



Town of Barnstable Planning Board



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Board Members

Stephen Helman – Chair Raymond Lang – Vice Chair David Munsell – Clerk Paul R. Curley Mark R. Ferro Holly Brockman-Johnson Marry Barry
John Norman – Town Council Liaison

Staff Support

Elizabeth Jenkins, Regulatory Review/Design Planner
Anna Brigham, Principal Planner
Karen Herrand – Principal Assistant - karen.herrand@town.barnstable.ma.us

Town of Barnstable Planning Board Minutes July 11, 2016 at 7:30

2017 AUG 2 PM 4:20

BARNSTABLE TOWN CLERK

Stephen Helman – Chairman	Not Present
Raymond Lang – Vice Chairman	Present
David Munsell – Clerk	Present
Paul R. Curley	Present
Mark Ferro	Present
Holly Brockman-Johnson	Present
Marry Barry	Present

Also in attendance were JoAnne Miller Buntich, Director, Anna Brigham, Principal Planner and Karen Herrand, Principal Assistant, Growth Management Dept.

Call to Order: Introduction of Board Members and Staff Members

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.

None.

Stephen Helman has gone home ill from the previous Planning Board Workshop.

Vice Chair Ray Lang is sitting in as Chair.

Annual Reorganization of the Board: Election of officers for FY 2017

Paul Curley moves the nominations as follows: Ray Lang as Chair, Mary Barry as Vice Chair and Holly Brockman Johnson as Clerk.

Motion entertained by Ray Lang, moved by Paul Curley to move the nominations, David Munsell seconds the motion. It is voted unanimously.

Subdivisions: Request to Modify Subdivision No. 801 Shearwater Way, Hyannis

The application is submitted on behalf of Brian Dacey, owner of 39 Shearwater Way, Hyannis. The request asks to waive full construction of the approved subdivision roadway. Specifically the applicant requests the modification to replace Minor "B" road with a 14 foot wide driveway. The subject property is shown on Assessors Map 272 Parcel 194. The plan to modify this subdivision roadway construction is entitled "Topographic Plan of land in Barnstable (Hyannis), MA Prepared for Franco Real Estate Development Company, Inc. (39 Shearwater Way)" June 23, 2004.

Matthew Eddy, of Baxter Nye Engineering in attendance, Attorney John Kenney in attendance.

Matt Eddy gives an explanation of the proposed modification; 22 ft wide with T turnaround. Looking for construction waivers to construct this as a driveway, Reference to the plan, **Exhibit A**. Proposed to be a driveway and not road. 14 ft. wide with 3 inch paved surface. He has met with Roger Parsons, Town Engineer and he is in agreement, Deputy Dean Melanson, Hyannis Fire Dept. has approved as well. Met previously with Planning/Growth Management as well.

Paul Curley asks/clarifies the access for each individual lot, from a road?

Matt Eddy replies that it is lot 1 of the subdivision, this comes off of Shearwater Way, it is a paved road, this would be a single driveway of Shearwater Way.

Paul Curley asks about lot 2 access?

Matt Eddy refers to the plan, Exhibit B. The access to this lot is to the south end of this lot. This accesses off of Whitehall Way.

JoAnne Buntich interjects that Whitehall Way was already constructed when this subdivision was approved, lot created. The northerly lot no waivers granted in 2004. Lot 2 has always had access since the time lot created.

Paul Curley asks about the catch basin, stormwater and drainage and assurance work will be done.

Matt Eddy confirms that they will be putting a catch basin in with leachpit.

JoAnne Buntich reaffirms that there are both covenant and surety in order for this subdivision to be completed. Reference to Roger Parson's memo and Chief Melanson's correspondence, Exhibits C and D.

David Munsell asks about restrictions on wetlands?

Matt Eddy replies, no, there are none. There is public water and sewer here also.

Motion entertained by Chair Ray Lang to Open the Public Hearing, moved by Paul Curley, seconded by Holly Brockman-Johnson.

Public Comment

None

Chair Ray Lang entertains a motion to close the Public Hearing, moved by Paul Curley, seconded by David Munsell, so voted unanimously.

JoAnne Buntich hands out draft outline/Potential Motions to Planning Board members, Exhibit E.

Finding:

Motion entertained by Chair Ray Lang, moved by Paul Curley that the Town Engineer in the June 24, 2016 memo and the Hyannis Fire Department in an e-mail dated May 19, 2015 both agree that the granting of the requested waivers from the full construction required for Shearwater Way will not adversely affect access to Lot 1 in Subdivision No. 801 for a single family home, seconded by Mark Ferro, so voted unanimously.

Grant of Waivers:

Motion entertained by Chair Ray Lang, moved by Paul Curley that the Board grant the request to modify Definitive Plan No. 801 approved on September 7, 2004 and recorded in Book 539 Page 100 at the Barnstable County Registry of Deeds.

This modification allows road construction for access to Lot 1 to be modified from full construction as required by the Subdivision Rules & Regulations to the reduced construction standard described in the application materials and approved by the Town Engineer and the Hyannis Fire Department and;

Shearwater Way shall be constructed in compliance with the materials submitted with the application and the Town Engineer and HFD requirements as submitted into the record including reduced construction of the roadway and adequate stormwater management and;

That the Definitive Subdivision Plan No. 801 is a two lot subdivision with Lot 1 accessed over Shearwater Way, the subdivision roadway, and Lot 2 or the use of Lot 2 accessed over existing separately approved Whitehall Way.

The waivers do not adversely affect access to Lot 2 or the use of Lot 2 for a single family home.

The waivers allow Lot 1 adequate access for a single family home use.

That all owners of Lot 1 agree to the definitive plan modification, and;

That the waivers requested for Definitive Subdivision Plan of Land prepared for Franco Real Estate Development Co., Inc. be granted as follows:

SRR Section 4-2.2 (801-26 B.(1)) width and alignment to 14' width

SRR Section 4-2.3 (801-26 C.(1)) Tee turnaround or cul-de-sac

SRR Section 4-2.3 (801-30) Curbing and Berms

SRR Section 5-8 (801-44 A.) Roadway foundation to 6 inches gravel base

SRR Section 5-9 (801-45 B.) Roadway surface to 3 inch bituminous concrete.

Seconded by Mark Ferro, so voted unanimously.

Subdivision No. 801 Covenant Release Request for Lots # 1 and #2

By letter dated July 5, 2016, from Attorney John W. Kenney, representing Franco Real Estate Development Company, Inc. has requested a release of covenant for Lot #1 and Lot #2 recorded in Book 19082, Page 157 on September 9, 2004.

Attorney John Kenney in attendance, representing the Applicant, Franco Real Estate. Asking that both lots get released from covenant. He explains that the covenant had an incorrect date on it and never got recorded. Sept. 9 of 2004. Lot 2 has already been sold. There is surety to make sure the work gets completed.

JoAnne Buntich explains that once the Applicant completes the roadwork as discussed then the Town Engineer can report back to release the surety. There are two types of surety in this case.

Attorney Kenney states yes, correct, they are asking for the covenants to be released now.

Motion entertained by Chair Ray Lang, moved by Paul Curley to grant the release of covenant for both lots 1 and 2, seconded by David Munsell, so voted unanimously.

Correspondence:

Resident Communication on Zoning Amendment Public Hearing Process – Felicia Penn

Chair Ray Lang confirms/directs to Felicia Penn (in audience) that she has a procedural matter to be discussed with the Planning Board.

Felicia Penn in attendance. She refers to correspondence dated June 27, 2016, Exhibit F. She states that she has made a procedural request, she is asking that the Planning Board have a discussion tonight, about whether or not they should have their own hearings on the proposed zoning amendment. She forwarded an outline to the Planning Board, Exhibit G, which states she is requesting this.

Chair Ray Lang states that they have not discussed this yet. Confirms that there is a Joint Public Hearing scheduled with Planning Board and Town Council for July 21, 2016.

Felicia Penn asks the Planning Board to note that Town Council had a meeting on June 16th and the legal publication appeared on June 17th, therefore it did not comply with Mass law and the two consecutive weeks needed to advertise before a public hearing is held. Town Council then withdrew the original amendment, and introduced a new amendment and moved that to a joint hearing on July 21st, but due to the fact that this was not properly advertised, this action is legally moot. A week or so later a full ad appeared for joint hearing. The Planning Board is not bound by this advertisement. The process for zoning is the same as what happened previously per state statute, with the first zoning amendment in December which was referred to the Planning Board whereby the Planning Board held their own hearing and in February took a vote and gave a report/recommendation to Town Council. A two thirds vote was not achieved by Town Council or Planning Board so this amendment did not pass.

The Town Council withdrew the original amendment and then introduced a new amendment, and then decided by themselves to have a Joint Public Hearing with the Planning Board on July 21st, for this amendment.

The Town Council cannot dictate to the Planning Board what to do. They have a right to hold their own hearing. This is what was done the first time, to do otherwise would be questionable. This is the Zoning Act, it is written here as procedure.

Chair Ray Lang clarifies that the Board is being asked to reconsider their vote? He suggests that we get input from Legal Dept.

David Munsell interjects/states that the Planning Board was told we were having a joint public hearing, the Board did not ever vote for this.

Ray Lang directs to Town Attorney Ruth Weil, asks for clarification of what information Felicia Penn has just relayed.

Felicia Penn states that the amendment 2016-166 vs. 2016- 054. The Planning Board has to decide if this newer amendment 2016-166, has material difference from what was originally proposed, 2016-054, this is extremely important to recognize the difference in the amendments. The Planning Board needs to have an independent discussion for this.

Ray Lang confirms.

Town Attorney Ruth Weil in attendance. She explains and addresses some of Felicia Penn's comments. Firstly; the introduction of the zoning amendment 2016-166 was a first reading for Town Council, no statutory requirement that the first reading be advertised. The ad that went in on June 17 was an error but there is no requirement to advertise (first read) for this anyway.

No protocol that requires a vote of the Planning Board before a joint hearing is scheduled. There is no justification for this.

Two characterizations are incorrect: reconsideration is considered the same item, this is not the same item, therefore the Planning Board does not have a gate keeping function requiring a separate hearing.

She thinks the Planning Board should go with the Joint Public Hearing as scheduled.

Ray Lang clarifies that the June 16th publication date was not needed?

Attorney Ruth Weil confirms, correct, this was first reading for Town Council with no publication/requirement needed. The proper advertising, two successive weeks is being done.

Ray Lang directs to Ruth Weil to clarify that the Planning Board doesn't make the determination for material changes/differences?

Ruth Weil replies that Chapter 40A, section 5 doesn't use the words substantial and material changes it does state that reconsideration being the same item coming forward. Attorney Kirk's letter talks about an identical item, in this case it is not identical.

David Munsell directs/asks if the Planning Board can back out of the Town Council meeting now?

Attorney Ruth Weil states that she advises against it.

Paul Curley comments that we are in a process and that at this point it would be inappropriate to change this. He thinks having another hearing at this point would be redundant. He thinks we should go to the Joint Hearing on July 21st.

David Munsell comments that this is trying to be pushed through. We have voted it down previously. The new amendment is a watered down version with the same intent. We should have our own public hearing.

Town Attorney Charles McLaughlin in attendance, he respectfully directs to David Munsell/cautions not to get into the merits.

Ray Lang confirms the suggested recommendation. Asks if the Planning Board can ask for a continuation of the hearing if they are having difficulty? Ask for a continuation of the hearing?

Town Attorney Charles McLaughlin replies yes, at the point of the July 21st hearing you could express that you need additional time, independently to decide to recommend or not. Request an argument as such.

He reads the statute, *Chapter 40A, section 5, Repetitive Petition to Council or Town Meeting* into the record:

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the Planning Board.

Town Attorney Charles McLaughlin states that nowhere in this paragraph do the words material and substantial appear. It is improper to read into a statute words that are not there. These words are however in *Chapter 40A, section 16* ;

No appeal, application or petition which has been unfavorably and finally acted upon by the special permit granting or permit granting authority shall be acted favorably upon within two years after the date of final unfavorable action unless said special permit granting authority of permit granting authority finds, by a unanimous vote of a board of three members or by a vote of four members of a board of five members or two-thirds vote of a board of more than five members, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the Planning Board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

He gives a history of a Nantucket case where there were minor material changes and then the case was approved by Zoning Board of Appeals (ZBA). The ZBA is different than the Planning Board. The legislature didn't put the same language in for Planning Board as for ZBA.

Paul Curley suggests that the Planning Board follow the advice that the Legal Dept. is giving us.

Ray Lang has a possible handout something he wrote himself. He is asking if this is appropriate or not. Can he leave a copy?

Ruth Weil replies/suggests that Ray Lang could bring it to Town Council. It may be appropriate at that time to present at Town Council's public hearing. A whole new proposal would be difficult at this point.

JoAnne Buntich confirms that this is a discussion item with no vote needed.

Felicia Penn directs to Attorney McLaughlin's statement earlier and would like to remind the Planning Board that within the Growth Incentive Zone, (GIZ) the Planning Board is the Special Permit Granting Authority (SPGA). Suggests finding some consensus from the Board.

Mary Barry asks for clarification about the vote, does the Planning Board have to vote at the July 21st joint public hearing with Town Council?

JoAnne Buntich confirms that she would like to know this as well and directs to Legal/Ruth Weil.

Attorney Ruth Weil responds that the Planning Board is not compelled to take a vote. If close public hearing then have to take action within 21 days if no action is taken then the Town Council can proceed to make its final vote. Under Chapter 40A, section 5, cannot act until the Planning Board gives its recommendation. You can also continue the hearing.

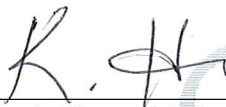
Matters Not Reasonably Anticipated by the Chair

Motion to adjourn made by Paul Curley, seconded by Mark Ferro, so voted unanimously.

Meeting adjourned at 8:15 p.m.

Future Meetings: Regularly Scheduled Meetings: July 25, August 22, 2016 @ 7:00 PM.

Respectfully Submitted



by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on



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 – Existing Conditions Plan C1.0 – Sub. 801 Request to Modify – Shearwater Way – Dacey_

Exhibit B - Topographic Plan – Sub. 801 Request to Modify – Shearwater Way – Franco Real Estate/Dacey

Exhibit C – Email correspondence from Deputy Dean Melanson dated May 19, 2016 – Sub. 801 Request to Modify – Shearwater Way - Dacey

Exhibit D – Memorandum dated June 24, 2016, from Roger Parsons, Town Engineer – Sub. 801 Request to Modify – Shearwater Way - Dacey

Exhibit E – Potential Motions (draft) Sub 801 – Shearwater Way - Dacey

Exhibit F – Letter from Attorney Edward Kirk dated June 27, 2016, re Zoning Amendment 2016-166 HPOD

Exhibit G – Hand out - Correspondence from Felicia Penn “Re: The Merits of the HPOD” – Zoning Amendment 2016-166