



# Town of Barnstable Planning Board



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### Board Members

Steven Costello – Chair    Jeffrey Swartz – Vice Chair    Patrick Foran - Clerk    Mary Barry    Stephen Robichaud    Aimee Guthinger    Robert Twiss  
Mathew Levesque – Town Council Liaison

### Planning & Development Dept. Staff Support

Elizabeth Jenkins, AICP, Director  
Kaitlyn Maldonado, Assistant Director  
Karen Herrand – Principal Assistant - [karen.herrand@town.barnstable.ma.us](mailto:karen.herrand@town.barnstable.ma.us)

## Town of Barnstable PLANNING BOARD Minutes May 24, 2021

BARNSTABLE TOWN CLERK  
2021 JUN 10 10:10 AM

Steven Costello – Chairman	Present
Jeffrey Swartz – Vice Chairman	Present
Patrick Foran – Clerk	Present
Marry Barry	Present
Stephen Robichaud	Present
Aimee Guthinger	Present
Robert Twiss	Present

*Also in attendance via remote participation were Elizabeth Jenkins, Director, Planning & Development, Kaitlyn Maldonado, Assistant Director, Karen Herrand, Principal Assistant, Planning & Development, and Assistant Town Attorney, Kate Connolly, Town Attorney's Office.*

The Planning Board's Public Hearing will be held at 7:00 p.m. by remote participation methods as a result of the COVID-19 state of emergency in the Commonwealth of Massachusetts.

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be viewed via the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/>
2. Real-time access to the Planning Board meeting is available utilizing the Zoom link or telephone number and Meeting ID provided below. Public comment can be addressed to the Planning Board by utilizing the Zoom link or telephone number and Meeting ID provided below:

Link: <https://zoom.us/j/92268169339>

Phone: 888 475 4499 US Toll-free

Meeting ID: 922 6816 9339

3. Applicants, their representatives and individuals required or entitled to appear before the Planning Board may appear remotely and are not permitted to be physically present at the meeting, and may participate through the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting so that they may be displayed for remote public access viewing.

Application materials may be accessed by contacting [Karen.herrand@town.barnstable.ma.us](mailto:Karen.herrand@town.barnstable.ma.us) or calling 508-862-4064.

**Call to Order:** Introduction of Board Members and Staff Members

**Attendance Roll Call:**

Steven Costello  
Jeff Swartz  
Patrick Foran  
Mary Barry  
Stephen Robichaud  
Aimee Guthinger  
Bob Twiss

**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.

**Public Comment**

Chair Steven Costello explains that the Planning Board is changing their format to have Public Comment at the beginning of the meetings, somewhat like Town Council does. Please hold any Accessory Dwelling Unit (ADU) comments until after we open the public hearing tonight.

**Approval Not Required Plans**

Nancy DC Weinstein, Trustee Chase Realty Trust, has submitted an ANR plan entitled "Plan of Land 2956 Main St. Barnstable, MA" prepared for Nancy Weinstein, prepared by Daniel A. Ojala, P.L.S. of Down Cape Engineering, Inc., dated March 29, 2021– proposed to merge two lots, 2956 and 2944 Main Street, Rte 6A, Barnstable, MA.

Dan Ojala in attendance, DownCape Engineering, he explains cut into 2 pieces previously and now would like to dissolve the lot line, rear area for Barnstable Land Trust will be unaffected. Maybe a perimeter plan, but would like it properly done with all being aware.

Jeff Swartz asks what is the purpose of separating previously and now bringing together?

Dan Ojala replies, in Barnstable can only have one house on lot, in order to have a second have to have the other lot , there is a partial donation parcel in the back. Has to be put into for a single family home/lot.

**Motion made by Mary Barry to endorse this ANR plan, seconded by Jeff Swartz,**

**Roll Call Vote:**

Steven Costello - aye  
Jeff Swartz - aye  
Patrick Foran - aye  
Mary Barry - aye  
Stephen Robichaud - aye  
Aimee Guthinger - aye  
Bob Twiss - aye

Chair Steven Costello moves items out of order on the Agenda – Approval of minutes.

**Approval of Minutes**

September 24, 2018, draft minutes  
October 22, 2018, draft minutes  
November 26, 2018, draft minutes  
December 10, 2018, draft minutes  
January 14, 2019, draft minutes  
April 12, 2021, draft minutes

**Motion made by Patrick Foran to approve the draft minutes of; September 24, 2018, October 22, 2018, November 26, 2018, December 10, 2018, January 14, 2019, and April 12, 2021, seconded by Jeff Swartz, Roll Call Vote:**

**Steven Costello - aye**  
**Jeff Swartz - aye**  
**Patrick Foran - aye**  
**Mary Barry - aye**  
**Stephen Robichaud - aye**  
**Aimee Guthinger - aye**  
**Bob Twiss - aye**  
**All the minutes are approved.**

**Patrick Foran recuses himself.**  
**Bob Twiss recuses himself.**

**Zoning Amendments**

**Town Council Item No. 2021-174** – Proposal to amend the Town of Barnstable zoning ordinance by amending Article XIV, Chapter 240, Section 128 of the zoning ordinance to add a definition for Accessory Dwelling Unit (ADU) and Dwelling Unit, and revise the definition of Dwelling, Single-Family and add Article V, Chapter 240, Section 47.2 Accessory Dwelling Units (ADUs) to the zoning ordinance.

**Town Council Item No. 2021-175** – Proposal to amend the Town of Barnstable zoning ordinance by amending Article XIV, Chapter 240, Section 128 of the zoning ordinance to revise the definition of Accessory Dwelling Unit (ADU) and amending Article V, Chapter 240, Section 47.2(C)(4) to allow ADUs with greater than 900 square feet by special permit from the Zoning Board of Appeals.

Chair Steven Costello states that the information has been out for all, material is on the Town of Barnstable (TOB) website and is very thorough, there is multiple access for all.

Elizabeth Jenkins in attendance. Presentation/Accessory Dwelling definitions – Exhibit A presentation - amend two sections, to add new section and definitions. Zoning, an ADU, self contained living unit. Single family or detached accessory with separate entrance. To be smaller than the principal dwelling unit, subject to regulations to assure accessory character. Detached or attached in a principal dwelling. Town conducts housing needs and production plans. Need to produce more rental housing for community. Renters are cost burdened, more than 30 percent on rent. Housing choice, 83% are single family dwellings. Out of reach for families, cost wise. Median property in April 2021 to 519,950 considerably outpacing the median of what a family can afford. Comprehensive Housing Plan addresses needs cost. Housing Production address more housing options. Cape Cod Commission (CCC) has identified as a housing priority. Demand for smaller units. Model bylaw by CCC. Several meetings to discuss and review model bylaw. Voted a recommendation for an ADU ordinance. Also community meeting to inform the community and for feedback for the proposed ordinances. Housing Choice provisions Jan. 24, 2021, Mass General Law 40A to provide housing in the Commonwealth. Town Council would have to have a simple majority as opposed to two thirds. We have split the two Zoning Amendments (ZA) for the vote that needs to be for each one. Review of purpose & intent.

**ZA 2021-174** is to add in the Accessory Dwelling Unit (ADU) definition itself. Review of the proposed ordinance text.

Procedural requirements – as of right, meaning without a waiver/review. Must comply with current zoning and regulations, height requirements, historic area. ADU's must be on the same lot, only one per lot. Design requirements, accessory in character, less visible than the principal dwelling. Design to be consistent in character with the single family home. Bedrooms and size states an ADU shall have no more than two bedrooms. Noted that an as of right with more than this could apply for a special permit with ZBA. Size limited to 900 sq. ft. or half of the size of the principal dwelling, whichever is smaller. Occupancy requirements are limited to two adult persons. Once ADU established the size is the maximum, cannot do an additional permit. Parking provision, must be off the street. Title 5 septic provision. To have permit issued has to be confirmation that there is adequate sewerage. Must meet all wastewater requirements for the lot. The maximum cannot exceed the number that is allowed for the property. Rental of ADU and the principal dwelling may be rented, ADU only a rental except if the owner resides. Shall not be shorter than 12 consecutive months, both principal and ADU. This includes short term rentals.

**ZA 2021-175** – one is clarification of definition of ADU and one is an amendment to the section that regulates the bedrooms, greater than 900 sq. ft. if granted a special permit from ZBA.

Stephen Robichaud asks if any other towns have a provision for added flexibility from zoning.

Elizabeth Jenkins explains that an ADU could be 900 sq. ft. – properties vary in terms of size and character, like our family apartment ordinance – some flexibility to allow potentially larger units. This is what was established with Mass General Law 40A, why we have this separate amendment.

**Chair Steven Costello entertains a motion to open the public hearing, moved by Jeff Swartz, seconded by Stephen Robichaud,**

**Roll Call Vote:**

**Stephen Robichaud - aye**

**Jeff Swartz - aye**

**Mary Barry - aye**

**Aimee Guthinger - aye**

**Steven Costello - aye**

**Public hearing is now opened.**

Bob Schulte in attendance. His wife and he support ADU's. Would like Planning Board to consider 2021-174. Affordability – why are there no provisions to ensure affordable rent fees. Should specify that rents cannot exceed certain amount, i.e., 30%. Orleans just approved similar to this. Owner occupancy – common provision is a requirement for owner occupancy. Most other Cape towns have this, except Provincetown. Landlords who are owner occupied are less likely to raise rents. Please consider these two items.

Whitney Macnamara in attendance. She strongly encourages to pass ADU's as they stand. Need units now. Need help with the costs. This would help seniors as well. Not always an option for owner occupancy. Many rentals are selling due to the housing market rise. Please pass quickly.

Meghan Mort in attendance. Forcing homeowners to limit rental fees is not good. No rental availability. 12 month year round is desperately needed. This is something that will help increase housing stock. Prices are so high right now. Need to make it possible and having an ADU would help, as written, year round.

Tara Vargas Wallace in attendance. Would like the ADU to move forward as written. Cannot afford to continue this way, would make it easier to build and move forward with the effort. Homeowners choose to do this. Limited pool. Do not slow this down. We need housing now.

Susan Rohrbach in attendance. Would like the ADU ordinance adopted. No rentals for families here. This would help if someone buying a house and can also have an ADU, this could really help. Need to make housing more available. Owner occupied, allow not to be this way.

Elizabeth Jenkins clarifies the two Zoning Amendments, and in excess of 900 sq. ft. but no amendments to either of these ADU amendments.

Dani Donahue in attendance. In support of ADU's as written. Appreciates the flexibility in the proposed ordinances.

Timothy Luff in attendance. In support of ADU as written and supports the additional square footage for 2021-175. He has friends and knows people being forced off of the islands and Cape Cod. Rents are out of control and cannot purchase with zero equity. In law apartments have restrictions. Has to be monitored and only for blood relatives. This could really help for housing and also keep families together. Families can pool resources. Enough legislation in place to keep in an adoptable way to come to fruition. Vote on as written.

Heather Hunt in attendance. Real Estate, implication on housing availability – will the town due any analysis for this. Questions that public has sent in. Prior public comments, renter to be watched. Sandwich, Mashpee, Eastham, Harwich, Falmouth these are based on owner occupancy requirements. Live in either unit. Consider approach – 12 month rental requirement is good.

Matthew Teague in attendance, former Planning Board member. He has done work with other towns re ADU housing. He owned a property in Yarmouth and purchased with an ADU on property. He had helped several people. Would highly recommend these ADU's as written. A cap on rentals does not work. The issue is economics of the investment, to build a code compliant unit is extremely expensive. The cost of housing has gone up 60%. None of these units will be developed. The housing situation is desperate. Let's make this change now.

Christine Ulijua, realtor, in attendance. Highly in support of this. People are desperate for housing. Sellers can't find a place after they sell. I think this ordinance will help people.

Eric Barsnod in attendance. He's lived here since 1987. Strongly reminds people that the rental landscape is in desperate need. This may be a good opportunity to build/add an ADU. Owner occupancy concerns. Look at the long term effects, if forced to live on the property or income restrictions this will not be good. Difficulty with deed restrictions would be a non starter.

Elizabeth Jenkins – on questions submitted.

There is a Forum on line/pilot that if public has questions to submit their input, also FAQ.

Q - Was there a study/analysis conducted on housing market by allowing non resident investors to buy/develop ADU's and then not occupy.

A - haven't done a study - intensity of the problem. Prohibiting Short Term Rentals.

Q – Parking, proposed amendment states that parking shall be on site. Have looked at other communities. We do not have parking requirements for single family. People asked where on the lot.

A - no provisions, ADU to be permitted, do have to go through a process and submit site plans and floor plans, this would be opportunity to ensure adequate parking, not in conflict with other things on site, i.e., septic.

Chair Steven Costello reminds that Town Council can also address any further questions.

Stephen Robichaud asks if any precedent in the Town with zoning ordinance for restricting the rate that someone can get for a rental. Seems challenging to limit based on income.

Elizabeth Jenkins replies the Town has an Accessory Affordable Apartment Dwelling program that allows for unit in exchange/income limited, 80 % of area median income. Our housing production plan recommends because sees challenges with this program. The process to establish can be burdensome to property owners and tenants and staff. Some studies say that income may suppress the production of ADUs. Income restrictions limit the eligibility of tenants to qualify for units and continue to live in units if income increases.

Stephen Robichaud confirms that this proposal limits to adults. Is this included with wastewater in the Town?

Elizabeth Jenkins replies that addressed by zoning and regulatory committee thinks it responds to limiting the intense of use.

Stephen Robichaud asks limited in size, bedroom count. What about homes on town sewer?

Elizabeth Jenkins replies that Town sewer bedrooms limit in a few ways, bedroom limitation, no more than 2 bedrooms. The size as well has limitations/dimensional per zoning district. The property would get form/info from DPW that can deal with the use/intensity.

Stephen Robichaud comments that most people are at a max bedroom count. Will people need to upgrade and make bigger septic with the Board of Health?

Elizabeth Jenkins replies that the ordinance doesn't allow any additional, per title 5. Could upgrade, but this does have to be available for the max of what's allowed. Septic capacity cannot be exceeded.

Stephen Robichaud asks about lot sites that already have, those sites would not be eligible. Anything to prevent that from happening?

Elizabeth Jenkins replies it is very unlikely to have both an ADU and an Accessory Affordable Apt., an oversight, but have a specific definition.

Arden Cadrin interjects/replies that the septic will take care of the ADU AAP units, most will probably transition to ADU now. Not allowing two would solve that point.

Aimee Guthinger parking/septic – opportunity to create parking over septic, there is an option when placing a new septic system in property.

Mary Barry unfunded mandate concerns. Would like to see Staff and Community work on bigger things moving forward.

Jeff Swartz concerns with expense. Would suppress the amount of units and could get a return on their investment. Owner occupied, statistics, a lot are second homes so people aren't always here. Investor to buy if prove two units to be created responsibly. Be progressive when the housing market shifts. Would like to see some workshops re this.

Chair Steven Costello doesn't think workable re cost of construction now. Need to provide as much housing as can. We need to think of how we operate in this Town, this is a huge crisis. Limitations, would not want to do as owner occupied. So concerned with drama of short term rentals that we started to think in a narrow way. We are trying to solve a housing crisis. Concerns with the 12 month rental terms, due to seasonal needs. Other towns have less, 6 and 8 month limitations, important to consider, multiple problems. Square footage, the ability to add 100 more sq. ft. does that really create an undue burden, especially if the property can handle it. In favor of allowing it to be done by a ZBA special permit.

Town Council will be making this decision, so we want to give them the best information/all information.

Gordon Starr in attendance. He asks about how sewer can affect the amount of bedrooms you have. Depends on the size of the lot. The potential is there. An ADU will be assessed as a separate dwelling unit. Taxes will be applied for both.

Stephen Robichaud, all are recognizing this is a dire situation, many months of work put into this. His takeaway that owner occupancy and cost to create would limit the possibilities. The code is harder every year. Doesn't support owner occupancy.

Aimee Guthinger doesn't support the owner occupancy either. An ADU could also create a caretaker type of situation, opportunity.

Mary Barry, the 12 consecutive month does concern her. Doesn't think this requirement supports the people that are here temporarily, less than 12 months.

Jeff Swartz comments that they are having problems growing their business where there are not enough people to work and live here so business cannot grow. Can't solve this issue with one answer.

Stephen Robichaud agrees about the 12 month, would be good for seasonal staff, but worried about the year round people being booted out so they can rent for a seasonal rate and to seasonal people.

Chair Steven Costello thinks that 6 months would allow more flexibility. Maybe include with recommendation to Town Council.

Aimee Guthinger comments that if it could be the renters choice/option, then it's their own choice.

Stephen Robichaud asks about making an adjustment, amendment.

Elizabeth Jenkins replies that can recommend with amendments, can propose to make a provision, number 11 in the ordinance relative to the minimum rental period required.

Chair Steven Costello asks maybe under 11, change from 12 months to 6 months.

**Chair Steven Costello entertains a motion to close the public hearing, moved by Jeff Swartz, seconded by Mary Barry,**

**Roll Call Vote:**

**Steven Costello - aye**

**Stephen Robicaud - aye**

**Aimee Guthinger - aye**

**Mary Barry - aye**

**Jeff Swartz - aye**

**The Public Hearing is closed.**

Mary Barry - the rental for and ADU and the principal shall not be shorter than 6 consecutive months, changing from 12 months to 6 months.

**Chair Steven Costello entertains a motion to recommend ZA 2021- 174 to Town Council as written with the amendment to substitute 6 months from 12 months in item number 11, moved by Jeff Swartz, seconded by Mary Barry,**

**Roll Call Vote:**

**Steven Costello - aye**

**Stephen Robichaud - aye**

**Aimee Guthinger - aye**

**Mary Barry - aye**

**Jeff Swartz - aye**

**Chair Steven Costello entertains a motion to recommend ZA 2021-175 to Town Council as written, moved by Stephen Robichaud,**

**Roll Call Vote:**

**Steven Costello - aye**

**Stephen Robichaud - aye**

**Aimee Guthinger - aye**

**Mary Barry - aye**

**Jeff Swartz - aye**

Chair Steven Costello entertains a motion to recommend ZA 2021-174 with proposed amendment and ZA 2021-175 to Town Council, moved by Jeff Swartz, as voted by all members, seconded by Stephen Robichaud,

**Roll Call Vote:**

Steven Costello - aye  
Stephen Robichaud - aye  
Aimee Guthinger - aye  
Mary Barry - aye  
Jeff Swartz - aye

Elizabeth Jenkins clarifies that the Planning Board's recommendation to Town Council for ZA 2021-174 will include a determination to qualify for a simple majority vote and ZA 2021-175 a two thirds vote by Town Council.

**Matters Not Reasonably Anticipated by the Chair**

**Correspondence**

Notification from DEP for Project at 52 Hallet's Ln, Marstons Mills – Ferretti – Mystic Lake/Pier & Ramp  
Notice of Chapter 91 Permit Application- Barnstable Harbor outer entrance channel - maintenance dredging project  
Notice of Chapter 91 – 500 Shoot Flying Hill Rd., Centerville – Lake Wequaquet aluminum seasonal pier  
Notice Fisheries & Wildlife – map of rare species – for public comment May 3 – July 3, 2021  
Notice of Chapter 91 – 71 Snow Creek Dr., Barnstable – Moeller, seasonal dock

**Future Meetings:** June 14, and June 28, 2021, @ 7:00 p.m.

**Adjournment**

Chair Steven Costello entertains a motion to adjourn, moved by Jeff Swartz, seconded by Stephen Robichaud,

**Roll Call Vote:**

Steven Costello - aye  
Stephen Robichaud - aye  
Aimee Guthinger - aye  
Mary Barry - aye  
Jeff Swartz – aye

The meeting adjourned at 9:12 p.m.

Respectfully Submitted  
Karen Herrand, Principal Assistant, Planning & Development

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 – Power Point presentation by Elizabeth Jenkins ADU – ZA 2021-174 & ZA 2021-175