



Town of Barnstable Planning Board



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Board Members

Mary Barry – Chair Stephen Helman – Vice Chair Steven Costello - Clerk Paul R. Curley David Munsell Fred LaSelva Jeffrey Swartz
John Norman – Town Council Liaison

Planning & Development Dept. Staff Support

Elizabeth Jenkins, AICP, Director
Paul Wackrow, Principal Planner
Karen Herrand – Principal Assistant - karen.herrand@town.barnstable.ma.us

**Town of Barnstable
PLANNING BOARD
Minutes
November 13, 2017**

20 JUL 27 P12:27

BARNSTABLE
TOWN CLERK

Mary Barry – Chairman	Present
Stephen Helman – Vice Chairman	Present
Steven Costello - Clerk	Present
Paul Curley	Present
David Munsell	Absent
Fred LaSelva	Present
Jeffrey Swartz	Present

Also in attendance were Elizabeth Jenkins, Director, Paul Wackrow, Principal Planner and Karen Herrand, Principal Assistant, Planning & Development Dept.

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.

Regulatory Agreements:

259 North Street LLC/Stuart Bornstein seek to enter into a Regulatory with the Town of Barnstable - to allow use of property for dental and medical clinics. The subject property is addressed 259 North Street, Hyannis, MA and is shown on Assessor’s Map 308 Parcel 073/002. Property is located in the HVB District – Hyannis Village Business District. *Continued from October 23, 2017, for draft*

Aaron Bornstein in attendance. He is here because Stuart Bornstein is not able to be here tonight. He suggests a continuance for this because they have just received the draft reg. agrmnt from

Motion ent by Chair moved by Stephen Helman, seconded by Paul C, so voted unanimously to continue to Nov. 27, 2017, meeting.

Zoning Amendments:

Zoning Amendment Town Council Item No. 2017-159 - Order, Pursuant to M.G. L. Chapter 40A Section 5, submitting Proposed Zoning Amendment Prohibiting the Establishment of Group Homes to the Planning Board - 95 Chase Street, Hyannis. *Continued from July 10, 2017, August 28, 2017 and October 23, 2017 – legal opinion requested by the Board.*

Motion entertained by Chair Mary Barry to open Public Hearing, moved by Jeff Swartz, seconded by Stephen Helman, so voted unanimously.

Laurel Wentzel in attendance. She explains that she would like section 240, e, ...Group homes. Section 140, sec. 8,

See Exhibit A. (she quotes from this).

Homeless not Hopeless, 4 Group Homes and 2 rental properties in Hyannis. Homes have claimed an educational exemption. Town sewer...convenience . Parking/driveway. Precinct 13 is over saturated with these homes. 95 Chase St. Police fees. Cost to Town. Neighbors complaints. Taxes for homes, not having to pay.

House Bills : S194, Senator _____ . She quotes for the Dover Amendment, Second H3593, Senator _____ . She quotes for the Dover H38A1 _____ . To regulate non profits within a residential district.

The FHA, substance abuse and homelessness are not listed for these types of homes. Opinion on education.

Chair Mary Barry directs to EJ regarding the Town Attorney's Office memorandum, Exhibit B. She reviews the Memorandum. Mass is a homerule state. Laws have to be consistent with State Law, Section 3 of htat act is the Dover Amendment,

She quotes the Dover Amendment: _____ . For organization to be educational, the exemption extends to other situations..re independent living. Basic life skills,

These are amendment protected. The Town Attorney concludes that the proposed ZA would be inconsistent and in violation of the restrictions opposed by the Dover Amendment.

There is some special legislation , currently a house billpending that would allow non profits exempt from the ZA.

Mass General Law ---congruate disabilities, compels equal treatment for this. Mass law doesn't define what a disabled person is.

Federal law is broadly defined, a regulation that is broadly construed. Given this the proposal would be inconsistent .

The Fair Housing Act and ADA. Federal Law that targets housing discrimination. To apply to local zoning. One of the actions is disperate.....by applying different uses.

Federal Fair Housing aCt provides that congruent cannot be labeled/treated differently.

American Disabilities Act works against the disabled, that discriminates against drug and alcohol.

Legal Memorandum Conclusion: Read into record (note: Cut & Paste here). Exhibit B.

Jeff Swartz asks to clarify what PB can rule on?

EJ clarifies that this is a ZA, brought for PB to make a recommendation to adopt or not to the Town Council.

Town Atty's memo has pointed out that this would be found inconsistent with state and Federal law.

Fred LaSelva comments/refers to the memorandum, Exhibit B. This seems like a broad....

The document, Exhibit B, doesn't take into consideration previous attempts to override the Dover amendment.

Stephen Helman comments that he doesn't perceive his role here to be someone whom either supports or opposes the Town Council. We asked for a legal opinion. Is this request compliant. It is very clear that it isn't. Based on that he cannot possibly support this. Due to violation of federal and state law.

Steve Costello comments that the description of educational purposes ...loop holes. It seems that there are a lot of towns affected. If

EJ replies that there are a number of issues, municipality plays with congruent living, how it applies to Home not Hope, conversation here tonight is specific to the requested za as a potential way to regulate group homes.

Chair Mary Barry clarifies what PB role is tonight.

Paul Curley asks for clarification regarding the bills/legislation in the works now, there are some currently?

EJ replies yes, Sponsored by Rep. Crocker. Pending House Bill., Refers to Exhibit B. This is a citizen's petition, this is a little unusual. Zoning Amendments typically do not come to PB this way/procedure.

Jeff Swartz clarifies that this is being taken out of order..our job to listen to them. Confirms that it will be legislative at the State level. The exemption they are asking for ...may come back when State legislation is passed.

Stephen Helman asks for clarification/once

EJ replies that maybe more control responsive to some concerns.

Fred LaSelva comments that the more important part to this is that the citizens have spoken up in this town.

Steve Costello clarifies that Town Atty helping Town Council?

EJ stated yes, this is being considered currently.

Local control to allow the Town's ...

John Julius in attendance. He has letters from

Jim Ogleasion

Martin Traywick

Gerold Malloy

Laureen Levet

Annette Elms

Ed Coulet

Gary Lopez

8 letters.

NOTE: need these for exhibit documents

Counselor Debra Dagwan in attendance. We have residents here that are transitional and life long residents, she thinks the two are competing. She states the entitites, Homeless not Hopeless, Needle exchange...

Some neighbors do not know all in the neighborhood. One side is getting what they need, they have property being served. The long term residents are not getting what they need, as a neighbor I care about my neighborhood. They don't know the people next to them.

Transitional housing people change, we don't know them. One side is not getting what they need. The transitional housing do not have a solution to help the long term neighbors. We should be able to handle this in our town. Suggests neighbors being more involved. Property value less with some of the properties, why not put money together and purchase a property further out. Saturated neighborhoods here.

Allen Felthman in attendance. Vice Chair of Barnstable Economic Development....

He comments that he has handed in letters, Exhibit docs, 4 letters, submitted: read into record: Dr. Patalano, president Steven Patalano. **Note: cut and paste here.**

Letter Debra Boschetti...letter Exhibit C. dated Nov. 13, 2017. **Note cut and paste 2nd paragraph.**
Letter Karen Patalano – Exhibit C, not dated. 3rd paragraph, **Note cut and paste**

Allen Feltham ..**Note cut and paste** under paragraph **WHY?** Exhibit C. Also in conclusion: Last comment.

Stephen Helman states that his group has a sound argument, he doesn't understand that His issue is the law is what it is..he will not vote to not obey the law. That is his position.

Jeff Swarz asks if EJ has an update re the legislation H...bill.

EJ replies that she is not completely updated

Deb Dagwan suggests maybe a van for transportation for people at these houses.

Jeff Swartz asks if she knows the progress of the bill.

Deb Dagwan replies that Jen Cullum went up and spoke before the House. Rep Crocker updates them all the time about the bill. It is being looked at and sounds favourable. At least still there, not dead.

John Julius confirms the bill is: 3881 is the House Bill.

Janet Lacker, in attendance, from Harvard St. Hyannis. She explains that this is already a bad area. Homeless people in the area. Movement in the neighborhood. Neighbors helping neighbors, got to know one another, transient or year round. Exchange of services a lot of good things. The neighborhood is now at odds because of the group home in the neighborhood. She doesn't think this is the place for rehabilitation. A lot of non profits now in the area.

Pat Richards, of Chase St., Hyannis. Comments that Hyannis is now a dumping ground. Town needs to come together to save it.

David Johnson, Sea St., Hyannis. In attendance. Comments/reads a property description from a real estate ad. Description of. Opinion comments made. We need a community plan.

Nicki King, Hyannis residence, next door to 95 Chase St., Hyannis. Comments that it is hard to sell the home now, because next door to a homeless shelter. Opinion comments made. Restrictions should be implemented for the zoning. Town and State governments need to amend the Dover amendment.

Laura Cronin in attendance. Reads Deb Krau letter into record: **cut and paste here.** Exhibit D.

She comments that there are a lot of zoning issues happening. There is a needle exchange program being run next door to them. We can be proactive.

John Crow, resident of Osterville. He has experienced things right in his neighborhood, addict has lived right next door to him. We have all experienced it. These are everybody's issues.

John Julius in attendance. In summary: he quotes – law is merely one's opinion. Attorney's have opinions, a judge makes the final determination.

He mentions several court proceeding/decisions: 1945 US Supreme court ruled to claim exemption – better business vs.....an organization,

Comments from this ruling.

2012 – Regis case, ZBA – against the Dover amendment.

1979 – Mass exemption per Dover amendment -

Education to be dominant use. Quotes of tax payers money and use of. Home values. Zoning needs to be protected. Gives his opinion regarding what the Planning Board should do.

Motion entertained by Chair Mary Barry, to close the PH, moved by _____

Chair Mary Barry directs to Elizabeth Jenkins/asks if there is an approval process for group homes?

EJ replies yes there is, a site plan review process, no abutter notices required. Need approval from the Bldg. Commissioner.

Jeff Swartz directs to EJ, educational component mentioned by John Julius, do we know what/if there is one?

EJ replies that she worked with ZBA re Home not Hopeless, outlined in legal memo, Exhibit B. 40A, section 3 provides the overall exemption, and then congruent living facilities. Admin process, look at judicial case law to give def to those terms, pg. 3 and 4 of legal memo, Exhibit B. Education use has to be primary and dominant. This is not traditional learners, sometimes articles of incorporation, wide variety of evidence.

Fred LaSelva asks/confirms that no one in Town inspects?

Elizabeth Jenkins replies that zoning enforcement does this. She is not aware.

Paul Curley comments that there is a process. He clarifies that a vote in the affirmative would be going against state and federal law. He cannot do that. His recommendation would be for the group to support Town Council and representative(s) on Beacon Hill and to take their passion and energy and show it there. The Planning Board cannot do this.

Motion entertained by Chair Mary Barry, moved by Fred LaSelva, to recommend to Town Council; Fred LaSelva is a yes, Jeff Swartz is a yes, Steven Costello is a yes, Stephen Helman is a no, Paul Curley is a no and Chair Mary Barry is a no. This is a split decision to recommend to Town Council, three yes and three no.

Jeff Swartz yes.

Fred LaSelva yes

Steven Costello yes.

Paul Curley no.

Stephen Helman no.

Chair Mary Barry no.

A split PB is reflected in the recommendation...it will be communicated as such. Not consensous.

Steven Costello asks for clarification re Town Council's role.

Chair Mary Barry comments that she is looking at it from the legal standpoint, the bigger picture of the hOuse bill.

Jeff Swartz asks for clarification.
EJ explains the procedure to him.

Fred LaSelva comments that he thinks our recommendation is an opinion not a decision. He feels the vote would be one to support all of Town..to say if this will help use it. He doesn't think our place to stop the momentum, we are not the final goal keeper.

Correspondence:

Chapter 91 – Notice – beach nourishment, maintain existing dwelling/reconstruct existing stone groins/bulkhead – 100 Cross Street, Barnstable
Chapter 91 – Notice – construct and maintain a pier – 78 Saw Mill Rd, Barnstable
Cape Cod Commission Hearing Notice Nov. 21, 2017 – TowerNorth Telecommunications Monopole - Cotuit

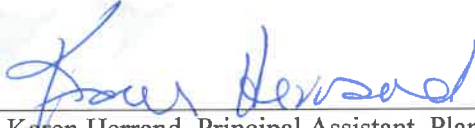
Matters Not Reasonably Anticipated by the Chair:

Stephen Helman to contact me to modify schedule as such.

Future Meetings: Regularly Scheduled Meetings: November 27 and December 11, 2017, @ 7:00 PM.

Motion ent to adjourn, moved by S Helman, seconded by Paul C, so voted unanimously to adjourn.

The meeting adjourned at 9:08 p.m. .

Respectfully Submitted 
By Karen Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on April 13, 2020

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 –