



Town of Barnstable Planning Board



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Board Members
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Mathew Levesque – Town Council Liaison
Planning & Development Dept. Staff Support
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Karen Herrand – Principal Assistant - karen.herrand@town.barnstable.ma.us

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BARNSTABLE
TOWN CLERK

Town of Barnstable PLANNING BOARD Minutes October 28, 2019

Steven Costello – Chairman	Present
Jeffrey Swartz – Vice Chairman	Present
Patrick Foran – Clerk	Present
Marry Barry	Present
Walter Watson	Present
Stephen Robichaud	Present

Also in attendance were Paul Wackrow, Senior Planner, Planning & Development and Karen Herrand, Principal Assistant, Planning & Development.

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.

Approval Not Required:

12 Atlantic Avenue, LLC and Attorney Bernard T. Kilroy, 12 Atlantic Avenue, Hyannisport, Map 286 Parcel 007, have submitted a plan entitled “Plan of Land at 12 Atlantic Aveune, Barnstable, Hyannisport MASS, prepared by Richard R. L’Heureux, CapeSurv, for Mannheim Realty, LLC, dated June 28, 2019” for endorsement as an approval not required plan.

Moment of silence for Town Councilor President Jim Crocker , Jr. who passed away.

Attorney Bernie Kilroy in attendance, representing. He stated that the Town Attorney Ruth Weil asked him to submit support memorandum, see Exhibit A. 41 L is a lot that is available for development property. Endorsement of plan – this will go with adjoining properties.

Jeff Swartz comments / asks about unbuildable lot. Could this be interpreted in another way.

Attorney Kilroy replies that that would be up to the zoning by law at that time. This is to increase the two areas. The endorsement would mean that they would have to come in to get relief.

Chair Steven Costello entertains a motion to, moved Jeff Swartz to approve, seconded by Mary Barry, so voted unanimously.

Regulatory Agreements:

Regulatory Agreement No. 2019-02 – 268 Stevens Street, Hyannis, Massachusetts, Map 308 Parcel 017 - Laham Management & Leasing, Inc. seeks to enter into a Regulatory Agreement with the Town of Barnstable to develop the former site of an automobile dealership into a carwash with two residential apartments for employees and office space on the second floor. The Regulatory Agreement seeks waivers from the Zoning Ordinance, specifically Section 240-24.1.6 OM Office/Multi-family to allow for a “carwash” use in the OM Zoning District. A carwash is not a permitted use in the OM Zoning District. – *Continued from February 25, 2019; March 25, 2019; April 22, 2019; June 10, 2019, and September 23, 2019.*

Attorney Michael Ford in attendance, representing Joel Laham.
Joel Laham in attendance.

Attorney Ford would like to formally withdraw this proposed Regulatory Agreement. He appreciates the Planning Board’s many meetings and the many people that made public comment. They went to a different location for this product/carwash. Now Joel Lahm will partner with Capebuilt LLC in order to bring residential housing to this site.

Rob Brennan, President and Ryan Roy both of Capebuilt in attendance.

This will bring forward a new Regulatory Agreement.

Rob Brennan – presents/shows a power point presentation. This project site in collaboration will be moving forward and coming to Planning Board. They are also working/doing 255 Main Street project – this will be Capebuilt’s home.

Cape Cod’s Housing Challenge – Power Point Presentation. This is an opportunity to engage with the community and will continue listening. Want more families to call Hyannis “Home”. “The listening Tour”, Dec. 10, 2019, Steamship Authority Meeting.

Chair Costello asks for clarification of the withdrawal.

Chair Steven Costello entertains a motion to close the Public Hearing, moved by Jeff Swartz, seconded by Walter Watson, so voted unanimously.

Chair Steven Costello entertains a motion in order to withdraw without prejudice, moved by Jeff Swartz, seconded by Mary Barry, so voted unanimously.

Special Permits:

Special Permit No. 2019-06 - Cellco Partnership, d/b/a Verizon Wireless, is applying for a Special Permit in accordance with Section 240-108 – Antennas permitted by Special Permit in all Zoning Districts. The Applicant is proposing to install small wireless equipment on the replaced utility pole located within the Town way of North Street, Hyannis. The utility pole is located adjacent to 65 Sea Street Extension, Hyannis.

Chair Steven Costello entertains a motion to open the Public Hearing, moved by Jeff Swartz, seconded by Mary Barry, so voted unanimously.

Attorney Daniel Klasnick, representing Cellco in attendance. He gives an explanation for using the existing utility structure to install small wireless equipment. Single antenna. Everything is placed on the utility pole itself. 12 inch diameter, 37 inches. The pole is 34 ft. Did go through Site Plan review, Aug. 15th. Verizon, RF Engineer states that there is a need for a facility. This smaller installation is better for us to work with Eversource/pole owner.

Chair Steven Costello entertains a motion to open up for Public Comment, moved by Jeff Swartz, seconded by Mary Barry, so voted unanimously.

Deb Krau of the Greater Hyannis Civic Association (GHCA) in attendance. Has concerns about the utility poles become higher so they are made ready for this type of equipment. Major products are being held up, i.e., Sea Street project. Suggests that until current, Verizon projects finished/delay this until the construction/projects be completed in the time frame that told they would be completed in.

Mary Barry asks about the plan for implementation for outstanding products.

Attorney Klasnick replies he is here solely for licensee, does not have anything to do with the other projects.

Steve Robichaud asks how many proposed installations for these are being done?

Attorney Klasnick replies he's been involved with 2.

Jeff Swartz asks for clarification regarding the look/like a transformer.

Attorney Klasnick replies yes.

Jeff Swartz clarifies that maybe the GHCA point is with the town, maybe not part of this particular situation. Asks for clarification that this is not associated with any other project(s).

Attorney Klasnick replies yes, he's only here regarding permit for this particular situation – Sea Street pole. He has no knowledge of what GHCA is referring to.

Paul Wackrow also does not have any info re /details/schedules for this or Verizon's involvement.

Patrick Foran clarifies that these will be canisters – this is the same type of device? This seems to be just a height question.

Paul Wackrow, Section 108 of zoning code, there are several types that can be done by right, but this will be 12 ft. higher than the original, this is the height increase - Bldg. Commissioner wanted a Special Permit done.

Walter Watson asks about the power output.

Attorney Klasnick replies that there is an RF study that the report has the compliance records for FCC standards. He does not know.

Walter Watson is this a 5G? Is this a singular site? Any more?

Attorney Klasnick replies, no this is a 4G. Verizon wireless is consistently looking to upgrade, but he cannot say exact.

Chair Steven Costello asks if Verizon owns utility poles? Possibly in the future will they have their own poles?

Attorney Klasnick answers, that they go through Eversource, they attach to their equipment.

Chair Steven Costello directs to Paul Wackrow, will there be height increase with pole?

Paul Wackrow, it's hard to say, some are different heights. This is hard to predict.

Dave Johnson in attendance, Sea Street residence. Verizon wireless is holding up the sea Street project, there is a connection between the wireless and Sea Street because Verizon is the owner.

Chair Steven Costello entertains a motion to close the Public Hearing, moved by Jeff Swartz, seconded by Mary Barry, so voted unanimously.

Chair Steven Costello entertains a motion, moved by Mary Barry to make the following Findings, seconded by Jeff Swartz, so voted unanimously.

The Findings are read into record: Exhibit B.

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit. Section 240-108 allows for antennas with a Special Permit.
2. The application received Site Plan Review approval (see letter dated August 15, 2019).
3. After an 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. The applicant has provided site plan review with evidence that they are a licensed carrier, authorized by the Federal Communications Commission (FCC) to construct and operate personal wireless services, and that the proposed transmitters are FCC regulated and approved. This document has been supplied.
5. The structure to which any mount or antenna is attached is a legally built structure under zoning, or a preexisting, legal nonconforming structure.
6. Pursuant to Section 240-108 for Special Permits in which the proposed antenna exceeds the height of the existing structure by more than 12 feet, the Board finds that the additional height is necessary to provide coverage, and the additional height will not be visually intrusive upon the surrounding area.
7. Pursuant to 240-24.1.2.E.(1), the issuance of the special permit is consistent with the Design and Infrastructure Plan and the development maintains pedestrian access. As presented by the applicant, no hindrance to pedestrian movements will result from the utility pole installation.

Chair Steven Costello entertains a motion to approve the Draft Conditions, moved by Patrick Foran, seconded by Mary Barry, so voted unanimously.

Zoning Amendments:

ZA TC Item No. 2020-029 – GMSPOD Map Amendment – Amending the Zoning Map of the Town of Barnstable Massachusetts to Amend and Expand the Ground-Mounted Solar Photovoltaic Overlay District to include 810 Wakeby Road, Marstons Mills, parcels 013004, 013005, and 013052 (also addressed as 0 Sandwich-Barnstable Town Line).

Chair Steven Costello entertains a motion to open the Public Hearing, moved by Jeff Swartz, seconded by Mary Barry, so voted unanimously.

Attorney Ford in attendance, representing TJA, they are not the owners of the property. This is up to be adopted, some other company may be the applicant. He will be speaking on the merits of why this particular site is a good potential site. He gives a history and refers to the Staff Report, Exhibit C.

Several efforts made in the past, 2017 effort to amend the overlay district. Did have the backing of Town Council and the former Town Manager. History of the site. This property consists of 19 acres, 3 lots/parcels. Sand & Gravel operation. Prior to 1956 use is grandfathered. Salvage Yard use – late 1960's and use variance/portion. Late 1990's Bldg. Inspector decided not a pre-existing non-conforming use. Comprehensive zoning had been adopted in 1929. Case tried in Barnstable Superior Court, found that the 1956 zoning to be upheld. Appeals Court determined that zoning was adopted in 1929 and that this site had

to cease & desist. Sand & Gravel not permitted on this site, but has the variance for the salvage yard. A lot of litigation, a lot of uses under the salvage yard use. This site needs a cleanup. There is a phase 1 and 2 study. 2.1E removal of hazardous waste and materials. His clients will see this through and make part of any condition. Currently zoned RF and has been since its inception. There are houses in the area. Refers to Power Point Presentation, Exhibit D, handout of the presentation.

Five minute recess taken in order to get the correct power point presentation up on the screen. Copies of this presentation will be made available to the public on the Town's website.

Attorney Ford refers to presentation, Exhibit D. The outline of removal of vegetation is clear here. Suggests members going out to site to take a look at. When TJA put this property under agreement advised to make a presentation to Energy Committee in town. They met with them, refers to the recommendation, Exhibit E. Abutters are not required by statute to be notified. He has discussed with his client and they have committed to send out a notice to every abutter for any other hearing/meeting, they are willing to do that.

These slides are not a concept plan. The Planning Board would only be recommending to Town Council. Cape Cod Commission (CCC) – Development of Regional Impact (DRI) and would be a regulatory agreement at the Commission.

Zach Thomas in attendance. Over 50 megawatt solar project, this is a conceptual design/what it may look like when and if the process does come to fruition. 15,000 solar panels, sufficient to power over 700 homes. He reviews the Power Point Presentation, Exhibit D. Battery storage/stabilization of the grid. When no sun, won't need backup. The West is undeveloped and the East, only one house. Existing cell tower adjacent to the site.

Community solar – Smart Program. Site location benefits. Public Assess to community solar. Environmental benefits. New certification for solar projects. Pollinator friendly for indigenous species. Plants of correct height. Proposed and existing access to site pictures. There is no gate, existing/property is an eye sore.

Attorney Ford states that Mass DEP encourages the cleanup of the site and implementation of solar would be a good land use. The state supports.

He has reviewed the correspondence that was submitted. He has comments with respect to these.

Chair Steven Costello asks if there is currently a Mass Dep order for this site?

Zack Thomas replies that they are working with the owner and yes they have had a conceptual site submitted and evaluated to confirm – it's no longer shown in groundwater. They have a copy of this letter, this had been closed out.

Chair Steven Costello asks for clarification of the term use by right as it applies, this would clearly change the zoning.

Attorney Ford states that provides for large scale solar arrays that would be as of right, assuming that it goes through the process and would become part of the ordinance, also, CCC jurisdiction.

Public Comment

Richard Celeste from Long Pond Rd., concerns living next to an industrial zoned property. We need more residential properties. The former owner created the problem with this property. Hazardous waste and health concerns. Opposition.

John Finn, 254 Long Pond Rd., there's a 55 acre pond in the area. This is a residential area. Has concerns with the pond and wildlife in the area. Opposition.

Attorney Paul Revere, representing Anne Salas. This will change zoning of the property. This would be a gift to the owner. Zoning Board of Appeals (ZBA) upheld Bldg. Commissioner's decision in the past. Superior Court, this was upheld. Appeals Court information in a cross appeal, Exhibit F. Sand & Gravel operations were halted and then a police investigation commenced. Town hired outside council and filed injunction in 2005 on owner. There is an order that property cannot be used for commercial properties. This is considered spot zoning. This would be for an economic benefit for the owner. There are only 2 other areas of this size for this type: Landfill and Airport. Those are industrial park areas, not a residential area.

Robert Gallan in attendance, Lakeshore Dr. His main concern is that this was a scrap metal depository, gas and oil. These vehicles must be dug up. This will pollute our groundwater. Opposition.

Mary Burkinshaw, 133 Mockingbird Lane, abutter, 26 year resident. Mr. Keyes, the owner. Landfill fillings in the past. They ultimately got a cease & desist. The owner clear cut the entire property. Does not think the owner will follow any rules put in place for this property. Wetland nearby that is no longer in existence. Long Pond association property has wetlands there. Who will maintain this property. Opposition.

Keith McKeone, 936 Wakeby Rd. Concerns with the owner and not being able to maintain the property. Why should the zoning be changed to an industrial use. There are farms here. Opposition.

Fred Hegg, 275 Long Pond Rd. Did some research re the average number of homes impacted is 2.2, this is much larger than that. This is at a scale that shouldn't be in a residential area. Opposition.

Catherine McDonough, 111 Mockingbird Lane. This property has been a point of contention. Problems with the owner. Residential area. Opposition.

Christine McDonough, 111 Mockingbird Lane. Past problems with the owner. Wildlife concerns. Solar panels kill birds and insects. Decreased property values. Toxic chemicals. Opposition.

Jim McDonough, 111 Mockingbird Lane. Barnstable is known for protecting residential areas. This has been a longtime problem. Special Permit granted and no trees were supposed to be removed, in order to keep the area rural. Owner had dug down to groundwater in order to supply landfill covering. The land has collapsed due to the damage done. The Health Dept. did stop the digging in order to protect the groundwater. They have spent thousands of dollars in legal fees and been to the Supreme Court. This will give the owner a lot of money. Opposition.

Howard Hurd, 651 Wakeby Rd. Bought this property to be in a rural area. A property of this size will need transmission lines.

Paula Schnepf, Town Councilor, Precinct 12. She was contacted in July to sponsor this amendment. She has met with some of the abutters and walked the property. She has concerns that the overlay district is by right, the opportunity for public comment goes away once the Planning Board makes a recommendation, may be at Cape Cod Commission level. Her concern is how is the project going to be developed. The underlying zoning is residential, 15 ft. setbacks here. The Council and the Planning Board need to review the overlay district. This by law needs to be amended to allow for some special permit uses. Site plan review can't put conditions down.

Anne Salas, 145 Mockingbird Lane. Concerns with storage batteries on the property. These will be industrial style batteries. Has fire concerns. Thermal runaway. Release of hazardous chemical concerns. Spot zoning concerns. Owner would be paid a lot of money. Property values would be completely worthless. Concerns with the groundwater protection overlay. Why is this being considered now except for the economic benefit of these few people. Opposition.

Attorney Ford replies that this is an overlay district, not for industrial use, only for the use of solar array. Historic District solar array project constructed by NRG. There are homes in this area as well. This was a

substantial tree area. This also needed CCC DRI approval. Conditions were put in regarding maintenance, screening, bonds, these are all a function of permitting, not for the Planning Board. TJA has gotten project approvals in several different projects, all in residential zones, done with proper screening, don't generate wastewater, don't generate traffic. Spot zoning – if you read the cases – when health, safety issue, it is not considered spot zoning. Seek the advice from Town Attorney, doesn't believe this constitutes spot zoning. The state is now looking for some battery storage. He is regulatory representation. He asks that the Planning Board make this a good use – has a chance to do something good with the property. Solar array districts are in a groundwater protection district – no wastewater. This site, a court has determined that sand & gravel is not a use. Prohibited uses in WP and GP, the salvage yard, the last thing you would want here. Suggests looking at some other sites, and that these uses can be very compatible with proper screening. Will notify abutters.

Chair Steven Costello will continue the public hearing, and states - notify abutters.

Mary Barry will not be in attendance. Next meeting November 25th, next meeting will be November 18th.

Chair Steven Costello entertains a motion to continue to Nov. 18, 2019, moved by Mary Barry, seconded by Jeff Swartz, so voted unanimously.

Other Business

Request from the Mashpee Planning Department that the Barnstable Planning Board waive noticing requirements for the following zoning articles: Warrant Article 26 - To amend §174-45.4 – Accessory Apartments; Warrant Article 27 - To amend §174-25 (A)(8) in the Table of Use Regulations; and Warrant Article 28 - To amend §174-3 Terms Defined.

Paul Wackrow states that this is a requirement that Town's notify each other. This notice did not go out and we received late. Typically we receive from the Town.

Mary Barry makes a motion to accept this waiver, seconded by Jeff Swartz, so voted unanimously.

Approval of Minutes:

September 9, 2019, and September 23, 2019, Draft Minutes

Chair Steven Costello entertains a motion to approve Sept. 9, 2019, minutes, moved by Jeff Swartz, seconded by Mary Barry, so voted unanimously.

Chair Steven Costello entertains a motion to approve Sept. 23, 2019, minutes, moved by Jeff Swartz, seconded by Mary Barry, so voted unanimously.

Correspondence:

Chapter 91 Notice – Windmill Cove, Osterville – Maintenance dredging
Chapter 91 Notice of issue – 4 Bay Shore Rd., Hyannis – Filled Tidelands of Lewis Bay
Chapter 91 Notice of Appln – 44 Johnson Ln., Barnstable – Geller – Maintain pier/bulkhead
Chapter 91 Notice of Appln – 94 Waters Edge, Barnstable – Cote – maintain pier
Chapter 91 Notice of Appln – 58 Nyes Point Way, Barnstable – Larsen – maintain pier
Environmental Notification Letter – Cape Cod Rail Trail Extension Phase III rescinded
Chapter 91 Notice of Appln – 24 Bay Rd., Cotuit – Myer – boardwalk, pier, ramp and float
Chapter 91 Notice of Appln – 1 Willow Street (Hyannis Marina) maintenance dredging
Environmental Notification Letter – construction of underground pump – Sandy Neck Barrier Beach System
Dept. of Public Utilities Notice of Public Hearing – Overhead Transmission Line Barn. Switching Station

Matters Not Reasonably Anticipated by the Chair:

Future Meetings: November 25th and December 9, 2019, @ 7:00 p.m.

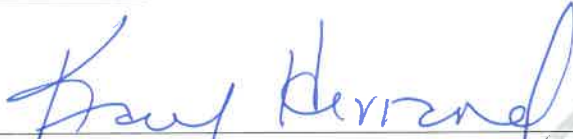
November 18, 2019 meeting – CANCEL NOVEMBER 25TH, 2019.

Chair Steven Costello entertains a motion to adjourn, moved by Jeff Swartz, seconded by Mary Barry, so voted unanimously.

The meeting adjourned at 9:13 p.m.

Future Meetings: November 25, and December 9, 2019, @ 7:00 p.m.

Special Meeting November 18, 2019

Respectfully Submitted 
By Karen Herrand, Principal Assistant, Planning & Development

Approved by vote of the Board on January 27, 2020

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** – ANR – 12 Atlantic Ave – Map/Par 286/007 - Lt dated Oct. 26, 2019, to Ruth Weil, Esq.
- Exhibit B** – Special Permit No. 2019-06 – Cellco – 65 Sea St., Map/Par 308/272 (adjacent) – Staff Report
- Exhibit C** – ZA Item No. 2020-029 – Staff Report
- Exhibit D** – ZA Item No. 2020-029 – Presentation “Community Solar Development”
- Exhibit E** – ZA Item No. 2020-029 – Lt. dated Oct. 16, 2019 – from Peter Doyle
- Exhibit F** – ZA Item No. 2020-029 – Handout from Attorney Paul Revere – map and court documents