



Town of Barnstable Town Council Meeting August 5, 2010

A quorum being duly present, Council President Frederick Chirigotis called the August 5, 2010, Town Council meeting to order at 7:00 p.m. in the 2nd Floor Hearing Room of Barnstable Town Hall, 367 Main Street, Hyannis, MA.

PRESENT: Richard Barry, Ann Canedy, Janice Barton, Frederick Chirigotis, James Crocker, Jr., Debra Dagwan, Henry Farnham, Janet Joakim, J. Gregory Milne (7:15 p.m.), James Munafa, Jr., John Norman, Thomas Rugo, and James Tinsley.

President Chirigotis led the hall in the Pledge of Allegiance, followed by a Moment of Silence.

PUBLIC COMMENT (limited to 2 minutes)

- Jon Julius addressed the temporary sign issue. Change the policy to allow people to have signs. The policy is unconstitutional. I have a right to put a sign out to sell a house. He has no problem in other towns, just this one. Please sponsor a new piece...he stated he had a copy of a suggested version.
- Brian Cobb from Century 21 Real Estate stated that he has had open houses for 30 years and has had no problems until recently. For the last 6 months we have been harassed on weekends and our signs have been removed. For open houses the signs are only up briefly. This sign ordinance is anti-business.
- Niles Morin, who is also a realtor, said he is just trying to make a living. He put signs up and because of the signs he is able to pick up buyers, without them it is lost business.
- Mark Goldberg addressed the DCPC regulations and has distributed a letter (marked Exhibit A). At its heart it is a zoning document. Once it passes, all will be in the hands of the Cape Cod Commission. We need to maintain local control. There have been some homes built that are irritating. This is your chance to bring people together – implement regulations as zoning.
- Steve Brown from Craigville gave comments (see Exhibit B) also on the DCPC. Many of us have documented the need for the DCPC. Zoning does not apply to non-conforming uses that are pre-existing. All the best intentions of zoning will not protect the water and beach like planning, which is pro-active.
- (President Chirigotis excused himself from the dias at 7:18 p.m. and Vice President James Crocker took the gavel.)

- Meg Loughran hopes that this will be the last time she will speak to the DCPC. The difference is grandfathering is exempt. Why are we afraid of it – redevelopment without a DCPC is scary. It is frightening to think what could be added.
- Mary Ann Barboza started to ask Councilor Dagwan and David Curley a question about a young man who had a complaint at the HYCC...Vice President Crocker informed Ms. Barboza that she can not use specific names or ask questions. He suggested that she might want to write to these people about the issue. Ms. Barboza asked what are we supposed to do when an issue happens? She felt the issue was overlooked. She wanted to know how and why people of authority can pick and choose what children get protected.
- Shirley Fisher has spoken before on the DCPC. She has no fear of local control. The real issue is what you want this area to look like way down the road in the future. She supported statements made by Steve Brown and Meg Loughran.
- Sarah Cote from Sandwich read a piece on behalf of Richard Bartlett from Cotuit. Nantucket Sound is not pristine. Please make an effort to listen to your constituents.
- Roy Richardson from Centerville spoke on the DCPC. There are serious questions. What is the nature of the council's role. The role is to listen. Take it to heart and act appropriately. Support the DCPC.
- Patrick Page from West Barnstable vented his frustrations. He said 3 of the councilors were reasonable. He and his wife came in 4 years ago and he asked the council to help him save a house on Buttonwood Lane. I have threatened no one. You have all used my name. I did the process with Conservation. They told me to take it to the state – I did. I have asked you to investigate. My boxes are full of evidence. I am aggrieved. You keep ignoring me and slandering and lying about me – watch out – I might put that shoe on. I have asked you to look into this. Who do I go through when it is a tie vote. I have not threatened anyone. How come the minutes are not written up properly.
- Jane Saunders (with Mr. Page) asked what are you going to do about this. You are going to have to listen until there is some resolution. We want an independent group to go over this. Who is watching the boards, the committees and commissions. Once again we beg you and plead with you to look at this in a new way. Who has the gumption and can overcome their complacency and have some compassion. You can't even solve a sign problem. It ought to be simple.
- Stephen Peckham noted that in an article published it said a gift fund was created to help support the fight against Cape Wind. He addressed being a first responder to emergencies and it was told that we will have to buy millions of dollars of equipment. He said it is false and the Coast Guard is the first responder and will reimburse the town for any expenses.
- Esther Kateff talked about the sewer issue in Stewarts Creek. They are in the midst of this and we don't have high powered attorneys. What is the cost going to be to us for this phase and phase 2? What is the betterment cost going to be and the

personal cost for the hookup – is it mandatory and what about those who have new and working septic systems. How will an override vote help us. We have heard of \$20,000 and \$30,000. I am on a fixed income. We are asking you to be transparent on the costs.

- Barbara Hill from Centerville said Clean Power asked to stop funding legal costs to fight Cape Wind. We know that over \$15,000 has been spent and that does not include other costs. What if someone wants to support Cape Wind? (see Exhibit C for full talk)
- Meredith Farnsworth thanked the council for the 50% betterment; it is better than 100%. Many of us will need grinder pumps, this is an additional burden. We don't know the cost or why we need them. Some may need electrical upgrades. We were told that we could fill the septic systems – however, now we hear that might not be the case. She wants to remind folks that there are predatory contractors out there as well.
- Al Baker from Marstons Mills thanked the council for his reappointment to the DPW and Waste Water Treatment Commission. He announced upcoming Village Day and BBQ on September 12.
- Conrad Geiser from Cotuit said It seems we could do better by constructive engagement with the wind farm proponents. We should work with them and not against them.
- Sharon Monahan represented her parents Ann and Jack O'Malley of Long Beach Road. We have unanimous support for local zoning. We have common ground and can move forward in an amicable manner.
- Jon Julius said the sign regulation is in violation under the 1st and 14th amendments to the Constitution. I am here for every person in the town. People are watching you.

COUNCIL RESPONSE TO PUBLIC COMMENT

- Councilor Norman said a majority of those elected to this board were obvious in their vote against Cape Wind. I am against it – this will be a monstrosity in a beautiful piece of property. I feel that I would be remiss if I supported the wind farm. We as a town will be negatively affected by the loss in tax revenue and lowering of the assessed value if it is built. Regarding the sewer situation – there seems to be unknown costs. There is a number that has been approved – there are change orders in contracts. Those could escalate the cost of the job. The funding from the Feds is not sure yet either. You can fill the existing septic. You can get bids for hookup. Grinder pumps are used for those who might have to have the sewage go up hill – you need the pump to grind and pump it uphill. He has listened to the people who live on the streets in the area of the DCPC.
- Councilor Milne asked about what we could do to help with predatory contractors. Milne said he has talked to many sides relative to the aggrieved

person – it would not be that difficult to grab a third party to look at this and be reasonable.

- Councilor Canedy said that the Council President has referred the review of the sign ordinance as to how it relates to real estate “Open House” signs to the Planning Board for consideration at her request.
- Councilor Farnham addressed Cape Wind. This has been a long standing effort. Most of the councilors are also aware of the open house and open flags issue – and many of us feel we can mitigate this while we are trying to modify the sign code for better codes for the people of the town. We are going to look at each village. If we can see a way to ameliorate the current code we will do it. We have a short window of the business season.
- Councilor Dagwan said it is nice to have signs on the main roads to properties that are off the road. Councilor Canedy has taken the lead on it. She said regarding the incident at the Youth Center, it was back in February, and the young man had an issue and it should have been taken to the parents. It was brought to the proper authority. It was handled properly.
- Councilor Tinsley has not agreed to or signed anything against Cape Wind. He is in favor. Fossil fuels are limited and that is the base fact. It won't affect us. He wants his daughters to have clean energy.
- Councilor Barton clarified a statement made at a previous meeting. She did not say she was threatened, she said she felt threatened. If you have that feeling it is a valid feeling and needs to be spoken. I think people's feelings should be validated. We have the law to back us up on it.
- Councilor Joakim worries that the council does not have the decorum and the respect that should be allotted this group. I don't want it to get to the point of shoes being thrown. She has felt threatened and it is not appropriate to yell and scream. Cape Wind came in 2001 and we tried to talk about our role, and the costs, there was an attitude from the beginning that they (Cape Wind) did not need to talk to us. There will be a helipad and ferries going back and forth to the construction area – we want to be part of the emergency plan. The Town of Mashpee and Barnstable will be responsible. It will take 4 hours to get any fuel spill to our shores. There are many questions and concerns that need to be answered. We have to file a suit because no one is giving us the answers.
- Vice President Crocker welcomed back the Town Clerk. He also addressed the writing of legislation and he gave some data on fossil fuels.
- Councilor Tinsley said he does know what has been happening on Cape Wind.

ACT ON MINUTES

Upon motion duly made and seconded it was voted to approve the minutes of: July 15, 2010.

VOTE: 13 YES

COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS, STAFF, CORRESPONDENCE, ANNOUNCEMENTS AND COMMITTEE REPORTS

- Councilor Tinsley said there have been some issues on illegal activity in Precinct 9 and thanked the police department who has been a comfort to the community. Thank you.
- Councilor Barton attended an event at the Zion Museum and it is an awesome building and facility. She announced some upcoming meetings such as one at CCCC on Sept. 19. She thanked everyone who attended the anti bullying workshop. She announced a new Peace Builders award (see Exhibit D). These are for acts of kindness. We are trying to support positive things. She announced a number of other happenings with the No Place for Hate group.
- Councilor Munafo thanked the Town Manager for his attention to having machinery moved from construction sites on weekends. We need to make sure neighbors in areas of construction have their rights protected.
- Councilor Joakim announced Centerville Old Home Week.
- Councilor Farnham said the world renowned West Barnstable Festival with its eclectic mix of people is Sat. August 21.
- Councilor Milne attended the opening of the Ruth Rusher Youth Hostel. He also stated he had met our Barnstable, England friends including the Mayor and Clerk who recently visited.
- Councilor Canedy announced the Barnstable Village Ice Cream Social that will be held on August 14. The Millway Munch ice cream will be introduced.
- Councilor Dagwan announced the Farmers' Market. She also stated that the Governor is visiting the Zion Museum this evening.
- (Councilor Rugo left the room briefly and returned about 8:50 pm)
- The Asst. Town Manager recused himself from the dias.

ORDERS OF THE DAY

A. OLD BUSINESS

2010-062 DCPC IMPLEMENTING REGULATIONS – CRAIGVILLE BEACH DISTRICT INTRO: 12/03/09, 02/25/10, 03/04/10, 04/01/10, 08/05/10

Paul Niedzwiecki from the Cape Cod Commission referred the council to two handouts (see Exhibit E). One was a legal statement and the other a staff report. The staff found that the language was indeed in line with the DCPC. He said most of the council seems to be ok with the language. You need a 2/3's vote to adopt this. Should you not vote it affirmatively –

a no vote limits your local control in many ways. Can you do it on the local level? The answer is no it is not the same thing. This language becomes certain.

He referenced a Bournedale DCPC – they are now looking to change it and the CCC is in negotiations. That is different from a residential DCPC.

Vice President Crocker said there is no unanimous love of the language...it was a negotiation choice.

Councilor Rugo said there are 12 members present and if 8 vote in favor that is 2/3's. There is 2/3's if you count just the membership present

Councilor Tinsley asked about #24 recommendations for strengthening. He was told by Niedzweicki that if it does not pass by November the CCC could take action..

Councilor Munafo asked about the super majority, which would be 2/3's of the whole body. A simple majority is needed for an opinion from Cape Cod Commission.

Councilor Joakim said the CCC was voted in by the people of the town. This is what our voters want. Grandfathering is a big issue. If we do not do this we would be subject to litigation regarding grandfathering.

Councilor Munafo said that whether or not you are for or against something, you don't want to be a rubber stamp either.

A motion was made, seconded and voted to move the question.

VOTE: 11 yes and 1 no

Upon motion duly made and seconded it was

ORDERED:

Preamble: This section is adopted as a zoning implementing regulation of the Craigville Beach portion of the Craigville Beach District of Critical Planning Concern (DCPC). Included in this order: **Section 1** amends the Zoning Map to create the Craigville Beach District; **Section 2** adopts the Craigville Beach District Implementing Regulations. **Section 3** incorporates the DCPC implementing regulations into the Town of Barnstable Zoning Ordinances upon approval by the Cape Cod Commission and **Section 4** adds the Centerville Beach District to the Town of Barnstable Ordinance Article II, § 240-5 Establishment of Districts, Residential Districts.

Section 1

Craigville Beach District Map

That the Zoning Map of the Town of Barnstable is hereby amended by rezoning portions of the RB, RC, RD and RD-1 zoning districts in Centerville and a small portion of western Hyannis to the Craigville Beach District as shown on a map on file with the Town Clerk entitled "Proposed Amendment to the Town Zoning Map Creating the Craigville Beach District" dated July 16, 2009 Index Sheets Hyannis Sheet 3 of 7 and Centerville Map 4 of 7 creating the Craigville Beach District".

Section 2

Craigville Beach District Implementing Regulations

That Chapter 240, The Zoning Ordinance is hereby amended by adding to Article XIV District of Critical Planning Concern Implementing Regulations a new § 240-131 adding Craigville Beach District Implementing Regulations as follows:

§240- 131 Authority

This section is adopted under the authority of the Home Rule Amendment, Article 89 of the Constitution of the Commonwealth, and the Cape Cod Commission Act, Chapter 716 of the Acts of 1989.

§240-131.1 Purposes and Intent

- A. The purpose and intent of this section is to guide development in the Craigville Beach District pursuant to the Guidelines of Barnstable County Ordinance 08-06 to ensure that development and redevelopment:
- (1.)Contributes to and respects the character and historic development patterns of the area; lessens inconsistent development and redevelopment impacts to the historic and community character resources in this area;
 - (2.)Protects and preserves scenic views and vistas and ways to the water;
 - (3.)Protects and improves natural resources including but not limited to the barrier beach and groundwater and coastal water quality; lessen development and redevelopment impacts to the natural resources and ecosystems in this district;
 - (4.)Protects human life and property from the hazards of periodic flooding,
 - (5.)Preserves the natural flood control characteristics and the flood control function of the flood plain,
 - (6.)Preserves and maintains the ground water table and water recharge areas within the floodplain. As the entire complex of coastal wetland resources moves landward due to relative sea level rise, the Craigville Beach area's coastal floodplains immediately landward of salt marshes, coastal beaches, barrier beaches, coastal dunes, and coastal banks require special protection.

240-131.2 District Boundaries

A. The provisions of this ordinance shall apply within the Craigville Beach District (CBD), as shown on the Zoning Map of the Town of Barnstable as amended.

B. Neighborhood Overlays. For the purpose of this section the Craigville Beach District is divided into the following Neighborhood Overlay areas, as shown on the Zoning Map and identified as: .

LBSB: Long Beach/Short Beach
CB: Craigville Beach
CRNB: Centerville River North Bank
CV: Craigville Village

§ 240-131.3 Definitions

Accessory Use or Building-- A use or structure which is customarily incidental to and subordinate in area, extent, and purpose to that of the principal use or structure.

Base Flood Elevation (BFE) – The elevation shown on the Flood Insurance Rate Map (FIRM) that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

Beach Club -- A membership establishment legally in existence at the time of the adoption of this ordinance, not open to the general public, located in close proximity to a beach and providing recreational and social activities, including food service, to members.

Building Coverage - The percentage of a lot covered by principal and accessory buildings or structures. For the purposes of this section, this definition does not include uncovered swimming pools and tennis courts, and decks not exceeding 100 square feet or 10 feet in length.

Building Height —The vertical distance from the grade plane to the highest point of a gable, hip or gambrel roof and the highest point of the coping of a flat roof. These height limitations shall not apply to chimneys, flagpoles or other similar appurtenances as approved by the Building Commissioner.

Common Driveway – A form of access which is not a street but extends from a street and provides common vehicular access to more than one (1) lot. For the purposes of calculating Lot Coverage, the common driveway's Impervious Surfaces shall be equally allocated among the lots served and/or benefited by the common driveway in proportion to the sizes of the lots.

Conference Center – A non-profit religious and educational use legally in existence at the time of the adoption of this section comprised of guest houses and cottages, single family residences, recreational areas, lodging for guests, meeting spaces, and summer recreational opportunities.

Cottage Colony – A group of three or more detached dwellings, under one ownership, legally in existence at the time of the adoption of this section located on a single lot, which are customarily rented out to the transient public by day, week, month, or season and occupied on a seasonal basis only. Cottage colonies shall not be used year round. Cottage colony structures shall not exceed one and one-half stories and 800 s.f. GFA.

Elevated Structure - A structure elevated for the purpose of Barnstable Code, Section 240-34, Flood Area provisions whose lowest structural member is 1' above BFE in A zones and 2' above BFE in V zones.

FEMA – Federal Emergency Management Agency.

FEMA Flood Zones - Geographic areas susceptible to inundation by water that FEMA has mapped according to varying levels of flood risk, as defined and delineated on a community's Flood Insurance Rate Map as may be amended from time to time.

FIRM – Flood Insurance Rate Map.

Grade – The referenced plane of the average of all finished ground levels adjoining the building or structure for a distance of 6 feet from all exterior walls. Retaining walls for mounded septic systems mandated by the Board of Health are not included in the calculation of grade.

Gross Floor Area – The sum of all floor areas within a building or structure, measured from the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features. It shall include all areas capable of being used for human occupancy, including all basement floor areas, mezzanine and attic space and enclosed porches.

Half Story – That space above the plate line but below the ridgeline in an area commonly called the "attic space", provided that the gross floor area of the half story shall not exceed 66% of the gross floor area immediately below the half story.

Impervious Surface A surface which prevents the penetration of precipitation or other liquids into the ground, including roofs, concrete, asphalt, sidewalks, etc. Any area designed

for vehicle use or vehicle parking covered with porous pavers, which may become impervious over time may, at the discretion of the Building Commissioner be considered impervious surface.

Lot Area – For the purpose of determining Maximum Building Coverage and Maximum Lot Coverage Allowances the lot area for legally created lots that are vacant or developed and/or improved as of November 6, 2009 shall be the horizontal area of the lot defined by metes and bounds. All of the lot area used for zoning compliance shall be land other than that under water nine (9) months or more in a normal year.

Lot Coverage - The percentage of a lot covered by Impervious Surfaces. For the purposes of this section, paved driveways and parking areas, principal and accessory structures, and other on-site amenities that render any portion of a lot impervious shall be included in the definition of lot coverage.

Non-Profit Educational Use – An educational use conducted by a not for profit corporation whose articles of incorporation permit it to engage educational activities and “educational purposes” as its principal permitted use within the meaning of Massachusetts General Laws, Chapter 40A, sec. 3, including but not limited to libraries and museums.

Open Foundation: A pile or column foundation designed for structures in flood zones that minimizes the foundation area subject to lateral flood loads. Open foundations are intended to prevent flotation, collapse, and lateral movement of a building during a flood-event.

Religious Institution – An institution engaged in “religious purposes” within the meaning of Massachusetts General Laws, Chapter 40A, Section 3.

Seasonal Use – A use carried on for only a part of the year. Typical seasonal uses are outdoor recreational activities such as swimming and boating both motorized and non-motorized; impermanent use of cottages, motels, hotels, letting of rooms in a residential structure and letting an entire residential structure.

Seasonal Use Structure – Any structure designed or used as temporary seasonal living quarters that is not used as a primary, permanent residence. Seasonal use structures may have heat and other amenities but do not deposit wastewater into wastewater treatment systems on a regular year round basis and do not withdraw water for consumption or other activities on a regular year round basis.

Single Family Residence - A detached residential building designed for and occupied by a single family.

Small-Scale Food Service – An establishment legally in existence at the time of the adoption of this section where food is served to customers by wait staff. Small-scale food service does not include restaurants designed to serve a large volume of customers. Small-scale food service is subject to formula business limitations as described herein. These uses are intended to increase pedestrian activity.

Special Permit Granting Authority (SPGA) - The Zoning Board of Appeals shall be the special permit granting authority within the Craigville Beach District.

Story - The vertical distance from top to top of two successive tiers of beams or finished floor surfaces; and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

Structure- Anything constructed or erected on the ground or which is attached to something located on the ground. Structures include buildings, sheds, swimming pools and towers, but shall exclude fences of 6 feet or less in height and flag poles.

Upland – All lands not defined herein as wetlands.

V (Velocity) Zone—The area extending from mean low water to the inland limit 100 year floodplain supporting waves greater than three (3) feet in height. V-zones are mapped on the FEMA FIRM.

Wetland – The land under the ocean or under any bay, lake, pond, river, stream, creek or estuary; any wet meadows, marshes, swamps, bogs, areas where high groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrata for a plant community for at least five months of the year, lowland subject to any tidal action or annual storm flooding or flowage, or any flat, beach, dune, or other shifting sand formation.

Section 240-131.4 Craigville Beach District Use Regulations

Municipal uses are exempt from these regulations.

Principal Permitted Uses. See 240-131.7 (Neighborhood Overlay Regulations) herein.

A. Use Limitations

- (1.) Any use not expressly allowed herein is prohibited.
- (2.) The conversion of any building or structure from seasonal use to year round use is prohibited, except that Single Family Residences are not subject to this use limitation. The conversion of a building, or buildings, constituting a cottage colony, hotel, inn or rooming house, or of a facility required to be licensed as a recreational camp, overnight camp or cabin, or motel under S. 32A to I of Chapter 140 of the General Laws, to condominium-type ownership, shall be deemed to be a change in use from seasonal to year-round use, and is prohibited.
- (3.) Permitted business and retail uses shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized (“Formula”) array of services and/or merchandise, trademark, logo, service mark, symbol, décor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than fourteen (14) other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.

B. Exempt Uses

- (1.) Religious institutions, accessory day care centers, and Non-Profit Educational uses are permitted as exempt uses within the Craigville Beach District. These uses shall, however, be subject to and in conformance with the reasonable bulk, density, design and development regulations of the Craigville Beach District as set forth in Sections 240-131.1 Purposes and Intent, § 240-131.5 Dimensional, Bulk and Other Regulations, § 240-131.7 Neighborhood Overlay Regulations including General Performance Standards and applicable Neighborhood Performance Standards
- (2.) Where the exempt use does not comply with said regulations, the Zoning Board of Appeals shall, by modification permit, modify said regulations if compliance with the regulation substantially diminishes or detracts from the usefulness of a proposed development or impairs the character of the development so as to affect its intended use, provided however that the relief granted will not create a public safety hazard along adjacent roadways and will not adversely impact natural resources or create a nuisance or adverse impacts to other surrounding properties. A modification permit shall be subject to the same procedural requirements as a special permit except that approval of a modification permit shall require a simple majority of the members of the Board.

C. Continuation. Any lawfully established lot, structure or use existing at the time of the adoption of this section that does not conform to the provisions of the CBD shall be allowed to continue.

D. Change, Expansion or Alteration of Uses and Structures

Existing conforming or non-conforming uses and structures lawfully existing at the time of the adoption of this ordinance may continue subject to the following:

(1) As of right

- a) The normal and customary repair and maintenance of a building or structure and the conversion of existing floor area to habitable space is permitted as of right.
- b) The alteration and expansion of a building or structure is permitted as of right provided that—the alteration or expansion shall conform to following criteria:
 1. Conforms to applicable height requirements of § 240-131.5.
 2. Does not exceed the Coverage Limitations set forth in § 240-131.6
 3. Complies with applicable General and Neighborhood Performance Standards.

(2) By Special Permit

(a) The alteration or expansion of an existing conforming or non-conforming lawfully established building or structure that does not qualify under the “as of right” provisions above shall be permitted only by a special permit from the SPGA. In granting such special permit, the SPGA shall find that the proposed alterations and/or expansions:

- [1.] Are not substantially more detrimental to the environment, community and/or historic character of the neighborhood than the existing building or structure;
- [2.] Comply with Section 240-131.1 Purposes and Intent and with the Performance Standards for the Neighborhood Overlay area in which the development is located, in accordance with Section 240-131.7 Neighborhood District Overlay Regulations with the exception of the dimensional requirements of Section 240-131.7 D (1);
- [3.] Do not exceed 25% of the Gross Floor Area of structures in existence as of July 1, 1989 or 10% of the Gross Floor Area of structures in existence as of November 6, 2009.
- [4.] Do not increase Lot Coverage over what is allowed under § 240-131.6 Coverage Limitations or by more than 10% over what was existing on November 6, 2009, whichever is greater.
- [5.] Do not increase flood hazards in the neighborhood.
- [6.] Maintain or enhance views to Nantucket Sound and/or the Centerville River where applicable in accordance with Section 240-131.5, note 4;
- [7.] In V-zones does not increase south facing building surfaces so as to limit the adverse effect of increasing elevation or velocity of flood waters due to a change in flowage characteristics on the subject site, adjacent properties, or any public or private way.

E. Special Permit for Dimensional Relief

The SPGA may provide relief from minimum yard setbacks when such relief ensures that the proposed development:

- (1) Is consistent with § 240-131.1 Purposes and Intent;

- (2) Is consistent with the Performance Standards for the neighborhood district where the development is located in accordance with Section 240-131.7 Neighborhood Overlay Regulations; and
- (3) The applicant demonstrates undue hardship without desired relief.

F. Re-establishment of damaged or destroyed use, building or structure.

- (1.)The re-establishment of a lawfully established conforming or non-conforming use and/or building or structure which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted as of right, provided that the Building Commissioner has determined that all the following conditions are met:
 - a. The reconstruction or repair will not materially increase the gross floor area or height of the building or structure beyond that which previously existed, nor materially increase the footprint of the structure; or materially change the grade other than grades required for installation or upgrade of onsite septic systems; except that buildings in the flood plain that existed prior to November 6, 2009 may be elevated 2 feet above BFE or as required by the applicable law regardless of the resulting building height provided the building complied with building height regulations at the time of its construction.
 - b. If the building’s location on the lot is to be changed, it will change in a manner that will be closer to complying with the dimensional and bulk regulations and with performance standards regarding building orientation.
 - c. The reconstruction or repair will not constitute an expansion or intensification of any use.
 - d. In the case of any use in which it would otherwise be required, the site plan review process has been followed.
 - e. Design and architecture of damaged or destroyed buildings and structures in existence at the time of the adoption of this regulation may be replicated. If the Building Commissioner finds that the structure is to be rebuilt to replicate what existed before the damage or destruction the design guidelines in this chapter do not apply. If the structure is in the floodplain, any design or architectural changes associated solely with flood-proofing the reconstructed structure shall not require compliance with the design guidelines.
- (2.)Any previously established use or structure which no longer complies with the provisions of the CBD shall be discontinued unless a building permit has been applied for within two years from the date of damage or destruction, and construction is continuously pursued to completion.

G. Voluntary Demolition and Reconstruction of Single Family Residences: Lawfully established Single Family Residences may be demolished and reconstructed in accordance with §240-131.4 G. This provision shall not be construed to supersede local, state or federal regulations pertaining to the demolition of historic structures.

240-131.5 Dimensional, Bulk, and Other Requirements: The following requirements apply to all development and redevelopment in the Craigville Beach Zoning District.

	Neighborhood Overlays
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	Craigville Village	Craigville Beach	Long Beach/Short Beach	Centerville North Bank	River
Requirements	For all legally created vacant lots the frontage and area in existence as of November 6, 2009 and/or legally developed lots that were in existence as of November 6, 2009 and conformed to the existing zoning when legally created, the existing lot area, lot frontage, front, side and rear setbacks and building height dimensions may be used in lieu of the following dimensional requirements.				
Minimum Lot Area (s.f.)	87, 120	87, 120	87,120	87,120	
Minimum Lot Frontage (feet)	75	100	125	125	
Min. Front Yard Setback (feet)	15	20	20	20	
Min. Side Yard Setback (feet) ⁴	10	15	15 ⁴	15	
Min. Rear Yard Setback (feet)	10	15	15	15	
Maximum Building Height ^{1,2,3}	30	26	30	30	
Maximum number of stories ³	2	2	2	2	
Maximum Building Coverage	See Section 240-131-6				
Maximum Lot Coverage	See Section 240-131-6				

Dimensional table notes:

- (1.)Maximum Building Height allowances vary depending upon the roof pitch of the structure, with gable roofs having a slope of 7/12 or greater allowed the maximum building height, hip and other sloped roofs with a slope of 4/12 or greater are allowed 5 feet less than the maximum building height, and flat roofs prohibited except on one-story additions totaling less than 300 square feet per parcel.
- (2.)Buildings in the flood plain that existed prior to November 6, 2009 may be elevated 2 feet above BFE or as required by the applicable law provided the building complied with building height regulations at the time of its construction.
- (3.)The second story must be set back at least 2 feet from the façade line of the floor below on two of the building's facades and the second story floor area shall not exceed 80% area of floor area immediately below it.
- (4.)In the Long Beach/Short Beach Neighborhood, to preserve and enhance views of Craigville Beach and the Centerville River, a view corridor shall be preserved using 20 feet of either side setback or, where side yard setbacks are less than 20 feet, the greater of either side yard setback existing on November 6, 2009. The view corridor shall remain free of view obstructing buildings, structures, site improvements or landscaping other than low growing plant material or existing natural vegetation for the entire depth of the property from the street to the river or beach.

240-131.6 Coverage Limitations: The following limitations apply to all development and redevelopment in the Craigville Beach Zoning District.

Lot Size	Maximum Building Coverage (footprint) Allowance	Maximum Coverage Allowance	Lot
1,300-4,999 s.f.	1,100 s.f. plus 10.8% of lot area over 1,300 s.f.	50%	
5,000-7,499	1,500 s.f. plus 6% of lot area over 5,000	50%, but no more than 3,200 s.f.	
7,500-9,999	1,650 s.f. plus 6% of lot area over 7,500	3,200 s.f.	
10,000-14,999	1,800 s.f. plus 4% of lot area over 10,000	3,300 s.f.	
15,000-19,999	2,000 s.f. plus 6% of lot area over 15,000	3,400 s.f.	
20,000-34,999	2,300 s.f. plus 4% of lot area over 20,000	3,600 s.f.	
35,000-44,999	2,900 s.f. plus 4% of lot area over 35,000	3,600 s.f. or 10%, whichever is greater.	
45,000 and above	3,300 s.f. plus 3% of lot area over 45,000	10%	

Section 240-131.7 Neighborhood Overlay Regulations

A. Purpose: The Neighborhood Overlay regulations establish uses, dimensional requirements and design guidelines to **preserve** the distinctive character; allow continued use and enjoyment of properties and structures; make provisions for changes, expansions; protect and **preserve** scenic views and vistas; protect and improve natural resources; and to limit damage from periodic flood events for each neighborhood within the Craigville Beach District.

B. Historic and Community Character. These regulations will ensure that development and redevelopment in the CBD contributes to and does not detract from the historic character of the Craigville Beach area; that any proposed additions to historic structures shall be consistent with the historic structure and shall be consistent with the character of the surrounding neighborhood, including elements such as building height, mass and orientation; and preserves views and ways to the water from public spaces, streets and ways.

C. Applicability: Development and redevelopment shall be subject to the following additional requirements and regulations based upon the applicable Neighborhood Overlay.

D. General Performance Standards

- 1) The development complies with the setbacks and lot coverage requirements set forth herein, and is in character with surrounding structures, particularly structures that predate it unless relief has been granted by the SPGA in accordance with Sections 240-131.4(E) and (F).
- 2) The development complies with the height limitations set forth herein.
- 3) Exposed foundation walls for raised septic systems and/or elevated structures are prohibited; foundation walls shall be screened through the use of foundation plantings and/or the use of other natural materials.
- 4) Stormwater management and erosion control for non-residential uses comply with best management practices through Low Impact Development or other adaptive management practice.
- 5) Up to 50 square feet of roof deck may be allowed atop the first or second floor of a structure if the railing and support structure for the roof deck are constructed fully below the tallest part of the roofline they are contained within.

E. Long Beach/Short Beach Neighborhood

(1) Permitted Principal Uses: The following principal uses are permitted in the Long Beach/Short Beach Neighborhood Overlay area subject to the performance standards listed below.

(a.) Single Family Residence

(2) Permitted Accessory Uses: Customary and incidental uses and structures are permitted in the Long Beach/Short Beach Neighborhood Overlay area subject to the use limitations and performance standards listed in 240-131-7 C.

(3) Neighborhood Performance Standards All development and redevelopment shall meet the following standards:

(a.) No land area shown as V-zone shall be developed unless such development is demonstrated by the applicant to be located landward of the reach of the mean high tide. Any man-made alteration of sand dunes in the course of such development within said designated V zones which might increase the potential for flood damage shall be prohibited. This provision shall not be construed to include duly permitted docks and piers.

(b.) Any activity or development in a V-zone that creates an adverse effect by increasing elevation or velocity of flood waters due to a change in drainage or flowage characteristics on the subject site, adjacent properties or any public or private way is prohibited. Any proposed activity shall not result in flood damage due to filling which causes lateral displacement of flood waters that, in the judgment of the SPGA, would otherwise be confined to said area. The burden of proof for this standard rest with the applicant and shall require certification by a professional engineer.

(c.) Open foundations shall be designed to accommodate only the height required to elevate the lowest structural member 2' above the BFE in V zones and 1 foot above BFE in A zones. For all new construction and substantial improvements within the V zones, the space below the lowest floor must either be free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

(d.) **Transitional Provision** Any development that has obtained a hardship approval from the Cape Cod Commission for a building permit prior to the effective date of this section shall not be subject to these regulations for the development authorized by said hardship exemption.

F. Craigville Beach Neighborhood

(1) Permitted Principal Uses: The following principal uses are permitted in the Craigville Beach Neighborhood Overlay area subject to the performance standards listed below.

(a.) Single Family Residence

(b.) Small-scale food service

(c.) Beach club

(d.) Cottage colony

(e.) Hotel or motel in existence as of July 16, 2008 that is lawfully established

(2) Permitted Accessory Uses: Customary and incidental uses and structures are permitted in the Craigville Beach Neighborhood Overlay area subject to the use limitations and performance standards listed in 240-131-7 C.

(3) Neighborhood Performance Standards: All development and redevelopment shall meet the following standards:

- (a.) No land area shown as V-zone shall be developed unless such development is demonstrated by the applicant to be located landward of the reach of the mean high tide. Any man-made alteration of sand dunes in the course of such development within said designated V zones which might increase the potential for flood damage shall be prohibited.
- (b.) Any activity or development in a V-zone that creates an adverse effect by increasing elevation or velocity of flood waters due to a change in drainage or flowage characteristics on the subject site, adjacent properties or any public or private way is prohibited. A proposed activity shall not result in flood damage due to filling which causes lateral displacement of flood waters that, in the judgment of the SPGA, would otherwise be confined to said area. The burden of proof for this standard rest with the applicant and shall require certification by a professional engineer.
- (c.) Open foundations shall be designed to accommodate only the height required to elevate the lowest structural member 2' above the BFE in V zones and 1 foot above BFE in A zones. For all new construction and substantial improvements within the V zones, the space below the lowest floor must either be free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

(4) Beach Club Design Guidelines

Purpose: To maintain public views to the water and to maintain the neighborhood's existing character with small scale building masses and natural or traditional building materials.

- (a.) **Building Height and Massing:** New construction on Beach Club properties shall have modest massings to relate to the small scale of most structures in the beachfront neighborhood. Any structure with a footprint of 3000 square feet or more shall incorporate significant changes in massing to break up the facade, and should integrate one-story massings into the design to relate the building to the surrounding smaller structures.
- (b.) **Building Orientation:** Buildings shall be oriented with the narrow end facing the street and the water to maximize public views of the water across the site. New buildings or complexes should not extend over more than 150 feet of the lot frontage, and efforts should be made to limit the expansion of existing buildings.
- (c.) **Maintaining Views to Water:** Multiple buildings on one lot should be clustered close together to limit obstructed views of the water, or shall be separated from each other by 100 feet or more of road frontage to allow broad unobstructed views across the lot to the water.
- (d.) **Fences:** Fences shall be of open construction and low profile (such as split rail and low picket fencing) to maintain public views to the water. Fences over 3 feet in height should be limited to screening loading and delivery areas adjacent to buildings, or modest trash collection areas. Screening fences should not extend farther than necessary beyond the building footprint to maintain public views.

- (e.) **Building Materials:** Exterior building materials shall be those traditionally used in the region or other naturally weathering materials, such as wood shingle, wood clapboard, or board and batten siding.

G. Centerville River North Bank Neighborhood

(1) Permitted Principal Uses: The following principal uses are permitted in the Centerville River North Bank Neighborhood Overlay area subject to the performance standards listed below.

(a.) Single Family Residence

(2) Permitted Accessory Uses: Customary and incidental uses and structures are permitted in the Centerville River North Neighborhood Overlay area subject to the use limitations and performance standards listed in 240-131.7 C.

(3) Neighborhood Performance Standards: All development and redevelopment shall meet the following standards:

- (a.) Tree removal or vista pruning shall not interrupt the treeline as viewed from the south looking northward to the treeline.
- (b.) No land area designated as V-zone of the FIRM maps shall be developed unless such development is demonstrated by the applicant to be located landward of the reach of the mean high tide. Any man-made alteration of sand dunes in the course of such development within said designated V zone which might increase the potential for flood damage shall be prohibited. This provision shall not be construed to include duly permitted docks and piers.
- (c.) Any activity or development in a V-zone that creates an adverse effect by increasing elevation or velocity of flood waters due to a change in drainage or flowage characteristics on the subject site, adjacent properties or any public or private way is prohibited. A proposed activity shall not result in flood damage due to filling which causes lateral displacement of flood waters that, in the judgment of the SPGA, would otherwise be confined to said area. The burden of proof for this standard rest with the applicant and shall require certification by a professional engineer.
- (d.) Open foundations shall be designed to accommodate only the height required to elevate the lowest structural member 2' above the BFE in V zones and 1 foot above BFE in A zones. For all new construction and substantial improvements within the V zones, the space below the lowest floor must either be free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

H. Craigville Village Neighborhood

(1) Permitted Principal Uses: The following principal uses are permitted in the Craigville Village Neighborhood Overlay area subject to the performance standards listed below.

(a) Single Family Residence

(b) Conference Center

(2) Permitted Accessory Uses: Customary and incidental uses and structures are permitted in the Craigville Village Neighborhood Overlay area subject to the use limitations and performance standards listed in 240-131.7 C.

(3) Neighborhood Performance Standards: All development and redevelopment shall meet the following Design Guidelines:

Purpose: Most buildings in the Craigville Village Neighborhood date from the late 1800s and early 1900s when the neighborhood developed as a Christian Camp Meeting Association. The neighborhood is still defined by its historic structures and their configuration around a central green, small street grid, and communal paths.

(a.) Objectives:

- (1.) To preserve the character-defining features of the original camp meeting neighborhood including its small lots, modest scale structures, and orientation of buildings to public areas.
- (2.) To ensure that additions and alterations to structures are compatible with the existing scale and character of the building and preserve the original massing and unique architectural features of its historic buildings.

(b.) Application:

The design guidelines set forth herein do not apply to structures in existence as of the date of the adoption of this section, but shall apply to all new development, to any additions to existing structures, and to all reconstruction projects except as provided for in Section 240-131 (G)(1)(e).

(c.) Building Design. The guidelines shall apply to construction of new structures and expansions and alterations of existing structures.

- (1.) Preserve the original massing of historic structures (pre-1945):
- (2.) Additions should be attached to secondary or less prominent facades of the building (the side or rear facades), and should be stepped back from the front and rear corners of the building so as to preserve the original massing of the structure, including its roof form.
- (3.) Work with modest massings: Additions should be scaled to be consistent with or smaller than the size of the original historic structure, following the neighborhood tradition of expanding small cottages incrementally with modest additions. Additions should generally have a lower roofline than the original structure to maintain the prominence of the original building, though some additions may be slightly taller than the original structure if attached to the original structure with a smaller connecting mass.
- (4.) Roof forms: The roof pitch on new construction and additions should complement the roof pitch of the original historic structure and should maintain a pitch of at least 6 over 12.
- (5.) Retain Original Architectural Details and Unique Forms: Additions should be placed so as to limit the removal of distinctive architectural trim and features that are unique to the building. Additions and alterations should not interfere with character-defining features such as open porches, steeply pitched roof forms, unique windows, and carpenter gothic trim along eaves and entries. Siding materials used on the original structure should be retained, though other regional siding materials may be appropriate on additions.

Section 240-131.8 Additional Provisions

A. Other regulations

The following provisions of the Barnstable Code are hereby incorporated into this regulation: § 240-7 Application of District Regulations; § 240-9.C & D; § 240-10 Prohibited Uses; § 240-34 Flood Area Provisions; § 240-43 Accessory Uses; § 240-46.A & B Home Occupations; Article VI Off Street Parking Sections 240-52, 240-53.B through F as delimited only in the

Craigville Beach neighborhood; and Sign Regulations § 240-59 through 63; Article XI Growth Management Sections 240-110 through 122; Article IX Site Plan Review; Article XII Administration and Enforcement § 240-123 – 240-124; and § 240-125 C Special Permit Provisions as these provisions of the Barnstable Code cited in this section may be amended from time to time

B. Conflicts

Unless otherwise stated, the requirements of the Craigville Beach District shall apply to uses and structures within the Craigville Beach District. In the event of a conflict, these regulations shall apply.

C. Severability

The provisions of this chapter are severable. If any court of competent jurisdiction shall invalidate any provision herein, such invalidation shall not affect any other provisions of this chapter. If any court of competent jurisdiction shall invalidate the application of any provision of this chapter to a particular case, such invalidation shall not affect the application of said provision to any other case within the Town.

Section 3

For the purposes of the Cape Cod Commission Act, the implementing regulations shall be deemed incorporated into the Zoning Ordinances of the Town of Barnstable upon the approval by the Cape Cod Commission.

Section 4

Amend the Town of Barnstable Zoning Ordinance § 240-5 Establishment of Districts by adding the CBD - Centerville Beach District to the list of Residential Districts

VOTE: Roll Call – 8 yes 4 no (No votes: Crocker, Farnham, Munafo & Norman) The Vice President announced that it fails to carry.

President Chirigotis returned to chairing the meeting. He announced at the last meeting items 2011-01, 02, 03, 04 were not read into the record – they were all as a unit passed to this meeting for their first action. They will be read as a first reading.

Asst. Manager returned.

2011-001 ACCEPTANCE OF A \$400 GRANT FOR THE BARNSTABLE YOUTH SERVICES DIVISION INTRO: 07/15/10, 08/05/10
--

Lynne Poyant, Director of Community Services, gave the rationale as written in the agenda.

Upon motion duly made and seconded it was

RESOLVED: That the Town of Barnstable hereby accepts a grant of \$400 to the Barnstable Youth Services Division from the Cape Youth Force, a program of the Cape & Islands Youth Congress, the Cape Cod Foundation, Barnstable County UMASS Extension/4H, and YMCA/Cape Cod to cover speaker costs for the Barnstable Youth Education and Support (YES) Group.

VOTE: 13 yes - unanimous

2011-002 ACCEPTANCE OF THREE LIFEGUARD TOWER CANOPIES, SUNSCREEN & DISPENSERS INTRO: 07/15/10, 08/05/10
--

Lynne Poyant explained about Glenna Kohl, who was a lifeguard for the Town of Barnstable, who died of cancer. She spoke of many activities that support this cause. The organization wanted to give back to the town.

A motion was made, seconded and voted to move the question.

VOTE: 13 Yes

Upon motion duly made and seconded

RESOLVED, That the Town Council does hereby accept a gift of three lifeguard tower canopies for Dowses Beach, sunscreen and sunscreen dispensers for Dowses and Craigville Beaches with a total value of approximately \$5,500, from the Glenna Kohl Fund for Hope to be used by the Barnstable Recreation Division.

VOTE: 13 yes - unanimous

**2011-003 AMEND GENERAL ORDINANCES, CHAPTER 177 SANDY NECK BEACH
INTRO: 07/15/10, 08/05/10**

Upon motion duly made and seconded it was voted to refer this item to Sept. 2, 2010 for a public hearing.

VOTE: 13 yes - unanimous

**2011-004 AMEND GENERAL ORDINANCE. C. 228, VEHICLE STORAGE INTRO:
07/15/10, 08/05/10**

Upon motion duly made and seconded it was voted to refer this item to Sept. 2, 2010.

VOTE: 13 yes – to refer

Attorney Weil said this is a storage issue but has been handled as a general ordinance so it does not have to go to the planning board.

B. NEW BUSINESS

President Chirigotis recused himself.

**2011-005 ZONING ORDINANCE CRAIGVILLE BEACH DISTRICT/DCPC AREA
INTRO: 08/05/2010**

Upon motion duly made and seconded it was voted to refer this item to the planning board for public hearing.

VOTE: 7 no – 5 yes (Roll Call – No – Barry, Barton, Canedy, Dagwan, Joakim, Milne, Rugo) – Does not pass

Councilor Rugo left the building at 9:18 p.m.

**2011-006 AMENDING ZONING ORDINANCE – GROUND MOUNTED SOLAR
PHOTOVOLTAIC OVERLAY DISTRICT INTRO: 08/05/2010**

Upon motion duly made and seconded it was voted to refer to the planning board for public hearing.

VOTE: 12 yes to refer

**2011-007 AMENDING THE ADMINISTRATIVE CODE – HUMAN SERVICES COMMITTEE –
INTRO: 08/05/2010**

Upon motion duly made and seconded it was voted to refer this item to a second reading on Sept. 2.

VOTE: 12 yes

A motion to suspend the rules to act on the above motion was made and seconded.

VOTE: 4 yes, 8 no – Failed. Motion and vote to refer stands.

**2011-008 ACCEPTANCE OF A \$3,520 CAPE COD HEALTHCARE COMMUNITY BENEFITS
GRANT INTRO: 08/05/2010**

Lynne Poyant gave the rationale on this item, which deals with many items including the additional paid van driver. Councilor Joakim thanked the volunteers who make these programs work.

Councilor Farnham moved the question which was seconded and voted

VOTE: Unanimous in favor.

Upon motion duly made and seconded it was

RESOLVED, That the Town of Barnstable hereby accepts a grant of \$3,520 from Cape Cod Healthcare Community Benefits to support an additional paid van driver for the Barnstable Senior Center Silver Express transportation program.

VOTE: 12 yes

**2011-009 APPROPRIATION - \$46,600 CP FUND RESERVE SET-ASIDES FOR OPEN
SPACE INTRO: 08/05/2010**

Upon motion duly made and seconded it was voted to refer this item to a public hearing on September 2, 2010.

VOTE: 12 yes

**2011-010 AMEND ZONING ORDINANCE CHAPTER 240, ARTICLE V FAMILY APARTMENTS
INTRO: 08/05/2010**

Upon motion duly made and seconded it was voted to refer this item to the planning board for a public hearing.

VOTE: 12 yes

TOWN MANAGER COMMUNICATIONS

Manager John Klimm notified the council that we are putting together the annual report. A municipal relief bill has been passed by the state and we are reviewing it. We were asked why we have meetings so regularly on various projects such as Millway and not on Stewart's Creek. Klimm said that DPW Director Mark Ells has met weekly with residents from Stewarts Creek.

As far as signs – he is pleased that the council corrected the record that we are looking at changing the regulations. He wants the record to show no fines were issued and one real estate sign was confiscated during the month of July. The warnings process is part of the process and 7 warnings were issued.

Pres. Chirigotis thanked Councilor Milne for joining him when the visitors from Barnstable, England were with us. The mayor, clerk and others and have invited us to England.

ADJOURNMENT

Upon motion duly made and seconded it was voted:

TO ADJOURN.

ADJOURNED: at 9:30 p.m.

Respectfully submitted:

Linda E. Hutchenrider, MMC/CMMC
Town Clerk/Town of Barnstable