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**Town of Barnstable**  
**Planning Board**  
**Minutes**  
**December 12, 2011**

12 JAN 19 AM 10:03

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Matthew Teague – Chairman	Present
Paul Curley – Vice Chairman	Present
Patrick Princi - Clerk	Not Present
Felicia Penn	Present
Raymond Lang	Present
Cheryl Bartlett	Not Present
David Munsell	Present

Also present were Art Traczyk, Regulatory Review Planner. a quorum being met, Chairman Matthew Teague opened the meeting at 7:00 PM.

**Approval Not Required Plans:** - None at this time.

**Security and Lot Release Requests:** - None at this time.

**Subdivisions:** - None at this time.

**7:00 PM Regulatory Agreement 2011- 03 - Beech Tree Alley, LLC**

Filed June 23, 2011 - (180 Day Extension) – 1<sup>st</sup> Hearing July 11, 2011 - continued to August 8, 2011, October 24, 2011, and to December 12, 2011, Decision Due February 17, 2012.

Members: Paul R. Curley, Patrick Princi, Felicia R. Penn, Cheryl A. Bartlet, Raymond B. Lang, and Matthew K. Teague

This was to be the second public hearing on this Regulatory Agreement however, the Applicants Representative, Attorney Steven J. Pizzuti has requested that the Application be withdrawn (see e-mail on December 2, 2011). Staff recommends that the Board grant the request.

Beech Tree Alley, LLC is seeking a Regulatory Agreement to develop the properties located at 434 and 438 South Street, Hyannis MA as a parking lot to be used as an accessory parking for the development at 599 Main Street, Hyannis MA. Included in the proposal is a pedestrian walkway connecting South Street with 599 Main Street. The 434 and 438 South Street lots are the lots to be regulated through this proposed Agreement. Those lots are located in the SF - Single Family Residential District of the Hyannis Village Zoning District and are shown on Assessor's Map 308 as parcels 280 and 123. The 599 Main Street lot is commonly known as the Beech Tree and is shown on Assessor's Map 308 as parcel 118 and



is zoned Hyannis Village Business. The Regulatory Agreement seeks waivers from numerous sections of the Barnstable Zoning Ordinances.

Chairman Matthew Teague stated that it is his understanding that the Applicant is requesting to withdraw without prejudice, and asks if there is any further information for this?

Art Traczyk stated that there is no further information and that this is all we have is the request to withdraw.

Raymond Lang moved to accept the request to withdraw without prejudice, seconded by Paul Curley, so voted unanimously.

**7:00 PM Special Permit Application 2011-07 - David L. Colombo, Trustee of Olive Oil Trust**

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, Section 240-24.1 Hyannis Village Zoning Districts and Section 240-125.C Special Permits, you are hereby notified of a Public Hearing to be held on Monday, December 12, 2011, at 7:00 PM in the Hearing Room of the Barnstable Town Hall, 367 Main Street, Hyannis, MA to consider Special Permit Application 2011-07. The Application seeks a special permit pursuant to Section 240-24.1.10.A(4)(a)[4], Circumstances Warranting a Reduction of Required Parking. The Petitioner seeks to further improve and expand the restaurant use at 159 Ocean Street, Hyannis, MA with an expanded outdoor seating area service bar that will increase the total number of seats from 50 to 96. The special permit is requested to allow for the expanded seating without providing any additional on-site parking. The applicant is David L. Colombo, Trustee of Olive Oil Trust and the property is located at 159 Ocean Street, Hyannis, MA and is shown on Assessor's Map 326 as Parcel 039. The property is in the Hyannis Village Zoning Districts and is zoned HD, Harbor District.

Matthew Teague entertained a motion to open the public hearing, so moved by Paul Curley, seconded by Raymond Lang, so voted to open the public hearing.

Attorney Dan Creedon and Applicant David Colombo both in attendance

Attorney Dan Creedon reviewed the application information to the board. He stated that his is a request to modify the Special Permit that was granted under Special Permit No. 4 of 2011. They were permitted at that time for 50 seats and the board had granted a reduction in public parking. Mr. Colombo is now looking to expand the use by adding a service bar to the rear (southeast portion) of the property. They were originally asking for 96 seats, they are now requesting 83. All required approvals have been made, the Board of Health has restricted it to 83 seats due to the size of the grease trap. They have accepted the information presented in the Staff Report and have accepted the condition to have the 83 seats. They are proposing that the additional 33 seats be allocated as 37 to the front area, the patio that was added and the remaining 46 in the back where there would be a service bar and tables in the paver patio area. The next step, pending approval, would be to go to licensing. He stated that this is the same rationale that was applied by the board under Section 240-24.1.10.A(4)(a)[4], specifically 4b and 4c, they are looking to add to the uses that are going on in the waterfront area, whereby people would be in the area already and



under 4c and 4b characteristic of the use involving normal methods of calculation would not be applied and also special characteristics of occupants under 4b impliedly extends to patrons, people in the area.

Matt Teague asked if the board had any questions?

Paul Curley asked if the Applicant was looking for an additional 83 seats, roughly 40 to 50 additional automobiles in the area?

Attorney Creedon stated 33, they already have 50 approved and are looking to go from 50 to 83.

Paul Curley asked, where do you propose to put these?

Attorney Creedon stated that there is already public parking in the area and they are not proposing to put these on site.

Paul Curley stated that the availability in this area will put more pressure on the parking in the area.

David Colombo asked to speak. He stated his ownership information. He stated that they intend on having a parking attendant here during peak seasons to assist the patrons with parking and assist delivery vehicles and payment of the meters. They are having to turn customers away and there is an overflow in the area already.

Paul Curley asked if they would offer any valet parking?

Mr. Colombo said yes, but that it is mainly foot traffic that they are trying to accommodate.

Raymond Lang asked where the 33 seats would be located, rear of building in the new paved area?

Attorney Creedon stated that now there are 50 and if the increase is approved the re-allocation of the 83 would be 37 at the front and 46 in the rear, 13 at the service bar.

Raymond Lang asked if this would be satisfactory to the Board of Health?

Attorney Creedon stated that the Board of Health has approved it, but limited their request to 83 as opposed to their initial request of 96, due to the grease trap issue.

Raymond Lang asked about restroom facilities being adequate.

Mr. Colombo stated that they have satisfied the Board of Health with the restrooms.

Raymond Lang stated that was last spring, right?

Mr. Colombo stated that there are two inside, one outside, four next door, they have seven, they are required to have eight between the two properties, however they got a variance for the shortage of one employee bathroom, they have enough to satisfy the public.

Raymond Lang asked how does the procedure work for letting people know where the facilities are? Are signs allocated?

Mr. Colombo stated that the public restroom criteria have been met, they were short one employee bathroom, two on each site.

Raymond Lang asked how would Board of Health handle this? Does the Planning Board have to come up with an amendment or change?

Attorney Creedon stated that he thinks there is a proposed condition on the Staff Report. Number six as quoted on the Staff Report "With respect to restroom facilities, the Applicant shall comply with all requirements of the Board of Health as may be varied or waved by that Board."

Raymond Lang asked if that identifies the next building?

Attorney Creedon stated no, it does not.

Mr. Colombo stated that each site has enough to accommodate stand alone the public and employees on each site.

Attorney Creedon stated he has the previous notes from the Board of Health meeting of November 8<sup>th</sup>, meeting that state as follows:

David Columbo was present and began with the variance from 322-4 for toilet facility variance. The adjacent property is owned by him as well and is only about 20 feet away from the outside bar. There are three on site and four toilets in the adjacent property, The Black Cat. Upon a motion duly made, seconded the Board approved the variance to allow three toilet facilities on site (two public, one employee).

Raymond Lang confirmed that no bathrooms were to be added.

Attorney Creedon stated no. That a variance was granted to two and one so three on this site and as rational there are two nearby facilities that can be used.

Raymond Lang asked if there was going to be direct access to the Black Cat from the new patio?

Attorney Creedon stated yes, controlled by licensing requirements with gating. There are two paths from the paved area to the adjacent property, as shown on the site plan.

Raymond Lang asked if Bond Court is private for individuals or can public access this street?

Attorney Creedon stated yes, it can be accessed by public. He stated that it had been mentioned previously and he believes that it is legally accessible.

Felicia Pennn asked if there is adequate employee parking and that there are only 3 additional parking spaces for 6 additional employees. Where do the employees park?

David Colombo responded that the Harbor Shack is of seasonal use and when in season the employee's are asked to park at the town hall parking area or on the public parking area, behind the old Hibbell Museum. They escort the female employees.

Felicia Penn stated so the employees will be parking offsite?



David Colombo stated yes.

Felicia Penn inquired about the decision by the Board of Health regarding the delivery issues and the traffic patterns being revisited. She asked if they had any plans for changing any traffic patterns and/or deliveries now that they are going to be expanding the use of this location?

Attorney Creedon stated that he thinks that relates more to reviewing the food service notes.

David Colombo stated that he is trying to work with his neighbors regarding delivery issues. He stated that during peak season they were thinking of having someone to direct the delivery vehicles as well as patrons as to where to park. He states that the neighbors have conflicting criteria regarding this issue.

Felicia Penn asked if the season will remain the same time frame that is being done presently?

David Colombo stated yes. Depending on weather permitting after the peak season is over.

David Munsell asked how successful was the first approval that was granted by the board? He asked if Mr. Colombo would give him a report as to how it has worked.

David Colombo stated that it was successful, however they have been turning customers away, mostly foot traffic and losing business due to the lack of seating. When the restaurant fills to capacity they have been referring customers next door, however customers desire the full service aspect.

David Munsell stated that looking at this area from Ocean Street, this area will not be visible from the front of the business on Ocean Street.

David Colombo stated correct and that they plan to do extensive landscaping so that the parking lots etc. will not be visible.

Matthew Teague asked if a seating layout or table layout had any requirement?

David Colombo stated that they had submitted one and it has been approved.

Attorney Creedon stated he did not have it with him presently.

Matthew Teague asked if there was any public comment at this time.

## Public Comment

Mr. Jim Hurley presented himself as the owner of the Hyannis Holiday Hotel. He spoke about the ongoing parking problem and eighteen wheeler vehicles going through his property. They will need to hire a full time person to monitor the parking situation so that his guests can get to their hotel. He had some pictures and he presented these to the board to show how congested the parking was. He stated that Bond Court is a road, private road that is parallel to his property and it is not monitored, but people park here and he thinks it is a safety/fire concern that has not been addressed. He stated that the Black Cat has parking for the Island and the restaurant as well.



Felicia Penn asked as a follow up question, is there a place for the deliveries to go to avoid this issue.

David Colombo stated that they ask the deliveries to go to the rear of the property. The reason Bond Court is jammed up with parking issues is due to the other abutters, people to the West of his property are parking on this road, thereby making it impassable for the delivery vehicles. He agrees with Mr. Hurley that this does occur.

Mr. Hurley stated that someone has put up a portable fence up on Bond Court. No one will be able to turn here due to this fence.

Mr. Colombo stated that they have both contacted the town about this fence issue and that they have been working together to try to resolve this problem. He also is going to have a full time person monitor the traffic and he has notified the town regarding this as well.

David Munsell asked who does he call?

Mr. Colombo stated, fire and building, as far as the fence issue. He stated that the fence belongs to the abutter on the left of them.

Mr. Hurley stated that there is no way to make a turn here and that they are going to have to block their property off for safety concerns and problems with the delivery trucks coming through his parking lot and disturbing his patrons.

Matthew Teague asked if there were any other public comments to be presented.

Raymond Lang reiterated the traffic problem and stated that the deliveries would be an ongoing need for Mr. Colombo's business.

Attorney Creedon stated that at the last hearing in February 2011, the Decision had a condition that deliveries be made through the Black Cat for The Harbor Shack.

Raymond Lang asked if this is another area where problems are now arising? Where is the Motel located?

Mr. Colombo stated that the Hotel is to the North of them. He stated that the delivery truck issues are not all the time, mainly on the weekends. The neighbors to the West of where they are located are making the through traffic the problem.

Raymond Lang stated that being a board should they address what is being presented at the public hearing and that it usually is.

Attorney Creedon stated that they were asking for modification regarding this with the previous permit.

Felicia Penn suggested an informal discussion regarding the enforcement of this issue after the meeting.

Matthew Teague agreed, and stated that it appears to be an enforcement issue rather than a regulatory issue.

Attorney Creedon agreed as well.

David Munsell stated that the parking will probably be an ongoing problem at this location.

Matthew Teague asked if there are any further comments and asked if this public hearing should be left open due to only five board members being in attendance?

Art Traczyk stated that we may want to leave it open if no decision being made tonight.

Matthew Teague stated it may be a quorum issue.

Felicia Penn stated that this is not a regulatory agreement so there is no requirement for two hearings. This would probably be a positive vote for the Applicant.

Matt Teague agreed.

Felicia Penn stated that the particular issue and the abutter and the traffic is a separate issue to be addressed and would like to have the conversation after the hearing regarding the traffic issue.

Matt Teague agreed with her comment and stated that there is nothing that the board can remedy at this time.

Raymond Lang asked if there are two classifications regarding parking, one for the Black Cat and one for Ferry parking?

Attorney Creedon stated no, the Ferry parking is not Mr. Colombo's operation.

David Colombo stated that the Black Cat does share the Ferry parking somewhat and that they are not the problem, it is the abutter to the south of them, not the west that is causing the traffic issue on Bond Court.

Motion entertained by Matthew Teague to close the public hearing, so moved by Paul Curley, seconded by Felicia Penn.

Matthew Teague stated as part of the Special Permit process the Findings of Fact have to be reviewed, approved.

Felicia Penn moved that the board accept the Findings of Fact as detailed in Special Permit Application 2011-07 as drafted by Staff. There are 8 of them with no specific changes and that the Suggested Conditions be modified at number 3 to read as the total number of seats on the property shall not exceed 83 and should be detailed to 37 in front and 46 in back as presented by the Applicant's attorney.

Matthew Teague suggested that the Facts be read into the record.

Felicia Penn read the Findings of Fact as follows:

1. The Applicant is David L. Colombo, Trustee of Olive Oil Trust seeking a special permit pursuant to Section 240-24.1.10.A(4)(a)[4] for additional reduction in the required parking for the expansion of the Black Cat Summer Shack food services establishment. The applicant seeks to expand seating



from 50 seats to 83 seats. The subject property is addressed 159 Ocean Street, Hyannis, MA and is shown on Assessor's Map 326 as parcel 039. It is in the HD, Harbor Zoning District.

2. The property has the benefit of prior relief issued by this Board in Special Permit 2011-04. That relief reduced the required front yard setback and reduced the required on-site parking from 28 spaces to 25 spaces. Thereby allowing the take-out food establishment to have 50 seats located on the front porch and front yard patios
3. The Applicant is now before the Board seeking additional relief from parking to allow for additional seating to be located on a proposed outdoor patio to be developed on the southwestern corner of the lot. The Applicant initially sought to add 46 seats, however that number has been reduced to 33 seats.
4. To add the 33 seats and the additional 6 employees would require 14 parking spaces.
5. The Board is authorized to reduce or waive on-site parking provided the applicant demonstrates that the reduced off-street parking is adequate for the proposed business and the proposed expansion. This is a seasonal business. The majority of patrons will be in the area and parked for other primary reasons related to the harbor and waterfront. This business supplements overall use of the area and is not a draw onto itself. The characteristics of the use invalidate the normal methods of calculating parking demand and the characteristics of its patrons reduces the need for on-site parking.
6. The application falls within categories specifically allowed in the ordinance for the granting of a Special Permit as Section 240-24.1.2.E(1) specifies the Planning Board as the Special Permit Granting Authority within the Hyannis Village Zoning Districts.
7. The site plan for the proposed expansion was reviewed by the Site Plan Review Committee and a Site Plan Approval letter was issued on November 17, 2011.
8. Based upon the evidence presented the grant of the additional parking relief does not represent a substantial detriment to the public good or the neighborhood affected. The grant of parking relief is in keeping with the intent of the Hyannis Village Zoning Districts as it encourages a more pedestrian orientated environment and therefore fulfills the spirit of the Ordinance.

Felicia Penn suggested that we add the Board of Health minutes of November 8, 2011, and that would be 9 Findings. That the Board of Health meeting of November 8, 2011, indicated approval of the proposed expansion as a pilot program to be reviewed in one year.

Matthew Teague suggested that an item number 10 also be added regarding the Hyannis Main Street Waterfront Historic District Certificate of Appropriateness.

Felicia Penn stated that this will be made item number 10. The Hyannis Main Street Waterfront Historic District Commission Certificate of Appropriateness, issued on December 9, 2011.

Matthew Teague entertained a motion to except the Findings of Fact now numbering 10 as modified by adding two additional items, number 9, to add the Board of Health approval and number 10, to add the reference of approval of the Hyannis Main Street Waterfront Historic District.

Moved by Raymond Lang, seconded by Felicia Penn. So voted unanimously.

Matthew Teague asked if Mr. Curley would read the Suggested Conditions as presented by Staff.



Paul Curley read the Suggested Conditions as follows:

1. Special Permit No.2011-07 is granted to David L. Colombo, Trustee of Olive Oil Trust for property addressed 159 Ocean Street, Hyannis, MA. The special permit is granted pursuant to Section 240-24.1.10.A(4)(a)[4] for a further reduction in required on-site parking to allow the existing 50 seats associated with the take-out food service to be increased an additional 33 seats for a total of 83 seats.
2. Improvements to the property shall be substantially in accordance to the plan presented entitled "Site Plan of Land in Hyannis, MA #159 Ocean Street prepared for David Colombo" as drawn by Down Cape Engineering, Inc., dated December 8, 2010, last revised October 27, 2011.
3. The total number of seats on the property shall not exceed 83 seats.
4. All requirements and conditions of the Site Plan Review Committee as cited in the approval letter of November 17, 2011, shall be complied with.  
Matthew Teague interjected that on item 3 this is where it would be modified to read 37 in the front and 46 in the rear as stated by the Applicant.
5. All improvements shall conform to all other requirements including those of building, health, licensing and fire.
6. With respect to restroom facilities, the Applicant shall comply with all requirements of the Board of Health as may be varied or waved by that Board.
7. All requirements of the Certificate of Appropriateness from the Hyannis Main Street Waterfront Historic District Commission shall be compiled with prior to the issuance of an occupancy permit for the restaurant.
8. All conditions of Special Permit No. 2011-04 remain in full force and effect except as modified by this decision.

Raymond Lang suggested that the applicant should try to comply with parking issues.

Mr. Teague stated that he doesn't think this would be enforceable. But does suggest that we should take another approach to rectify this problem.

Paul Curley suggested that it may be helpful to add a condition that a parking attendant be on site during peak times and that this be made a condition of the special permit issue.

Mr. Colombo agreed with this suggestion.

Matthew Teague entertained a motion to accept the 8 Suggested Conditions as read and item number 3 as modified and also the addition of item number 9 as suggested by Paul Curley, so moved by Raymond Lang, seconded by Felicia Penn, so voted unanimously.

**Approval of Minutes:** Approval of October 24, 2011, and November 14, 2011, Board Meeting minutes.

Approval of past minutes covering 9 Board Meetings held in February, May, June, August, September, November and December of 2010.



Raymond Lang questioned if these had already been reviewed.

Matthew Teague reiterated that the last minutes of Oct 24, 2011, needed to be reviewed regarding the accuracy, volume and a reference regarding the availability of the meetings to the public. Ms. Penn had brought this up at the last meeting.

Paul Curley moved that the Board except the minutes of October 24, 2011, and November 11, 14, 2011, seconded by Raymond Lang. Felicia Penn abstained due to no attendance at the Oct 24, 2011, minutes.

Matthew Teague entertained a motion to approve the meeting minutes of February, May, June, August, September, November and December of 2010, moved by Paul Curley, seconded by Raymond Lang. Matthew Teague abstained from December 13, 2010, as he was not in attendance.

**Executive Minutes:** Possible Report of the Chair on review of past Executive Session Minutes

Matthew Teague stated that he worked with the Town Council and Jo Anne Buntich. Review of these indicated that the past meetings are very old, more than 10 years. There were some not released do the age.

**Discussion:** Renewal of Location Hardship Sign Special Permits

Staff Report enclosed

Art Traczyk explained that there have been 4 of these hardship signs issued, now down to 3 due to one going out of business. Renewal letters have gone to all of these regarding the deadline renewal dates. The renewal dates will be in another 2 years. There have been no issues with these and we are requesting that the review be done administratively due to the cost and expense.

Motion by Felicia Penn, seconded by Raymond Lang, so voted unanimously.

Matthew Teague asked to bring up parking issues re David Colombo's special permit.

Felicia Penn stated that the specific abutters that are blocking of Bond Court and her familiarity with these abutters and the inconsiderate parking issues here. She thinks that a representative from the Planning Board go to Licensing and/or Town Manager and impose some sort of enforcement that needs to be done at this property. She stated that this abutter is overgrowing the bounds here. There are many safety issues at hand.

David Munsell asked who actually owns the property at Bond Court?

Mr. Hurley approached the board and stated that the Property is under Hawthorne property. And that they own half of it. He said it is a road on the Assessors map. He suggested that the engineering department take a look at it and mark off the road. He stated that Bond Court goes up Bay Street as well. The Police and Fire Dept recognize Bond Court as a road.



Matthew Teague asked if Art Traczyk could find out who would be in charge of this issue, regulatory dept. etc. and who would be the appropriate contact.

Raymond Lang asked if Art Traczyk could access Accessors and/or DPW to see who has jurisdiction for the road.

Paul Curley stated that his concern is that we are expanding usage here, people, cars etc. and that the expansion of the property has not expanded the parking. He agrees with Ms. Penn stating that we need to get very proactive regarding this parking issue and get the Town Manager's Office involved.

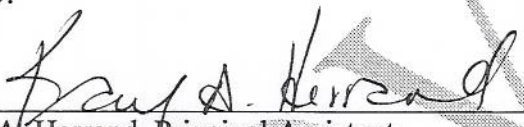
**Future Meetings:**

Regularly Scheduled Planning Board Meetings – January 9<sup>th</sup> and 23<sup>rd</sup> @ 7:00 p.m.


Motion entertained by Matthew Teague to adjourn, moved by Raymond Lang, seconded by Felicia Penn.

The meeting adjourned at 8:05.

Respectfully Submitted

  
Karen A. Herrand, Principal Assistant

Approved by vote of the Board on

 January 9<sup>th</sup>, 2012

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