

**MINUTES
TOWN OF BARNSTABLE
PLANNING BOARD
NOVEMBER 22, 2010**

A regularly scheduled and duly posted meeting of the Barnstable Planning Board was held on November 22, 2010 at 7:00 p.m. at the New Town Hall, second floor Hearing Room, 367 Main Street, Hyannis, MA.

The meeting was called to order at 7:00 p.m. by Chairman, Raymond Lang, with the following Members/Staff present:

PLANNING BOARD MEMBERS

Raymond Lang, Chairman
Matthew Teague, Vice Chairman
Paul Curley, Clerk
Felicia Penn
David Munsell

STAFF

JoAnne Buntich, Director of Growth Management
Jacqueline Etsten, AICP, Principal Planner
Elizabeth Jenkins, Principal Planner
Ellen Swiniarski, Regulatory Review Coordinator

APPROVAL NOT REQUIRED PLAN

The following was read into the record by Clerk, Paul Curley:

OLD POST ROAD LLC

“Approval Not Required Subdivision Plan of Land of Old Post Road, LLC and Donald F. Law, Jr., Trustee at 581 and 595 Old Post Road, Cotuit, MA”, dated August 23, 2010, with final revision November 11, 2010, scale 1”=20 ft; prepared by Field Resources, Inc. Needham, MA, Map 054, Parcels 016 & 017. Zoning: RF, Received November 15, 2010 + 21 days = December 5, 2010.

Ms. Jackie Etsten addressed the Board and explained that the ANR implements and finalizes a Zoning Board of Appeals decision to redraw the lot line between the two lots. There are two houses built in the 1920s, the ANR would realign the lot to give additional side yard area adjacent to the houses and relocate one of the houses. Plan is properly drawn and consistent with the Zoning Board of Appeals decision. The frontage is not reduced although it does not meet the current requirements it has been this way for a long time and it was recommended that the Board endorse the plan as an ANR plan.

Motion was duly made by Felicia Penn and seconded by David Munsell to approve the plan as an approval not required plan. So voted unanimously.

SUBDIVISIONS

An informal discussion was requested by Trustees of Nantucket Village regarding a proposal for installation of a gate on Kilkore Drive, Hyannis. Proposed gate to be located between 90 and 102 Kilkore Drive, Hyannis: between Subdivisions #571 and #572.

Jackie Etsten addressed the Board and explained that the area was developed with long rectangular subdivisions. These patterns of development were from wood lots that were acquired and combined one strip at a time. The subdivisions are grid subdivisions and usually have the advantage of being interconnected. The long straight roads in this area do not interconnect. Lack of access to this area has been of concern for a long time. The Whitehall subdivision decision conditioned that the subdivision must be connected

and that Kilkore Drive be used as one of the access roads. Cobblestone Landing II subdivision (Nantucket Village included) has 124 lots was developed subsequently and lack of access was also of concern where public safety personnel wrote to the Planning Board recommending as much interconnection as possible when approving the subdivision. Four connections were designed as a result: one east to Castlewood, one north to Bayberry Place, one connection to a subdivision road to the west that went out to Phinney's Lane and one to the South at Kilkore Drive. This avoided the overconcentration of traffic on one roadway in a subdivision. Over time, a Chapter 40 B to the east was approved and that interconnection was not developed. Bayberry Place to the north litigated a gate. Presently there are only 2 accesses left of the 4 original interconnections. If Kilkore Drive were to be gated, there would be only one access road remaining.

To modify the subdivision, a public hearing would need to be held and all persons in subdivisions on both sides of the gate would need to be notified as well as abutters. An informal request for Town officials' opinion from Fire Department, Police, Schools Dept. and Department of Public Works was sent. The Hyannis Fire Department and DPW and Police Department responded and expressed concern regarding the blocking of Kilkore Drive.

David Munsell stated that he would not encourage an application for approval of a gate on Kilkore Drive. Paul Curley stated that he would not support the installation of a gate in this area. Matt Teague agreed that a gate should not be encouraged. Felicia Penn was opposed to the installation of the gate.

John Sullivan of Kilkore Drive, Hyannis (Cobblestone - Nantucket Village) addressed the Board. The petition began the petition to install the gate due to speeding and near miss accidents. He stated that the Town of Barnstable lists the roads in the subdivision as private so Eighty-four of the 124 The Nantucket Village Association members are in favor of the proposal for a gate on Kilkore Drive. Mr. Sullivan stated that he wishes to withdraw the review due to the complicated process it involves.

Deputy Chief Dean Melanson, Hyannis FD addressed the Board and stated that there had been a gate installed 8 years ago and then removed. Hyannis Fire Department does not have any policy or code regarding gates. He has been working toward identifying a standard. However, should a gate be installed there are presently no turnarounds so the 2 roads would become a dead ends. He further stated that he would not be in favor of the gate unless it were to be automated and he was 100% against a padlocked gate which would add to the response time.

Ray Lang stated that there are no bylaws that allow gates. Locked gates and dead end streets do interfere with response to an emergency. Mr. Lang stated that because of this, he would be opposed to a locked gate anywhere in the Town of Barnstable.

Felicia Penn said that speed was an issued of concern to the residents and inquired if there was advise from staff for traffic calming. Jackie Etsten answered that Cobblestone Landing does not have a great deal of speed because the roads are winding however, Kilkore Drive and the older subdivision roads are long and straight where speed may be a problem. Ms. Etsten suggested that the Association contact DPW to explore the installation of speed tables in the problem areas.

7:00 p.m. Public Hearing - Regulatory Agreement 2010-01 HSR Realty Trust,

Wayne Kurker, Trustee *The following legal advertisement was read into the record by Paul Curley, Clerk*

To all persons deemed interested in the Planning Board acting under Chapter 40A, Section 9, and all amendments thereto of the General Laws of the Commonwealth of Massachusetts and the Town of Barnstable Zoning Ordinances, specifically Section 240-24.1 Hyannis Village Zoning Districts, you are hereby notified of a Public Hearing to be held on Monday, November 22, 2010 at 7:00 PM in the Hearing Room of the Barnstable Town Hall, 367 Main Street, Hyannis, MA to consider Regulatory Agreement Application 2010-01 under Chapter 168, Regulatory Agreement for property located at 90 High School Road Extension, Hyannis, MA, consisting of approximately 3.79 acres, shown on Town of Barnstable Assessors Map 309 as Parcel 265. The Applicant is HSR Realty Trust, Wayne Kurker, Trustee. The Regulatory Agreement seeks relief required to permit uses to be conducted at the existing premises which are not authorized under the Table of Use Regulations, Section 240-24.1.6 in an OM Office Multi-Family Residential Zoning District. Those uses include automobile dealership with sales and service/repairs, private educational facility, indoor storage and service of boats, retail and mixed use of retail/office, and food retail sales with delivery including, without limitation, a farm market or other type of supermarket. No construction is proposed on site, other than interior renovations to the existing approximately 51,000 square foot building in order to accommodate the new use of the building.

Motion was duly made by David Munsell and seconded by Paul Curley to open the public hearing. So voted unanimously.

Representing the applicant, Attorney Michael Ford addressed the Board, also present was Wayne Kurker, principal of the applicant. Atty. Ford stated that he has appeared before the Board informally and met with staff, and formally presented the proposal for the public hearing:

- Mr. Kurker has owned the former location of Puritan Pontiac for approx. 1 year
- Site is two lots totaling 3.79 acres on Winter Street and High School Road Ext.
- Two of the uses at this location are ongoing: auto body and truck lining
- Potential tenants under the Office Multifamily District zoning are not authorized uses
- Building is located in AP Overlay District (outside of zone of contribution)
- Regulatory agreement would authorize the center portion of the building (approx. 27,000 s.f.) for boat storage and indoor service
- 40 to 80 boats would be moved in the spring and fall between building & harbor
- The front section of the building would be reserved for retail use
- Boat storage would never take up whole building
- 240 existing parking spaces with no landscaping in the interior or parking lot proposed. Landscape plan (Exhibit A) distributed to Planning Board members.
- Landscaping to be accomplished right away.
- Uses requested under the regulatory agreement includes those uses that Mr. Kurker has been encouraged by potential tenants to obtain.
- The prior non-conforming automobile dealership use will not expire for 2 more years.
- The parking scenarios (Exhibit B) were reviewed and it was indicated that only if the entire structure were to be dedicated to supermarket use would all of the existing parking be use.

- Option 1 and 2 routes of travel between marina and location (Exhibit C) were distributed to the Planning Board
- A flexible regulatory agreement is requested due to economic times.

Mr. Kurker addressed the Planning Board:

- Doorways will need to be changed in the middle section of the building for boat service.
- Façade will be addressed upon the identification of a tenant.
- Reviewed the uses allowed in the OM District, proposed uses require relief
- Regulatory agreement is most viable
- Long term employees can continue to work indoors year round; will not need to layoff employees

Questions from the Board:

Felicia Penn

- Any parking spaces lost with new landscaping plan? Mr. Kurker - yes a few.
- Any drainage issues on the lot or street? Mr. Kurker - A very good drainage system was installed when dealership went in and it works very well.
- Does the perimeter landscape plan show green space that belongs to abutters- Mr. Kurker - yes a little bit. The type of tenant will be determining a lot regarding landscaping. Will landscape in the spring, however some needs to wait for tenant to be identified. The dead arborvitaes will be first to go.
- Ms. Penn suggested that maximum number of boats should be contained in language of regulatory agreement.
- Dumpster location and property line was discussed.
- Will any parking spaces be eliminated by the proposed larger doors? Mr. Kurker - could be 2 spaces per door.

David Munsell

- Visited site, was impressed, however, expressed concern about hazard and blocking traffic. Attorney Ford - car carriers have delivered cars all year round to the site for 20 years. Continued current use of the building is much worse than uses being proposed.

Matthew Teague

- Would like to see that indoor boat storage/service only is in the regulatory agreement.
- Landscaping is unremarkable
- Would like to see a plan that has visual improvements sooner rather than later
- Questioned why High School Road Ext. was not used as a route as it is a straight shot - Mr. Kurker stated he would use Main Street to High School Road Ext if the Planning Board prefers.
- Steven's Street residents were annoyed with car carriers that idle all night
- Regulatory agreement should limit boats, size, times

Paul Curley

- Would like to see comprehensive of all possible facades
- Would like design of at least the North Street façade included in regulatory agreement

Raymond Lang

- Mr. Lang questioned if the green area on Steven's Street is on Town property. Atty Ford - Yes, green area is already there, would improve and maintain it. Sidewalks are not on this side of the street. Immediate plans are for boat storage in whatever area is left over from tenant.

Public Comment was invited:

Mr. Grant Stonebury of 12 Stevens Street, Hyannis addressed the Board. He stated that he is concerned with noise problems and delivery at night. Mr. Kurker assured that boats move only during the day when it is safe, unless there is an emergency such as a hurricane. No deliveries between 11 p.m. to 6 a.m. was agreeable to Mr. Stonbury.

Tony Pelletier of the Hyannis Civic Association spoke very highly of Mr. Kurker personally:

- Supports the project - not a detriment
- Mr. Kurker is a good citizen who will do what he says
- Building will be dressed up.

Donna Green of 48 Bearnse's Way, Hyannis addressed the Board with the following concerns:

- Stevens Street floods in heavy rain; from 52 Stevens to the end floods
- ZBA decision for the site stated that no deliveries were supposed to be made from Steven Street only High School Road
- Noise from prior car dealership tenant was a concern
- When tenant was food store, trash would blow down the street
- Wants to be sure that all of the above is improved and/or not repeated.

Joseph Chili - Member of Hyannis Civic Association addressed the Board regarding Mr. Kurker's reputation:

- Stated Mr. Kurker fielded questions regarding this proposal for an hour before the Hyannis Civic Association.
- Stated that he has known Mr. Kurker for 25 years and that his promises are golden. His ethics are second to none.
- Hyannis Marina is envy of all others.
- Astute, generous and concerned.

Elizabeth Wurthbaine - Hyannis BID addressed the Board and stated that she echoed Mr. Chili's sentiments:

- The BID's interest is to promote community
- The Hyannis Main Street BID supports all of what Mr. Kurker is proposing as it is a model of what BID wants to achieve in the downtown.

Mr. James Tinsley addressed the Board as a Hyannis resident who lives very nearby to the site:

- Stevens Street does flood, however he has not witnessed the lot itself flooding
- If a car dealership tenant is proposed, improvements would need to be made regarding delivery and car carrier issues.
- A manager can have full control over this during the day

- Night deliveries are a problem that is common to the business; not sure how to solve.
- Toured the facility and is a neighbor
- Stated that a person's track record should weigh in.
- North Street project was a big improvement, would like to see same in this area\
- Economic development is a big concern, keeping long term employees employed is important.
- Confident that Mr. Kurker will be willing to work at improvements.

Mr. Jim Concella - Barnstable Patriot:

- How many doors are proposed? Mr. Kurker - 5 doors, there are 4 now, will add one

Deputy Chief Dean Melanson:

- This is not a new operation at this site
- Depending on the tenant, there may be upgrades to meet code
- Most everything has been done already
- There is code for protecting the building/people
- This project could move forward as proposed and would be code compliant
- Sprinkling system may need to be brought up to high hazard standard
- If there is errant parking of delivery vehicles, call police and have ticketed
- Town is looking at reconfiguration of Stevens Street - sidewalks, landscaping, perhaps stormwater will also be addressed.

Motion was duly made by David Munsell and seconded by Matthew Teague to continued the public hearing to December 13, 2010 at 7:00 p.m. So voted unanimously.

INFORMAL DISCUSSION

Informal discussion was requested by Attorney David Lawler regarding a proposed modification to the existing Regulatory Agreement for property located at 89 Lewis Bay, Hyannis, MA.

Attorney David Lawler addressed the Planning Board regarding the above proposed modification for the applicant 89 Lewis Bay LLC, Mr. Chad Doe, Principal:

- 2 modifications of the approved 2007 Regulatory Agreement were filed, however neither went forward.
- The Greenery stopped operating as a nursing home in 2002 - 2004
- Initial regulatory agreement consisted of adding a 4th floor to building - which has occurred
- 4th, 3rd, and 2nd floors were to have residential condominiums - with 42 residential units- 2/3 have been constructed already
- \$1M onsite mitigation was included - redid parking lot, tree scapes, drainage, removed 2 buildings, curb cuts - there were 37 delineated items in the regulatory agreement that dealt with façade and onsite mitigation that has been accomplished already.
- The only one of the 37 items not done is striping of crosswalk because of coordination with other construction in the road. This will be done in the spring.

- The 1st floor (approx. 21,000 s.f.) was to be for medical or office use and other uses allowed in the MS District.
- The proposed educational use may have been allowed by right if not for the regulatory agreement
- The property has a contract with the Town for uses that would not otherwise be allowed in the zoning district. A change the contract requires a return to the Board and T.C.
- Another proposed change to the regulatory agreement is \$430,000.00 cash mitigation requested to be eliminated.
- Culinary educational use (Cambridge Culinary School) was presented to the Planning Board shows a fully accredited school with 3 full commercial kitchen classrooms proposed, 15 students per class for career oriented students.
- Want to be ready for classes September 2011 or before.
- Propose to have classes for laypersons at night.
- Parking analysis numbers turn out to be same as originally proposed.
- Remaining unit #1 does not have a tenant as yet, and will not need a modification for that tenant.
- Project will create 45 permanent jobs some full some part time
- Applicant has been very successful - North Street and 500 Block - \$1M in mitigation has been paid - has followed through and more.
- 300 jobs have already been created or retained by projects by this applicant in partnership with the Town through the regulatory agreement.
- Citing the recession, the change in circumstances, and work that has already been done on the Greenery project, it is requested that the \$430,000.00 cash mitigation be eliminated, acknowledging that \$1M in onsite mitigation has that has been provided, the jobs to be created, and other avenues of future development that this developer would like to do.

Comments from the Board:

Felicia Penn:

- Conceptually a good idea for professional culinary school.
- Details need to be worked out?
- Compatible use with residents? Atty. Lawler - Developer is highly experienced with this type of mixed use.
- Open to the public as this would stress the area? Atty. Lawler - not a part of this proposal at this time.
- Use on the first floor under the original RA was for office/medical use, not a general commercial use.

David Munsell:

- If not for a regulatory agreement use could have gone matter of right? Atty. Lawler - Yes. Change of terms of a contract (Reg. Agreement).

Matthew Teague:

- Questioned where is the incentive to the Town to grant the elimination of \$430,000.00 cash mitigation? Atty. Lawler - Property has not paid much in property taxes in last 9 years. With property completed, will be \$100s of thousands of dollars per year. Should not look at short sighted end of mitigation in the recession. Only developer still building and has brought in 300 employees to downtown. Long term benefit to the Town is substantial - tax revenue & future

development. When you look at the support services for a culinary school this also creates jobs.

Paul Curley:

- Would like to see analysis as to how the figure was arrived to begin with and what do you bring to the table that would allow consideration of backing down from that figure.
- Would like to see parking analysis.
- If regulatory agreement is changed now, would need to know that owners of residential units are in agreement with the proposed use on the first floor.

Raymond Lang:

- Confirmed that there are 42 student benches and a minimum of 10 faculty members. Will parking still be under control? Atty Lawler - classes are 9-5 and off set peak hours of resident parking. Evening classes will be small.
- Expressed concern for the increased level of parking/traffic involved with the school.

JoAnne Buntich reviewed the list of concerns from the Planning Board:

- Parking analysis relative to Unit 1 proposed use and Unit 2 parking.
- Disclosure to residents - restaurant/condo uses.
- Fire safety
- Analysis of original cash mitigation amount and how it was arrived at.
- Site circulation concerns.
- Informal site plan review suggested.

Motion was duly made and seconded to adjourn. So voted unanimously.

Respectfully submitted,

Ellen M. Swiniarski
Regulatory Review Coordinator, GMD