look at climate change adaptation, pilot to do planning and recommendations. Operation DPW looked at Snow and Ice procedures, Infrastructure for Stewarts Creek. Adoption of FEMA maps – raise awareness of flood areas. Update process, encourage all to get involved. Project website, Barnstable Iforum to share experiences on encourage public to become involved/comment re safety concerns etc. Safety officials what are the goals. Incorporate this into the plan. Working with consultant on the plan who will give information/data update hazard and detailed data and Cape Cod Commission, a disaster would be a regional event. We have to look at areas with repeated flooding, reevaluate/analysis, strategies in the plan. Will be releasing a draft plan in a couple of weeks for comments. Please let us know any comments/concerns suggested to incorporate into the plan.

Paul Curley asks about emergency situations at the Plymouth Nuclear plant, is information for that in this plan, evacuation?

Elizabeth Jenkins replies that this is out of this realm, we are looking at natural hazards/disasters for the most part.

JoAnne Buntich interjects that this is being addressed through emergency management agencies and coordination throughout the State and hopefully the Federal Government.

David Munsell clarifies that this is being worked on with other towns as well as the Cape Cod Commission.

Elizabeth Jenkins states yes, impacts across municipal boundaries as well.

Special Permit Public Hearing: Special Permit Application David Colombo/Olive Oil Trust - 159 Ocean Street, Hyannis, Black Cat Harbor Shack Map/Par 326/039 – Proposal for: New roof deck, stairs and vertical lift located within front yard setback and reduction of required parking for an additional 23 seats. *Public Hearing continued from March 28, 2016, April 11, 2016, April 25, 2016, to May 23, 2016*
Request to continue enclosed

Attorney Dan Creedon in attendance. He is requesting an extension for this Special Permit application. He states that they are looking for a continuance, working with the state for a possible variance.

JoAnne Buntich interjects that there is not time frame and the Public Hearing for this Special Permit can stay open as long as the Board wishes.

Paul Curley moves to continue this public hearing to Sept. 26, 2016, at 7p.m., seconded by Ray Lang, so voted unanimously.

Regulatory Agreement Public Hearing:

Mark Hyannis, LLC – 411 & 417 Barnstable Road and 42 Bearse Rd, Hyannis – Map 311 Parcels 033, 035-001 and 035-002. Proposal to demolish all three existing buildings and construct a two-story, 6,080 sq. ft. office/bank with a drive-through and an approximately 12,900 sq. ft. retail pharmacy with a drive – through and site improvements and re-divide the existing three lots into two lots. *Public Hearing Continued from May 9, 2016.*

Attorney Eliza Cox of Nutter, McClennen and Fish in attendance, representing the Applicant/Owner. She She give a brief history, would like to reply to previous questions the Board had.

David Roche, Vice President, Mark Investments in attendance.

Josh Swirling, of Bohler Engineering, in attendance.

Matt Keeley, VHB, Transportation Engineers in attendance.

David Roche reviews the power point presentation, handouts to the Board, (3) Exhibits D and E and F. He refers to the VHB memorandum, Exhibit D. There will be a significant amount of landscaping here which will make it much more appealing, irrigated, more efficient LED lighting, curb cuts. Signage to be redone on the bldg., individual letters. Adding sidewalks, bike parking, storm water run off the site.

Ray Lang asks about Bearse Road and asks if the two exits/entrances will remain?

David Roche replies yes, looked at consolidation.

Stephen Helman asks about the entrance at Bearse Rd. will it cause a conflict going around the bank? Refers to map, Exhibit E, clarification of arrows, conflict of drive through.

David Roche states that it will have sufficient parking and a bypass lane here as well. Two way travel in front of the bldg.

David Roche and Josh Swirling explain the curb cut areas and boundaries to Ray Lang and clarify dumpster location.

Mark Ferro asks about he left hand turn coming out of Bearse Rd., this may be congested and hard to make a left hand turn here. What could the back up be?

David Roche answers, maybe four cars, queing space, there is a second curb cut as well.

David Munsell asks about the State work being done at the rotary, proposed work. How will this effect this property/project. Cape Cod Commission is going for a grant to redo the rotary.

David Roche replies that this is very limited, the rotary gets smaller per this proposal. This is a preliminary plan.

JoAnne Buntich interjects that the Town's peer review traffic consultant is here if the Board has any questions for him.

Ray Lang directs to Attorney Cox and asks for clarification about the procedure, doing an ANR after the tear down of the buildings.

Eliza Cox refers to Exhibit F, where the responses are listed to the Board's comments (Ray Lang's project comments/proponent responses), she recites the procedure here at comment 2. Reviews the procedure, permitting process. Will seek ANR endorsement from the Planning Board simultaneously with pulling the building permits. The proposed lot line runs through an existing bldg. They have structured a time frame, lot maneuvering . They do have this identified on the plan submitted, Exhibit E (large scale plan). They are proposing a condition that will require they receive endorsement for the ANR. A draft ANR plan will be submitted with the Regulatory Agreement as well.

Josh Swirling refers to the site plan, Exhibit E, explains the division for the ANR and the the boundary configuration shown.

Stephen Helman asks Giles Ham to speak about traffic issues and if he has any concerns?

Giles Ham in attendance. He refers to the plan, Exhibit E. He thinks all of the recommendations they had have been addressed. The biggest safety issue is the curb cut. They have gone from 8 to 4 curb cuts, reduced which is better for pedestrian flow. They are satisfied that all issues have been addressed.

Paul Curley directs to JoAnne Buntich. He asks about site plan review, have they seen and approved this current plan? Has both the bank and CVS reviewed and approved this plan? He thinks they should proceed forward and get the draft regulatory agreement.

JoAnne Buntich replies yes.

Eliza Cox has an initial draft and they are working on finalizing and presenting at the June 13th 2016, Planning Board hearing, they will hand out to the Board in advance of this meeting.

Deb Krau in attendance. She is extremely concerned at the safety issue being created at the rotary. The increased traffic will put pressure/stress on this rotary. BJ's and Kappy's will be here soon. Chili's when it left, nothing been rebuilt here because of concern at the rotary traffic here. A CVS will create much more traffic, she thinks this is a major safety hazard being created. It is dangerous here now.

John Julius, in attendance. He is also concerned about a safety issue being created at this rotary. He's wondering if CVS knows about this hazardous area? He makes a plea to send this to the Cape Cod Commission. This is a huge safety issue here.

Attorney David Lawler in attendance, representing the owner of Wendy's. He has looked at the peer review and thinks this is a substantial improvement. People/business's at the rotary are in favor of this.

Joel Laham in attendance, abutter/business owner at the rotary. He states that something is going to go here. There are people here and there is traffic here anyway. They have closed all of their curb cuts. His location, if you looked at it before and now, is significantly better. He's willing to put his own money into cleaning up the rotary, he would/could adopt and maintain it. At present there are/is a junk pile of businesses now. The traffic is already there, he is in total support of this project.

Chair Stephen Helman entertains a motion to continue this public hearing to June 13, 2016, at 7:00 p.m., moved by Ray Lang, seconded by Paul Curley, so voted unanimously to continue.

Chair Stephen Helman directs/asks Paul Curley, and Mark Ferro and Mary Barry to form a nominating committee.

Asks for a report at the next Planning Board meeting.

Correspondence: Chapter 91 Application - Hyannis Inner Harbor, 135 South Street, Dredging,
Fill/Excavation
MDEP BRP WW 26 Combined Licenses/Permits for Waterways

Matters Not Reasonably Anticipated by the Chair:

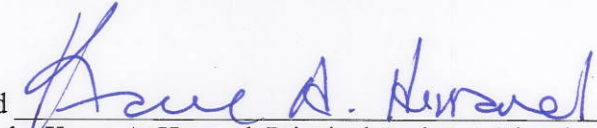
Chair Stephen Helman entertains a motion to adjourn, moved by Ray Lang, seconded by Mary Barry, so voted unanimously.

The Meeting adjourned at 8:59 p.m.

Future Meetings:

Regularly Scheduled Meetings: June 13 and July 25, 2016, @ 7:00 PM.

Respectfully Submitted



by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on

March 27, 2017

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 – Letter from Edward Kirk, Esq. dated May 23, 2016 – ZA 2016-054 - HPOD

Exhibit B – Ray Lang’s notes/comments – dated May 19, 2016 – ZA 2016-054 HPOD

Exhibit C – 2010 - Multi-Hazard Mitigation Plan brochure – Elizabeth Jenkins hand out

Exhibit D – VHB memorandum dated May 17, 2016 – Reg. Agrmnt. No. 2016-01

Exhibit E – Site Plan sheet no. 4 – Mark LLC dated May 4, 2016 – Reg. Agrmnt. No. 2016-01

Exhibit F – Project Comments/Proponent Responses – dated May 23, 2016 – Reg. Agrmnt No. 2016-01