



Town of Barnstable Planning Board

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BARNSTABLE TOWN CLERK

2015 APR 15 PM2:54

Board Members

Paul Curley – Chair Stephen Helman – Vice Chair Felicia Penn – Clerk Patrick Princi Mark R. Ferro Raymond Lang David Munsell
John Norman – Town Council Liaison

Staff Support

Art Traczyk – Design/Regulatory Review Planner – art.traczyk@town.barnstable.ma.us
Karen Herrand – Principal Assistant – karen.herrand@town.barnstable.ma.us

Town of Barnstable Planning Board Minutes March 23, 2015

Paul Curley – Chairman	Not Present
Stephen Helman – Vice Chairman	(sitting in as Chair) Present
Felicia Penn – Clerk	Present
Raymond Lang	Present
David Munsell	Present
Patrick Princi	Present
Mark Ferro	Not Present

Also in attendance Art Traczyk, Regulator Planner, JoAnne Buntich, Director, and Karen Herrand, Principal Assistant, Growth Management Dept.

Call to Order: Introduction of Board Members – All members present introduce themselves

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

Approval Not Required Plans:

Gevorgyan - A plan entitled "Approval Not Required Subdivision Plan prepared for Mr. Garik Gevorgyan" for property at 36 Old Colony Road, Hyannis MA, as drawn by Baxter Nye Engineering & Surveying dated 09/03/2014, last revised 1/5/2015 has been submitted for endorsement as an Approval Not Required Plan. The plan intends to divide an existing 0.77-acre parcel of land into two lots. Both lots front Old Colony Road. Lot 1 is shown as 0.32-acres and Lot 2 as 0.45-acres in area. The property has the benefit of Bulk Variance No. 2015-001 issued by the Zoning Board of Appeals granting relief to minimum lot area and shape factor. The property is addressed 36 Old Colony Road, Hyannis, MA, shown on Assessor's Map 306 as parcel 117, and zoned Residence B.

Shane Mallon of Baxter Nye Engineering in attendance. He gives a brief explanation and history regarding the variance that was granted from the ZBA. Reference made to General Notes, number 9 on the plan, Exhibit A.

Ray Lang asks/confirms that all of the setbacks would be adhered to?

Shane Mallon answers yes.

Motion made by Patrick Princi to approve/endorse this ANR plan, seconded by Felicia Penn, so voted unanimously.

Airview LLC - A plan entitled "Approval Not Required Plan of Land ... prepared for Airview LLC" for property at 467 Iyannough Road Hyannis, MA, as drawn by Baxter Nye Engineering & Surveying dated 03/09/2015 has been submitted for endorsement as an Approval Not Required Plan. The plan intends to divide-off a 953 sq.ft. area from the existing 1.23-area parcel to correct an infringement from an abutting property. No new independently developable lot is being created. The property is addressed 467 Iyannough Road (Route 28), Hyannis, MA, shown on Assessor's Map 311 as parcel 027, zoned Hyannis Gateway (HG).

Shane Mallon of Baxter Nye in attendance. He gives a brief history. There is a building encroachment from 400 Barnstable Rd, 1.6 ft. onto Iyannough Rd., proposed Lot A is not a buildable lot. Reference made to General Notes, number 1 on the plan, Exhibit B.

Ray Lang asks for clarification of where lot A will be? Will the south side of the lot encroachment be addressed? The bldg. north of 400 is that encroaching as well? Access through Iyannough Rd. primarily.

Shane Mallon answers that Lot A will be subdivided from the current lot and conveyed to the Lot 400 in order to elivate the building encroachment. He does not have any knowledge for the south side of the lot. The building north of 400, Nantucket Sound, he is not aware of any encroachment here.

Motion made by David Munsell to approve/endorse this ANR, seconded by Felicia Penn, so voted unanimously.

Zoning Amendment Public Hearing

7:00 PM TC Item No. 2015-071

Amend §240-39 Shopping Center Redevelopment Overlay District (SCROD) to allow by special permit a drive-through restaurant

The Planning Board of the Town of Barnstable, acting under Chapter 40A, Section 5 of the General Laws of the Commonwealth of Massachusetts, will hold a public hearing on Monday, March 23, 2015, at 7:00 p.m. in the Hearing Room of the Barnstable Town Hall, 367 Main Street, Hyannis, MA. The purpose of this hearing is to take comment on a proposed zoning amendment to §240-39, Shopping Center Redevelopment Overlay District (SCROD). The amendment proposes to permit a Drive-through Restaurant by special permit from the Zoning Board of Appeals within an area of the SCROD overlay district to be designated "Drive-through Restaurant Sub Zone".

The Drive-through Restaurant Sub Zone encompassed that part of the SCROD overlay district located southwesterly of Iyannough Road/Route 132 and Enterprise Road. The amendment also proposes that within the Sub Zone the required front yard setback on Iyannough Road/Route 132 be reduced to 50-feet and that one freestanding exterior sign be permitted within the Sub Zone in addition to that signage permitted in the SCROD overlay district.

Motion entertained by Stephen Helman, Acting Chair, to open the Public Hearing, so moved by Patrick Princi, seconded by Ray Lang.

Attorney Michael Ford in attendance representing the Applicant. He gives a history/explanation of the zoning in this district when first created (SCROD) and information related to 2008 amendment that allowed drive through bank.

Josh Bohler, Site Engineer for Chick-fil-A in attendance.

This parcel is separated from the Cape Cod Mall, this is a small, isolated area that was originally set aside for parking, however it has not been needed for parking and has fallen into disrepair. This is the section of the SCROD that they are referring to;

Firstly, to allow a drive through restaurant. Currently this is not allowed in the SCROD overlay, but is in the Highway Business Zone, which is the underlying zone here. Due to the Special Permit issued to the Cape Cod Mall (Simon) these provisions take precedence.

Secondly they are seeking amendment to allow a setback of 50 ft. off Rte 132 as opposed to the 100 ft. current setback, so that parking could be located to the side and the rear of the building. Highway Business Zone has a 100 ft. setback. This was also done with TD Bank on Route 28 for setbacks.

Thirdly, they are seeking that this parcel be allowed to have a pylon/free standing sign. Subject to same size as any that would be allowed in the HB District.

This has gone before Town Council for a first reading. Councilor Dagwan and Canedy have agreed to sponsor.

David Munsell asks if the property would be bought or leased through the Mall by Chick-fil-A, the business owners?

Attorney Ford answers, it would be a long term lease.

Felicia Penn has a lot of issues with this, process and project. She's confused as to why no Special Permit is being pursued here?

Attorney Ford answers/explains that they firstly, did seek out an amendment to the ordinance when they applied for the Special Permit for the TD Bank drive through on Rte 28.

If the ordinance is amended, then they would need a modification from the Cape Cod Commission of DRI permit for the Mall and then Special Permit from ZBA as well as Site Plan Review. They did this for TD Bank and this would require the same process. They cannot ask for a special permit for this as of yet.

Felicia Penn clarifies that the Planning Board would have no basis for questions re traffic, intensification of use, entrances, etc. This seems to be being done backwards.

Attorney Ford reiterates that this is the exact same process as he did with TD Bank's petition.

Patrick Princi asks if the property owners, Simon Mall, would like to utilize this property, develop it further?

Attorney Ford answers that Simon Mall and Chick-Fil-A have entered into an agreement for this.

Ray Lang asks for clarification of the perimeter of the lot? Sub zone area. He makes reference to the map, (Exhibit B, map handed out at meeting). How was this piece picked out? How does the ZBA get involved with this property if zoning goes through? What happens if the drive through restaurant leaves, does it revert back to previous zoning?

Attorney Ford explains the 1.7 acre area and the three lots that make up this area along with the remnants of a way. He explains that special permit conditions would apply. The ZBA would have to receive an application requesting an amendment to the existing (Cape Cod Mall) special permit and then it would be referred to the Cape Cod Commission by the ZBA or by Site Plan review. This is a DRI property (development of regional impact).

Patrick Princi clarifies what the Planning Board has to review tonight; do we want to allow a drive through restaurant, the signage and the setback. We are here to recommend. Town Council has already had first reading, there is not to much for us to do tonight.

JoAnne Buntich interjects and states that the drive through is an option, not a requirement, it's a choice. All the provisions of the SCROD will still apply as well as the drive through restaurant.

Stephen Helman asks/clarifies that in the future would any new owner have the right for a drive through as well?

David Munsell asks about timing and when this project would be completed?

Attorney Ford answers, hopefully within the next 12 months.

Stephen Helman states that this is hard for him to vote on when he doesn't know the particulars.

Attorney Ford states that they have met with several departments, Fire, DPW, Growth Management, Cape Cod Commission staff, Councilors. The rezoning simply allows another use and a different setback. There is a process that they have to go through with many other departments with the Town and the County.

Ray Lang asks if there is any information the Planning Board can look at that these other departments have seen?

Attorney Ford answers, you could, but this is really unrelated due to the recommendation that the Planning Board has to make, the information they have now is potential.

Motion made by Patrick Princi to close the Public Hearing, seconded by Ray Lang, so voted unanimously.

Motion made by Patrick Princi to recommend to Town Council the proposed amendment as written, seconded by David Munsell, Ray Lang votes yes.

Felicia Penn and Stephen Helman are opposed. The vote is 3 to 2 to recommend.

Felicia Penn states that she would like the report that goes to Town Council to reflect that this was a 3 to 2 vote and not unanimous. So noted.

Discussion Item:

Whistleberry – Subdivision No. 454

A January 26, 2015 letter from Attorney Brian J. Wall has requested the Board to reconsider the January 12, 2015 vote to accept the construction schedule proposed by the developer for the Whistleberry Subdivision. This discussion includes potential vote of the Board to amend or modify that prior vote on accepting the construction schedule.

Stephen Helman questions if they should even entertain this discussion?

Felicia Penn states no. The Planning Board has exhausted their efforts regarding this discussion. She thinks that we are done.

Ray Lang comments how can the Whistleberry people predict realistic schedules any more the developer? He doesn't think we should go any further.

David Munsell agrees. The development is probably 40 years old, there is not to much they can do at this point.

Art Trazyk states that Attorney Schultz could not make it tonight and has asked for this to be continued to the next meeting. There is a May 1st deadline for a report to the Board.

Stephen Helman clarifies that the Board will see them in May and get an update/report at that time.

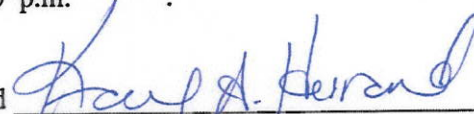
Approval of Minutes: Approval of March 9, 2015, Board Meeting Minutes

Motion made by Patrick Princi to approve the minutes of March 9, 2015, seconded by Felicia Penn, so voted unanimously.

Future Meetings: Regularly Scheduled Meetings: April 13 & 27, 2015 @ 7:00 PM.

Motion made by David Munsell to adjourn, seconded by Ray Lang, so voted unanimously to adjourn. The meeting adjourned at 7:45 p.m.

Respectfully Submitted


by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on

April 13, 2015

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

List of Exhibit Documents

Exhibit A - ANR Plan of Land, 467 Iyannough Rd, Hyannis Airview LLC, dated March 9, 2015 – File ANR Map/Par 311/027

Exhibit B - Map of Proposed Amendment to the Shopping Center Redevelopment Overlay District Creating the Drive-Through Restaurant Sub Zone of the Shopping Center Redevelopment Overlay District dated February 20, 2015. Handed out at Meeting - File Zoning Amendment TC Item No. 2015-071

APPROVED