



# Town of Barnstable Town Council

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## TOWN COUNCIL MEETING AGENDA January 06, 2022 7:00 PM

### Councillors:

Matthew Levesque  
President  
Precinct 10

Paula Schnepf  
Vice President  
Precinct 12

Gordon Starr  
Precinct 1

Eric R. Steinhilber  
Precinct 2

Paul Hebert  
Precinct 3

Nikolas Atsalis  
Precinct 4

David W. Bogan  
Precinct 5

Paul C. Neary  
Precinct 6

Jessica Rapp Grasseti  
Precinct 7

Jeffrey Mendes  
Precinct 8

Tracy Shaughnessy  
Precinct 9

Kristine Clark  
Precinct 11

Jennifer L. Cullum  
Precinct 13

Administrator:  
Cynthia A. Lovell  
[Cynthia.Lovell@town.barnstable.ma.us](mailto:Cynthia.Lovell@town.barnstable.ma.us)

Administrative  
Assistant:  
Kelly Crahan  
[Kelly.Crahan@town.barnstable.ma.us](mailto:Kelly.Crahan@town.barnstable.ma.us)

The January 06, 2022 Town Council Meeting of the Barnstable Town Council shall be conducted remotely and shall be physically closed to the public. Alternative public access shall be provided as set forth below.

1. The meeting will be televised live via Comcast Channel 18 or may be accessed via the Channel 18 live stream: <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Remote Participation: Real-time public comment may be addressed to the Barnstable Town Council utilizing the Zoom video link or telephone number and access meeting code:

Join Zoom Meeting <https://zoom.us/j/92087995153> Meeting ID: 920 8799 5153  
US Toll-free 1-888 475 4499

3. Written Comments may be submitted to:

[https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town\\_Council/Agenda-Comment.asp](https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town_Council/Agenda-Comment.asp)

### PUBLIC SESSION

#### 1. ROLL CALL

#### 2. PLEDGE OF ALLEGIANCE

#### 3. MOMENT OF SILENCE

#### 4. PUBLIC COMMENT

#### 5. COUNCIL RESPONSE TO PUBLIC COMMENT

#### 6. TOWN MANAGER COMMUNICATIONS

- Update on Rental Registration Program, Assistant Town Manager Andy Clyburn
- Update on Local Comprehensive Plan, Elizabeth S. Jenkins, AICP, Director of Planning and Development

#### 7. ACT ON MINUTES (Including Executive Session)

#### 8. COMMUNICATIONS- from elected officials, boards, committees, and staff, commission reports, correspondence and announcements

Councilors:

Matthew Levesque  
President  
Precinct 10

Paula Schnepf  
Vice President  
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## 9. ORDERS OF THE DAY

- A. Old Business
- B. New Business

## 10. ADJOURNMENT

**NEXT REGULAR MEETING: January 20, 2022**

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Approve Minutes: December 16, 2021

**Please Note:** The lists of matters are those reasonably anticipated by the Council President which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed to the extent permitted by law. It is possible that if it so votes, the Council may go into execute session. The Council may also act on items in an order other than as they appear on this agenda. Persons interested are advised that in the event any matter taken up at the meeting remains unfinished at the close of the meeting, it may be continued to a future meeting, and with proper notice.

**A. OLD BUSINESS (May be acted upon) (Roll Call Majority)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-059**

**INTRO: 12/16/2021, 01/06/2022**

**2022-059 ORDER TO APPROVE TERM OF CONTRACT FOR BARNSTABLE PUBLIC SCHOOLS FOOD SERVICE MANAGEMENT CONTRACT**

**ORDERED:** That the Town Council, under the provisions of M.G.L. c. 30B, § 12 (b), does hereby authorize the School Committee to enter into a one (1) year contract with up to four (4) one year extensions for the management of the Barnstable Public Schools Food Service program.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>12/16/2021</u>	<u>Refer to Second Reading 01/06/2022</u>

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2022-059  
INTRO: 12/16/2021, 01/06/2022

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Meg Mayo-Brown, Superintendent of Schools  
**DATE:** December 16, 2021  
**SUBJECT:** Order to approve term of contract for Barnstable Public Schools Food Service Management Contract

**BACKGROUND:** Barnstable Public Schools during the 2020-21 school year served 446,000 lunch and breakfast meals to the students of Barnstable. The food service program is fiscally managed within a revolving fund structure with revenue between \$1.8-\$2.1 million annually. The program has closed each fiscal year in a positive fiscal position over the last fifteen years, covering all operating and minor capital improvement costs. Program operations are provided by a food service management company (FSMC) currently Aramark Educational Services LLC, and overseen by the district employed Food and Nutrition Coordinator.

**ANALYSIS:** M.G.L. c. 30B, § 12 (b) requires unless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or option. The current three (3) year contract with Aramark Educational Services expires June 30<sup>th</sup>, 2022. The district will be seeking requests for proposals (RFP) January 2022 from eligible management companies to provide daily breakfast and lunch services to students beginning July 01, 2022. The National School Nutrition Program administered by the United States Department of Agriculture allows school districts to contract with FSMC's for one (1) year with up to four (4) one year contract extensions (total five years). The three year cycle of requests for proposal -issue, evaluates and award is a laborious activity on district and municipal resources. It has been determined that a longer five year term would be more advantageous while providing program stability and possibly increase interest in the food service management contract bidding environment. At the November 10<sup>th</sup>, 2021 School Committee Meeting, the Committee voted unanimously to support the request to seek a five-year FSMC contract term.

**FISCAL IMPACT:** No fiscal impact is expected with the addition of the two year term beyond contract increases as defined in the request for proposal. Historically FSMC management fees beyond the first year are tied to a Consumer Price Index (CPI) and regulated by the National School Nutrition Program.

**STAFF ASSISTANCE:** Gareth Markwell, Deputy Finance Director; David Badot, Barnstable Food and Nutrition Coordinator

**A. OLD BUSINESS (Public Hearing) (Roll Call 2/3 Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-063  
INTRO: 12/16/2021, 01/06/2022**

**2022-063 AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND LYON INVESTMENT REALTY TRUST FOR 80 PEARL STREET, HYANNIS, MA 0.94± ACRES, SHOWN ON TOWN OF BARNSTABLE ASSESSOR’S MAP 326 AS PARCEL 008, AND WHOSE BOUNDARIES ARE SHOWN ON LAND COURT PLAN 25652-A (THE “PROPERTY”)**

**ORDERED:** That the Town Council hereby authorizes the Town Manager pursuant to Section 168-5, General Ordinances of the Code of the Town of Barnstable (the “Code”), to enter into and execute a Regulatory Agreement between the Town of Barnstable and Lyon Investment Realty Trust, for the property at 80 Pearl Street, Hyannis, 0.94± acres, shown on Town of Barnstable Assessor’s Map 326 as Parcel 008, and whose boundaries are shown on Land Court Plan 25652-A (the “Property”); and further authorizing the renovation and reuse of the Property and granting the requested zoning relief pursuant to and as described in this Regulatory Agreement.

**REGULATORY AGREEMENT  
LYON INVESTMENT REALTY TRUST  
80 PEARL STREET, HYANNIS, MA 02601**

This Regulatory Agreement (the “Agreement”) is entered into by Jennifer and Jeffrey Lyon, Trustees of the Lyon Investment Realty Trust u/d/t dated August 13, 2019, with an abstract of trust recorded as Document No. 1,382,713, and an address of Post Office Box 611, Hyannis, Massachusetts 02647 (the “Applicant” and the “Developer”), including successors and assigns, and the Town of Barnstable, a municipal corporation with a place of business at 367 Main Street, Hyannis, MA 02601 (the “Town”) on this \_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”) pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code.

WHEREAS, this Agreement shall establish the permitted use and density with the development on the hereinafter identified Property, the duration of the Agreement, and any other terms or conditions mutually agreed upon between the Applicant and the Town;

WHEREAS, the Applicant is the legal owner of the real property located at 80 Pearl Street, Hyannis, Massachusetts which has an area of approximately 0.94 acres and is shown on Barnstable Assessor’s Map 326, Page 008, the title to which is evidenced by Certificate of Title No. 222052 recorded with the Barnstable Registry District of the Land Court and whose boundaries are shown on Land Court Plan 25652-A (“Property”);

WHEREAS, the Property is located in the SF Single Family Residential District §240.24.1.5;

WHEREAS, the Property is improved with a two-story building with 3,285 square feet on the first and second floor and 1,196 square feet of a walkout basement (the “Building”);

WHEREAS, the Building was constructed circa 1820 and has been used for the last forty plus years as office, day care, and commercial kitchen space by Cape Cod Child Development as an exempt zoning use;

WHEREAS, the Applicant proposes to renovate the Building into eight apartments (one rear walkout, four first floor, and three second floor units) which would be studio and one bedroom units as set forth in proposed plans submitted with the application for this Regulatory Agreement;

WHEREAS, the Property has sufficient parking in a pre-existing parking lot on the Property which is being modified solely to improve handicap parking;

WHEREAS, to proceed with the project, the Applicant requires relief from Section 240-24.1.5.A to allow a multi-family dwelling in a single family residence district;

WHEREAS all properties which abut the Property are not currently being used for single residential use and the Property is buffered from impacting the nearest single family neighborhood by natural and manmade impediments;

WHEREAS, the Town is authorized to enter into this Agreement pursuant to Chapter 168 of the Barnstable Code;

WHEREAS, the Town and the Applicant desire to set forth their respective understandings and agreements regarding the reuse of the Property;

WHEREAS, the Applicant shall reuse the Property substantially in accordance with this Agreement;

WHEREAS, the proposed development of the Property will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA);

WHEREAS, the Development is located in the Downtown Hyannis Growth Incentive Zone (GIZ) as originally approved by the Cape Cod Commission by decision dated April 6, 2006, and re-designated by decision dated April 19, 2018, as authorized by Barnstable County Ordinance 2005-13, as amended by Barnstable County Ordinance 10-19, 14-05, 17-11 and 18-02 Chapter G, Growth Incentive Zone Regulations of the Cape Cod Commission Regulations of General Application;

WHEREAS, the Development is not subject to review by the Cape Cod Commission as a Development of Regional Impact due to its location in the GIZ and due to the adoption of Barnstable County Ordinance 2006-06, as amended by Barnstable County Ordinance 10-19, 14-05, 17-11 and 18-02, establishing revised development thresholds within the GIZ, under which this development may proceed and Developer has submitted a Jurisdictional Determination to the Town of Barnstable Building Department to confirm the same;

WHEREAS, prior to applying for approval of this Agreement, the Development was reviewed by the Town of Barnstable Site Plan Review Committee and the Site Plan Review Committee voted to find the development proposal approvable subject to the grant of a Regulatory Agreement and other conditions on January 21, 2021 and Formal Site Plan Review on September 16, 2021;

WHEREAS, the Town acknowledges that this Regulatory Agreement will result in a material increase in the number of year-round residential units for lower to middle income residents;

WHEREAS, the Town acknowledged through the recently completed Housing Needs Assessment dated December 2014 that the Town of Barnstable's primary housing need is additional year-round rental housing and Hyannis is in need of additional rental housing stock;

WHEREAS, Applicant would require zoning relief to allow for multi-family residential development in the Single Family Residential District;

WHEREAS, the Applicant has obtained administrative approval from the Barnstable Historical Commission (BHC) Chair to replace the existing window on the rear elevation with a door providing access to the proposed deck;

WHEREAS, the project is consistent with the Downtown Hyannis Design & Infrastructure Plan in that it contributes to the plan's goals of creating livable neighborhoods for year-round residents; creates housing opportunities for persons and households of all income levels; is compatible with the historic and maritime character of the Downtown Hyannis as it shall preserve an existing historic structure;

WHEREAS, the Property is within walking distance to the Downtown Hyannis business district and Cape Cod Regional Transit Authority Hyannis Transportation Center, making the multi-family residential reuse of Property appropriate;

WHEREAS, the proposal has undergone a public hearing opened on August 23, 2021 and closed on November 8, 2021 on the Agreement application and received an affirmative majority vote from the Planning Board on November 8, 2021;

WHEREAS, the proposal has undergone a public hearing opened on \_\_\_\_\_ and closed on \_\_\_\_\_ on the Agreement application before the Town Council and received no less than a two-thirds vote approving the application on \_\_\_\_\_;

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto acknowledged to each other, the Applicant and Town do enter into this Agreement, and hereby agree to covenant as follows:

1. The Applicant shall renovate and maintain the Building and Property at 80 Pearl Street and construct eight apartment units, in substantial compliance with the site plan entitled "Site Improvement Plan" 80 Pearl Street, Hyannis, MA prepared for "Jeffrey Lyon" dated October 8, 2021 as revised November 5, 2021, scale 1"=20', prepared and stamped by Tarja McGrail, P.E., Coastal Engineering Co., 260 Cranberry Hwy, Orleans, MA 02653; and the floor plans entitled "Initial Drawing Release As Built Plan Showing Proposed Building Floor Plan" 5 Pages, client Jeff Lyon, 80 Pearl Street, Hyannis, MA dated December 22, 2020, prepared by Glen A. Mitchell.
2. The Applicant shall not change the exterior of the Building in any substantial or material manner.
3. This Agreement shall vest land use development rights with the Applicant/Owner and/or its successors for the duration of this Agreement and such rights shall not be subject to subsequent changes in local development ordinances, with the exception of changes necessary to protect the public health.
4. This Agreement authorizes only the uses and intensity of use and mitigation stipulation, if any, specified herein. Any minor amendment to the authorized terms of this Agreement may be made by the Town Manager pursuant to Section 168-5D; any substantial amendment to the authorized terms of this Agreement shall require review by the Town Council and Planning Board pursuant to Section 168-10 of the Town Code.
5. The Applicant is permitted to the use of one (1) residential unit in accordance with §240-24.1.5.A. In addition, this Agreement permits the construction of a total of seven additional units as shown on the Plan on file with the Barnstable Planning Board. All units shall remain rental units in perpetuity and shall not be converted into a condominium form of ownership.
6. Any future partial and/or to total demolition of the Building shall constitute a substantial change to the Property and require review by Town Council and Planning Board pursuant to Section 168-10 of the Town Code, in addition to any partial and/or total demolition of the Building shall require review and approval from the Barnstable Historical Commission (BHC) in accordance with Article I, Chapter 112, Sections 1-7.
7. The Applicant shall be responsible for obtaining all necessary building permits and all necessary approvals from the Town of Barnstable Public Works Water Supply Division as necessary and their use and construction of the Building shall be in compliance with all Building, Fire and Health Codes.
8. Prior to the issuance of any building permit, the Developer shall submit a Landscape Plan for the Property that is consistent with Downtown Hyannis Design & Infrastructure Plan. All landscaping within the development shall be low water use and shall minimize the use of fertilizers and pesticides. The Landscape Plan shall be approved by the Director of Planning & Development, or their designee, prior to issuance of any building permit. The implementation and completion of the Landscape Plan shall be

reviewed and approved by the Director of Planning and Development, or their designee, prior to occupancy permit.

9. Lighting for the Development shall be contained on-site, shall be down cast, and shall not contribute to light pollution of the area.
10. The existing detached structure on the property shall be used exclusively for storage accessory to the multi-family use and shall not be used as living area.
11. Developer shall be responsible for snow plowing and snow removal on the Development site in perpetuity.
12. Developer shall be responsible for providing trash removal on the Development site in perpetuity as is required by Section 54-5(2) of the Code of the Town of Barnstable.
13. All plumbing fixtures in the new units and any replacement plumbing fixtures in the existing units shall be low water use fixtures and other water conservation measures are encouraged in the design and development of the project.
14. Developer's minimum lease term of rental units shall be twelve (12) months. Sublease of rental units, if permitted by the Developer, shall be for a minimum term of ninety (90) days. The lease documents shall be reviewed by the Town Attorney for consistency with the conditions of this Agreement prior to issuance of the first Certificate of Occupancy.
15. Subsequent to the issuance of a Certificate of Occupancy for the units, each apartment shall be registered with the Health Division's Rental Registration Program.
16. The Project shall be completed in compliance with all requirements and conditions of the Site Plan Review approval issued on January 21, 2021 and Formal Site Plan Review on September 16, 2021; the conditions of that approval are attached and shall be incorporated herein.
17. All development rights granted under the Agreement shall run with the land and all of the terms, conditions, and obligations contained in this Agreement shall be binding on any successor or assignor of the Applicant. However, the Applicant agrees that 30 days prior to any change of ownership of the Property that written notice shall be sent to the Planning Board, Town Council, and the Town Manager and further agrees that all terms and conditions of this Regulatory Agreement and amendments thereto, shall be binding on successive owners of the Property.
18. All terms, conditions, and obligations contained in this Regulatory Agreement shall be binding on any successor or assignee of the Applicant.
19. The Town hereby grants the following waiver from the Town of Barnstable Zoning Ordinance for the Redevelopment, as requested by the Developer:
  - A. Section 240-24.1.5.A Principal permitted uses to allow multi-family development comprised of eight units in a single family residence district.
20. The Redevelopment provides, without limitation, the following site design, traffic safety, and community benefits:

An enhanced landscape setback along Pearl Street to improve the neighborhood streetscape and to provide a buffer between the redevelopment and the adjacent property to the south.
21. The term of this Agreement shall be five (5) years from the effective date of the Agreement (hereafter, the "Term"), and the development rights authorized herein must be exercised prior to expiration of the Term of this Agreement or it shall be null and void. Once the development rights authorized herein have been timely exercised, all terms and conditions of this Agreement shall remain in effect until the Property is no

longer used in accordance with the Redevelopment Plans in a manner that requires additional zoning relief.

22. The development allowed in this permit shall be considered full build-out of the property. The structures authorized shall not be expanded nor other buildings and structures added without compliance with §168-10 of the Barnstable Code.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed on the date first above written.

Town of Barnstable, Lyon Investment Realty Trust,  
By,

\_\_\_\_\_  
Mark S. Ells, Town Manager

\_\_\_\_\_  
Jennifer Lyon, Trustee

\_\_\_\_\_  
Jeffrey Lyon, Trustee

#### Certificate of Trustee

We, Jennifer Lyon and Jeffrey Lyon, Trustees of the Lyon Investment Realty Trust, u u/d/t dated August 13, 2019, with an abstract of trust recorded as Document No. 1,382,713, and an address of Post Office Box 611, Hyannis, Massachusetts 02601, hereby certify as follows:

1. We are presently the Trustees of said Trust;
2. That said Trust has not been altered, revoked, or terminated since its inception of August 13, 2019;
3. That pursuant to said Trust, upon the specific direction of the Beneficiaries of the Trust, the Trustee(s) have the power and authority to purchase and sell real estate, to construct or alter buildings, to borrow money, to grant the Trust estate as security for such borrowing and to execute and deliver all notes, mortgages, discharges, and assignments to implement the purposes of the Trust including the power and authority to enter into a regulatory agreement; with the Town of Barnstable
4. That all of the Beneficiaries of the Trust have authorized and directed the Trustee(s) to enter into a regulatory agreement with the Town of Barnstable.
5. That pursuant to the terms of the Trust every agreement or action authorization to be taken by the Trustee(s) may be taken by the Trustee(s) of record;
6. That the undersigned Trustee has been authorized and empowered to execute such documentation as they deem necessary in order to effectuate the above-described documentation as they deem necessary in order to effectuate the above described conveyance as the Trustee(s) so determines; and
7. That all of the beneficiaries of the Trust are the age of majority and are not under any disability.

WITNESS my hand and seal this \_\_\_\_ day of November 2021.

Lyon Investment Realty Trust,  
By,

\_\_\_\_\_  
Jennifer Lyon  
Trustee

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Jeffrey Lyon  
Trustee

**EXHIBIT A: REDEVELOPMENT PLANS**

**SPONSOR:** Jennifer Cullum, Town Councilor, Precinct 13

DATE	ACTION TAKEN
<u>12/16/2021</u>	<u>Refer to Public Hearing 01/06/2022</u>

- 
- Read Item
  - Motion to Open Public Hearing
  - Rationale
  - Public Hearing
  - Close Public Hearing
  - Council Discussion
  - Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2022-063  
INTRO: 12/16/2021, 01/06/2022

## SUMMARY

**TO:** Town Council  
**FROM:** Lyon Investment Realty Trust  
**THROUGH:** Elizabeth S. Jenkins, Director of Planning and Development  
**DATE:** December 16, 2021  
**SUBJECT:** Authorizing the Town Manager to execute a Regulatory Agreement between the Town of Barnstable and Lyon Investment Realty Trust for 80 Pearl Street, Hyannis, MA 0.94± acres, shown on Town of Barnstable Assessor’s Map 326 as Parcel 008, and whose boundaries are shown on Land Court Plan 25652-A (the “Property”)

**RATIONALE:** The Developer, Lyon Investment Realty Trust, which entity has standing to proceed as owner of the property, the title to which is evidenced by Certificate of Title No. 222052 recorded with the Barnstable Registry District of the Land Court, located at and commonly known as 80 Pearl Street, Hyannis, Massachusetts shown on Town of Barnstable Assessor’s Map 326 as Parcel 008, consisting of 0.94 ± acres, located within the Downtown Hyannis Growth Incentive Zone (GIZ), has filed an application to enter into a Regulatory Agreement with the Town of Barnstable under Chapter 168 and Chapter 240 of the Barnstable Code to renovate and reuse said property.

The Developer has undergone a public hearing on the Agreement application and received a unanimous vote from the Planning Board recommending an approval of the proposed Regulatory Agreement on November 8, 2021.

The Developer proposes to renovate and reuse the existing 1890 building on the property as eight (8) studio and one-bedroom residential rental units, along with associated landscaping. A waiver from Section 240-24.1.5(A) Principal permitted uses is requested to allow multi-family development comprised of eight units in a single family residence district.

The Redevelopment is proposed to provide the following community benefits:

- I. An enhanced landscape setback along Pearl Street to improve the neighborhood streetscape and to provide a buffer between the redevelopment and the adjacent property to the south.

**FINANCIAL IMPACT:** Approval of the proposed Regulatory Agreement will have no significant fiscal impact.

**STAFF ASSISTANCE:** Elizabeth S. Jenkins, Director of Planning & Development; Kate Maldonado, Assistant Director of Planning & Development; Jim Kupfer, Senior Planner; Kathleen Connolly, Assistant Town Attorney

**B. NEW BUSINESS (Refer to Public Hearing 01/20/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-066  
INTRO: 01/06/2022**

**2022-066 APPROPRIATION ORDER IN THE AMOUNT OF \$214,240 FOR THE  
HYANNIS YOUTH AND COMMUNITY CENTER ENTERPRISE FUND FISCAL  
YEAR 2022 OPERATING EXPENSE BUDGET**

**ORDERED:** That the amount of **\$214,240** be appropriated for the purpose of funding the Hyannis Youth and Community Center’s Fiscal Year 2022 Operating Expense Budget and that to fund the appropriation, that \$214,240 be provided from the Hyannis Youth and Community Center Enterprise Fund Surplus.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2022-066  
INTRO: 01/06/2022

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** January 06, 2022  
**SUBJECT:** Appropriation Order in the amount of **\$214,240** for the purpose of funding the Hyannis Youth and Community Center Enterprise Fund's Fiscal Year 2022 Operating Expense Budget

**BACKGROUND:** In Fiscal Year 2021 the facility was operating in a limited capacity due to the public health emergency. This resulted in a significant reduction in utility costs incurred in Fiscal Year 2021. As it was unknown when the emergency would subside, the Fiscal Year 2022 budget for utility expenses was reduced to reflect an amount that assumed the continued limited use of the facility. Subsequently, the facility has reopened to the public and 2 sheets of ice are expected to remain operational through the end of the fiscal year. This will result in utility consumption levels similar to those which occurred prior to the pandemic. Additionally, the natural gas contract expired and was renewed at a cost increase due to market conditions. An additional sum of \$50,565 is projected to be needed for natural gas and \$163,675 for electricity for the remainder of the fiscal year.

**ANALYSIS:** The budget and actual expenses for utilities at the facility for the past few years was as follows:

BudgetActual

Fiscal Year 2021	\$506,774	\$315,921	– full pandemic year
Fiscal Year 2020	\$541,658	\$436,606	
Fiscal Year 2019	\$540,580	\$505,876	
Fiscal Year 2018	\$525,775	\$489,327	

The budget for Fiscal Year 2022 was reduced to \$310,000 based on the actual amount expended in fiscal year 2021. To date a total of \$241,626 has been incurred. The additional ask of \$214,240 will result in a total revised budget for utilities of \$524,240 which reflects a return to normal consumption levels and the increase in the natural gas contract.

**FISCAL IMPACT:** Funding for this appropriation will be provided from the Enterprise Fund's surplus which was last certified at \$663,490 as of July 1, 2021.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this Appropriation Order.

**STAFF SUPPORT:** Daniel W. Santos, P.E., Director of Public Works

**B. NEW BUSINESS (May be acted upon) (Roll Call Majority)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-067  
INTRO: 01/06/2022**

**2022-067 AUTHORIZATION TO EXPEND A GIFT IN THE AMOUNT OF \$2,500 FROM THE CORSON FAMILY TO SUPPORT THE BARNSTABLE RECREATION DIVISION'S FRIDAY NIGHT SOCIAL PROGRAM**

**RESOLVED:** That the Barnstable Town Council does hereby authorize the Town Manager to expend a gift in the amount of **\$2,500** from the Corson Family to support the Barnstable Recreation Division's Friday Night Social Program.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2022-067**  
**INTRO: 01/06/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Madeline Noonan, Director, Community Services  
**DATE:** January 06, 2022  
**SUBJECT:** Authorization to expend a gift in the amount of **\$2,500** from the Corson Family to support the Barnstable Recreation Division's Friday Night Social Program

**BACKGROUND:** The Barnstable Recreation Division's Friday Night Social Program has received a generous gift from the Corson Family. The Friday Night Social Program provides support and connection for individuals with special needs through social and engaging activities. One of the most popular activities is the regular group trip to the movies. This thoughtful donation will be used to purchase movie tickets for program participants and will also help to fund other associated program costs.

The Recreation staff and Friday Night Social Program participants are deeply appreciative of the Corson Family's kindness and generosity and their ongoing support of this valued program.

**FISCAL IMPACT:** There is no immediate financial impact to the Town's operating budget as a result of accepting this grant.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends acceptance of this gift and its authorization to expend.

**STAFF ASSISTANCE:** Patti Machado, Director of Recreation; Michelle Davies, Therapeutic Program Coordinator

**B. NEW BUSINESS (May be acted upon) (Roll Call Majority)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-068  
INTRO: 01/06/2022**

**2022-068 RESOLVE DESIGNATING THE ASSISTANT TOWN MANAGER TO SERVE AS THE APPOINTING AUTHORITY FOR PURPOSES OF G.L. CHAPTER 31, THE STATE CIVIL SERVICE LAW, IN MATTERS IN WHICH THE TOWN MANAGER HAS RECUSED HIMSELF OR IS OTHERWISE UNABLE TO PERFORM THE DUTIES OF THE APPOINTING AUTHORITY DUE TO A CONFLICT OF INTEREST**

**RESOLVED:** That the Town Council does hereby designate the Assistant Town Manager to serve as the appointing authority for purposes of G.L. c. 31, the state civil service law, in matters in which the Town Manager has recused himself or is otherwise unable to perform the duties of the appointing authority due to an actual or apparent conflict of interest.

**SPONSOR:** Paula K. Schnepp, Vice President, Precinct 12

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2022-068**  
**INTRO: 01/06/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Karen L. Nober, Town Attorney; William Cole, Director of Human Resources  
**DATE:** January 06, 2022  
**SUBJECT:** Resolve designating the Assistant Town Manager to serve as the Appointing Authority for purposes of G.L. Chapter 31, the State Civil Service Law, in matters in which the Town Manager has recused himself or is otherwise unable to perform the duties of the Appointing Authority due to a Conflict of Interest

**BACKGROUND:** Sections 41 and 41A of G.L. c. 31, the State Civil Service Law, set forth the role of the appointing authority in connection with the discharge, removal, suspension or transfer of employees in civil service positions. The Town Manager is the appointing authority for these purposes. However, in some instances, the Town Manager cannot perform that function due to an actual or apparent conflict of interest. Because the act of delegating one's responsibility or authority to another employee is considered participation in that matter, the Town Manager cannot delegate the appointing authority role or function in a matter in which he has recused himself or is otherwise unable to participate due to an actual or apparent conflict of interest. Accordingly, the Town Council is the appropriate body to delegate those responsibilities when the Town Manager cannot.

**FISCAL IMPACT:** None

**STAFF SUPPORT:** Karen L. Nober, Town Attorney; William Cole, Director of Human Resources

**B. NEW BUSINESS (Refer to Public Hearing on 02/03/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM # 2022-069  
INTRO: 01/06/2022**

**2022-069 AUTHORIZING THE TOWN MANAGER TO EXECUTE A MAJOR AMENDMENT TO THE ORIGINAL REGULATORY AGREEMENT 2019-03 BETWEEN THE TOWN OF BARNSTABLE AND AIRVIEW, LLC FOR THE PROPERTIES LOCATED AT 451 AND 467 IYANNOUGH ROAD, HYANNIS**

**ORDERED:** That the Town Council hereby authorizes the Town Manager pursuant to Sections 168-5 and 168-10 of Chapter 168 of the General Ordinances of the Code of the Town of Barnstable (the "Code") to amend the original Regulatory Agreement 2019-03 between the Town of Barnstable and Airview, LLC for the properties located at 451 and 467 Iyannough Road/Route 28, Hyannis, Massachusetts, shown on Town of Barnstable Assessor's Map 311 as Parcels 027, 081 and 082, respectively, and which are more particularly described in the deed recorded with the Barnstable County Registry of Deeds in Book 28116, Page 008 (collectively, the "Property"), consisting of approximately 2.108 acres of land, and further authorizing a drive-through with supplemental site improvements and granting the requested zoning relief pursuant to and as described in this First Major Amendment to Regulatory Agreement.

**FIRST MAJOR AMENDMENT TO REGULATORY AGREEMENT  
AIRVIEW, LLC**

451 AND 467 IYANNOUGH ROAD, HYANNIS, MA 02601

This Regulatory Agreement Amendment ("Amended Agreement" or "Amended RA") is entered into by and between the applicant, **Airview, LLC** (the "Applicant" and/or "Developer"), a Massachusetts limited liability company with a mailing address of 297 North Street, Hyannis, MA 02601, and the **Town of Barnstable** (the "Town"), a municipal corporation with a mailing address of 367 Main Street, Hyannis, MA 02601, on this \_\_\_\_ day of \_\_\_\_\_, 2021, pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Chapter 168 of the Code of the Town of Barnstable.

WITNESS:

WHEREAS, the Applicant and the Town entered into a Regulatory Agreement dated July 15, 2020 ("RA 2019-03"), which is recorded in the Barnstable County Registry of Deed in Book 33111, Page 187;

WHEREAS, the Applicant has constructed Building A, a one-story retail pharmacy building with a drive through lane and a gross floor area of approximately 10,000 square feet, and Building B an approximately 6,000 square foot building together with numerous site improvements, including a significant reduction in curb-cuts, increased landscaping, new parking, pedestrian and site amenities, and new storm-water drainage;

WHEREAS, The Applicant applied for an amendment to RA 2019-03 to allow for a drive through window, additional signage, and minor revisions to the site plan to accommodate a drive through for a 2,500 square foot food service establishment/coffee shop located in Building B as shown on the Amended Redevelopment Plans are hereafter referred to herein, collectively, as the "Amended Redevelopment", all as shown on the plans submitted and attached hereto as **Exhibit A** (hereafter, the "Amended Redevelopment Plans");

WHEREAS, pursuant to sections 168-3 and 168-10 of the Code of the Town of Barnstable, the Town of Barnstable is authorized to amend RA 2019-03 with the Applicant;

WHEREAS, the Applicant continues to own the properties known as and numbered 451 and 467 Iyannough Road, Hyannis, which are shown on Barnstable Assessor's Map 311, as Parcels 027, 081 and 082 respectively, and which are more particularly described in the deed recorded with the Barnstable County

Registry of Deeds in Book 28116, Page 008 (hereafter, collectively, the "Property");

WHEREAS, the Applicant commenced development of the Property consistent with the approvals under RA 2019-03 by constructing Buildings A and B, with Building A already occupied by a Walgreens Drug Store;

WHEREAS, this Amended Agreement shall establish additional permitted uses, densities, signage, traffic, and the drive through, within the approved Redevelopment (as defined within the original RA 2019-03), the duration of this Amended Agreement, and any other terms and conditions mutually agreed upon between the Applicant and the Town;

WHEREAS, the scale, placement, materials, design, and details of the buildings comply with the Design and Infrastructure Plan guidelines; and the Project and its supported mitigation provide the infrastructure necessary to support the project;

WHEREAS, the Town and Applicant desire to amend RA 2019-03 and this Amended Agreement reflects their respective understandings and agreements with regard to the Amended Redevelopment;

WHEREAS, the Applicant commits to use of the Property in accordance with this Amended Agreement and desires to have a reasonable amount of flexibility to carry out the amended use and therefore considers this Amended Agreement to be in its best interests;

WHEREAS, the Amended Agreement will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA);

WHEREAS, the Amended Agreement is not subject to review by the Cape Cod Commission as a Development of Regional Impact due to its location in the GIZ and due to the adoption of Barnstable County Ordinance 2006-06 establishing a cumulative development threshold within the GIZ, under which this Redevelopment may proceed;

WHEREAS, the Amended Redevelopment proposal was reviewed by the Site Plan Review Committee (Building, Department of Public Works, Hyannis Fire District, etc.) pursuant to Article IX of the Zoning Ordinance. Per the Site Plan Review Letter dated February 8, 2021, the Committee determined that the proposal was approvable subject to obtaining Planning Board approval for the modification to the approved Regulatory Agreement, with recommendations for sufficient stacking and a focus on site improvements to ensure that pedestrian and vehicle circulation would be sufficient and safe provided the added drive-through.

WHEREAS, pursuant to Section 168 of the Code of the Town of Barnstable, the Town of Barnstable may enter into Regulatory Agreements with qualified applicants in areas shown on the Regulatory Agreements District Map. The subject property is located within the area delineated for regulatory agreements. Regulatory agreements may be amended pursuant to §168-5(D). This request qualifies as a substantial amendment, as additional zoning relief is necessary, and must be approved by the Planning Board and Town Council;

WHEREAS, the Applicant submitted a "Traffic Impact and Assess Study" dated May 27, 2021 performed by WorldTech Engineering ("WorldTech") and an additional Traffic Report in July 2021;

WHEREAS, after the initial hearing on the Application to amend RA 2019-03, the Planning Board requested a Peer Review of the traffic implications of the proposed amendments;

WHEREAS, the Planning Board hired Vanasse & Associates Inc. ("Vanasse") to conduct the peer review ("Peer Review" at the Applicant's expense) and;

Vanasse submitted the Peer Review on October 5, 2021;

and WorldTech Engineering submitted a "Peer Review Memo Response" dated October 21, 2021;

WHEREAS, the final Traffic Impact and Assessment Study showed that anticipated traffic impacts are 97 new trips during the peak hour. This was deemed to create significant queuing leaving the Site as well as adding

vehicular trips to an already congested regional roadway;

WHEREAS, the Applicant submitted a revised Site Plan dated November 22, 2021 from Baxter Nye Engineering & Surveying with additional signage and modifications to the parking lot layout;

WHEREAS, the Applicant submitted signage design and specifications and a rendering for the proposed drive through;

WHEREAS, the Amended Agreement application has undergone a public hearing opened on 08/23/2021 and closed on 11/22/2021 and received an affirmative majority vote from the Planning Board on 11/22/2021;

WHEREAS, the Amended Agreement has undergone a public hearing opened on XX/XX/XXXX and closed on XX/XX/XXXX before the Barnstable Town Council and received a \_\_\_\_\_ vote \_\_\_\_\_ the Agreement on \_\_\_\_\_, 2022;

NOW, THEREFORE, in consideration of the agreements and covenants set forth hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties hereby acknowledge to each other, the Applicant and Town do enter into this Amended Agreement, and hereby agree to covenant as follows:

1. All conditions defined within the original RA 2019-03 shall remain in full force and effect.
2. The Amended Redevelopment shall consist of:
  - Addition of a drive-through for a 2,500 square foot food service establishment/coffee shop located in Building B with a drive through lane and additional site improvements including wayfinding, drive through and traffic control signage, a clearance bar and a patio.
  - A reduction in provided parking from 80 to 78 paved parking spaces.
  - The island directly at the rear of the Building B was increased to accommodate the drive through menu boards.
  - The southeast rear corner of the site was established as one-way circulation counter clockwise around Building B.
  - Within the southeast corner, parking was modified from ninety degree parking to angled parking to better accommodate one-way traffic and the reduced drive aisle width.
  - Modification to the median on Route 28, including addition of two flexible bollards, to be coordinated with MassDOT for approval in an effort to further limit the ability to take a left turn into the site.
  - Addition of a bike rack.
3. The Developer constructed the Redevelopment on the Property in accordance RA 2019-03.
4. This Amended Agreement shall vest land use development rights in the Property for the duration of this Agreement, and such rights shall not be subject to subsequent changes in local development ordinances, with the exception of changes necessary to protect the public health, safety or welfare.
5. Any substantial deviation from the authorized terms of this Amended Agreement shall require review by the Town Council and Planning Board pursuant to Chapter 168-10 of the Code.
6. The Developer agrees to construct the Amended Redevelopment on the Property in accordance with the Amended Redevelopment Plans which are submitted herewith and which are entitled as follows:
  - a. "Layout and Dimension Plan", Sheet C3.0, revised November 22, 2021
  - b. "Landscape Planting Plan", Sheet L1, dated November 17, 2021

- c. Building B Floor Plan and Elevation drawings as follows:
    - i. "FF & E Plan ", Sheet I101, dated November 22, 2021
    - ii. "Building Exterior Elevations", Sheet A201, dated September 3, 2021
    - iii. "Building Exterior Elevations", Sheet A202, dated September 3, 2021
  - d. Signage Plan "Starbucks Coffee #66563 467 Iyannough Road Hyannis, MA 02601", Sheets 1-11, dated November 19, 2021 and revised November 22, 2021
7. This Agreement shall run with the land, and all of the terms, conditions, and obligations contained in this Agreement shall be binding on any successor or assignor of the Applicant.
  8. The remaining 3,500 square feet of space of Building "B" shall be occupied by office use or low impact retail use not to exceed the traffic impact established for office use (58 new total daily trips, 7 new AM peak hour trips and 9 PM peak hour trips) in accordance with the Traffic Impact and Access Study prepared by WorldTech Engineering dated July 2021. Office use shall not include medical or dental offices or clinics, unless approved by the Planning Board at a public hearing.
  9. All new exterior lighting shall be "dark sky complaint" in order to retain all exterior lighting on the site.
  10. All deliveries for both Building A and Building B shall be during non-peak hours. Deliveries shall be limited to the hours when the Starbucks is closed. Limited small deliveries may occur during the day via small vans, which can park in front of the store drop off and leave.
  11. The northeastern driveway island shall be constructed substantial in conformance with the Layout and Dimension Plan updated November 22, 2021. The Massachusetts Department of Transportation shall review and approve the final design on the northeastern driveway island.
  12. As a result of the traffic impacts to the surrounding roadways, the Applicant has agreed to provide \$100,000 towards the study and/or design of roadway and multi-modal improvements along the Route 132 and/or Route 28 corridor(s).
  13. The Developer is responsible for obtaining all applicable permits and licenses.
  14. No Certificate of Occupancy shall be issued until all conditions of this Amended Agreement have been met and Design and Infrastructure Plan approval has been issued.
  15. Prior to the issuance of any building permits the Developer shall submit a bike rack detail.
  16. This Amended Agreement is transferable to a person or entity other than the Applicant (hereafter, the "Transferee") with prior written notice to the Town Manager and contingent upon the Applicant being in compliance with all the requirements of this Agreement. However, no such notice to the Town shall be effective unless it includes a written acknowledgement by the Transferee that they have read this Regulatory Agreement, and any amendments thereto, and they agree to be bound by the terms and conditions set forth herein, in which event after such assignment the transferor shall be relieved of liability from and after the date of transfer. Upon receipt of such written notice of transfer, and subject to a determination by the Town Manager that that the Applicant is in compliance with all the then applicable requirements of the Agreement, the Transferee and the Town Manager shall execute a minor amendment of this Regulatory Agreement acknowledging the Transferee is a signatory of this Regulatory Agreement, agreeing to be bound by the terms and conditions set forth herein, and any subsequent amendments hereto, and assuming liability as of the date of transfer. No Planning Board or Town Council approval is required for such a minor amendment acknowledging such a transfer in ownership.
  17. The Developer estimates that construction will commence within 30 days of the granting of the Building permits.
  18. To the extent that the Amended Redevelopment Plans referenced in this Amended Agreement do not

depict all the findings and conditions set forth in this Agreement, revised plans and/or notations shall be provided with the submission of final plans to the Building Commissioner. The amended Redevelopment shall remain in substantial conformance with the Site Plan Review approvals dated July 2, 2019 and February 8, 2021 and all conditions thereof and any modifications thereto including any conditions required should the Building Commissioner determine that modifications to the Site Plan Review approval are necessary as reflected in the final approved site plan.

19. Upon completion of all work, a registered engineer or land surveyor shall submit a letter of certification and an as-built plan, made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the approved site plan (Barnstable Code Section 240-104(G)). This document shall be submitted before the issuance of the final certificate of occupancy.
20. The Town hereby grants the following waivers from the Town of Barnstable Zoning Ordinance for the Redevelopment, as requested by the Developer:
  - a. Section 240-24.1.4.1.11(A) (3) Drive-through windows. Drive-through windows are prohibited within the Hyannis Village Zoning Districts; with the exception that banks allowed as a principal permitted use may construct and operate a drive-through window upon the issuance of a special permit.
    - i. The proposed amendment to the RA 2019-03 requests the ability to construct a second drive through window for a 2,500 square foot food service establishment/coffee shop within Building B.
  - b. Sections 240-24.1.11(A) (6); 240-67(A), (B), and (C), and 240-65 (A)-(I), Signage. Airview, LLC seeks to amend the original RA 2019-03 to update the request associated with the need for the previously approved signage waivers to incorporate signage proposed for the food service establishment/coffee shop and to modify the request associated with signage established for Building A.
    - ii. Section 240-67(B) limits the maximum square footage of all signs to the lesser of 50 square feet or 10% of the building face. Excluding directional drive thru signage, the total square footage of signage for Building A (pharmacy) is 177.54 square feet and the total square footage of signage for Building B (proposed retail space) is 150 square feet.
    - iii. Section 240-67(C) limits the maximum size of any freestanding sign to 10 square feet except that the Building Commissioner can grant up to 24 square feet. The project proposes two freestanding signs each totaling 30 square feet.
    - iv. Section 240-65(A) limits each business to a total of two signs. Building A (proposed pharmacy) proposes 6 signs (four building signs and one panel on each of the two freestanding pylon signs). Building B (retail space) proposes four signs (a panel on each of the freestanding pylon signs for each location) with additional signage to be determined.
    - v. Section 240-65(d) allows one freestanding sign per business, which may not exceed half of the allowable size as permitted. The project proposes two freestanding signs each of which exceeds the allowable size.
    - vi. Section 240-65 and 240-67 Signs in the HG District. Redevelopment proposes two free-standing signs – one along Route 28 and one along Barnstable Road. The Ordinance allows for only one free-standing sign per business.
    - vii. Section 240-78 Internal Illumination drive through menu signage will be internally illuminated.
    - viii. Section 240-75 allows for directional or safety signs provided such signs do not

exceed one square foot in area, nor be more than three feet high. No more than four such signs are allowed per site. Building B proposes the following directional/safety signs:

18" CHANNEL LETTERS ON BUILDING (A)	22.94 SQ FT.
48" DT WALL SIGN (B)	6.96 SQ. FT.
CLEARANCE BAR (C)	2.29 SQ. FT.
46" ILLUMINATED DIRECTIONAL TYEO (D)	7.99 SQ. FT.
Sign cabinet only	2.6 SQ. FT.
PRE-MENU BOARD (G)	6.72 SQ. FT.
FREESTANDING 5-PANEL MENU (H)	22.9 SQ. FT.
DOS ON CANOPY (I)	9.62 SQ. FT.

- c. Section 240-24.1.8(B) (3), Special Permit for retail uses that increase the number of vehicle trips per day and/or increase peak hour vehicle trips.
    - ix. Proposed 2,500 square foot food service establishment/coffee shop will result in increase of vehicle trips.
  - d. Section 240-24.1.8(C)(2)(a), Special Permit for new vehicular access/change in use that increases vehicle trips per day and/or peak hour roadway use for existing curb cuts on Route 28.
    - x. Proposed retail uses will result in increase of vehicle trips.
21. The failure of this agreement to address a particular permit, condition, term, or restrictions shall not relieve the qualified applicant of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction;
22. Section 240-24.1.11(A) (4) (a) [1] and Section 240-56, Schedule of Parking Spaces.
  - xi. Airview, LLC seeks to amend the original RA 2019-3 to update the request associated with the need for a reduction from the required parking. The Amended Redevelopment provides a total of 78 parking spaces. The proposed redevelopment, with the remaining 3,500 square of Building B being used as office, requires a total of 83 parking spaces. If the remaining 3,500 square feet of Building B is used for low impact retail, the required parking would be 89 parking spaces. In either scenario, the required parking exceeds the provided parking.
23. This amended Regulatory Agreement may not be used to prevent the Town of Barnstable or other governmental agency from requiring the qualified applicant to comply with the laws, rules and regulations and policies enacted after the date of the regulatory agreement, if the Town of Barnstable or governmental agency determines that the imposition of and compliance with the newly effective laws and regulations are essential to ensure the public health, safety or welfare of the residents of all or part of the jurisdiction.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed on the day and year

first above written.

Town of Barnstable,

By,

\_\_\_\_\_  
Mark S. Ells  
Town Manager

Date \_\_\_\_\_

Airview LLC,

By,

\_\_\_\_\_  
Stuart Bornstein

Date \_\_\_\_\_

**PROPERTY DESCRIPTION**

The land, together with the buildings thereon, situated in Barnstable (Hyannis), Barnstable County, Commonwealth of Massachusetts, consisting of two parcels, bounded and described as follows:

**Parcel I**

A certain parcel of land with the buildings thereon situated in Barnstable (Hyannis), Barnstable County, Commonwealth of Massachusetts, bounded and described as follows:

NORTHERLYby Iyannough Road - Route 28, a public way, as shown on a plan hereinafter mentioned, 175.90 feet;

EASTERLYby land now or formerly of Henry Murphy, et ali, as shown on said plan, 202.99 feet;

SOUTHERLYby land now or formerly of Allan F. Jones, as shown on said plan, by two courses, 96.24 feet and 49.34 feet, respectively; and

WESTERLYby Parcel II described below, as shown on said plan, 247.96 feet.

The above described parcel contains 34,450 square feet of land, more or less, according to said plan.

The above described premises are shown on a plan entitled "Plan of Land in Hyannis - Barnstable - Mass. for Armands Restaurant, Scale: 1 IN = 40 FT, Date: 3 July 1958, Charles N. Savery, Co., Engineers & Surveyors, Cotuit- Falmouth Mass., Plan No. 75839," which said plan is recorded with the Barnstable County Registry of Deeds in Plan Book 144, Page 85.

Property Address: 451 Iyannough Road - Route 28, Hyannis, Massachusetts.

**Parcel II**

A certain parcel of land with the buildings thereon situated in Barnstable (Hyannis), Barnstable County, Commonwealth of Massachusetts, bounded and described as follows:

NORTHERLYbyRoute 28, a public way, as shown on a plan hereinafter mentioned, 150.00 feet;

EASTERLYbyother land of the Town of Barnstable Cobb Trust as shown on said plan, 248.47 feet, being Parcel I described above;

SOUTHERLYbyland now or formerly of Allan F. Jones as shown on said plan, 231.98 feet;

WESTERLYby land now or formerly of N. W. Kalat and M. H. Segel, Trustees, as shown on said plan, 236.98

feet;

NORTHERLY by other land of the Town of Barnstable Cobb Trust as shown on said plan, 100.00 feet; and

WESTERLY by said Cobb Trust land as shown on said plan, 107.97 feet.

The above described parcel contains 1.34 acres of land, more or less, according to said plan.

The above described premises are shown on a plan entitled "Town of Barnstable Plan of a portion of a Cobb Lot in Hyannis (Barn's) Mass. to be conveyed to the Dennis F. Thomas Post No. 2578 Veterans Of Foreign Wars Building Association, Inc., Engineering Section D. P. W., Scale: 1 in. = 30 ft., Date: Aug. 18, 1982," and recorded with the Barnstable County Registry of Deeds in Plan Book 368, Page 97.

Property Address: 467 Iyannough Road – Route 28, Hyannis, Massachusetts 02601.

For title to Parcels and II see deed recorded in the Barnstable County Registry of Deeds in Book 28116, Page 008.

ASSENT TO REGULATORY AGREEMENT

The undersigned, Airview, LLC, a Massachusetts limited liability company, of 297 North Street, Hyannis, Massachusetts 02601, the owner of property in Hyannis, Barnstable County, Massachusetts, described in a Deed recorded in Book 28116, Page 008, does hereby consent to the recording of a Regulatory Agreement by and between Airview, LLC, a Massachusetts limited liability company and the Town of Barnstable dated \_\_\_\_\_, 2022. Airview, LLC further agrees to be bound by the terms and conditions contained in said Regulatory Agreement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Applicant:

Signature:

Print:

Date:

**EXHIBIT A: REDEVELOPMENT PLANS**

**SPONSOR:** Paul C. Neary, Councilor, Precinct 6

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2022-069  
INTRO: 01/06/2022

## SUMMARY

**TO:** Town Council  
**FROM:** Airview LLC  
**THROUGH:** Elizabeth S. Jenkins, Director of Planning and Development  
**DATE:** January 06, 2022  
**SUBJECT:** Authorizing the Town Manager to execute a major amendment to the original Regulatory Agreement 2019-03 between the Town of Barnstable and Airview, LLC for the properties located at 451 and 467 Iyannough Road, Hyannis

**RATIONALE:** The Developer, Airview LLC, which entity has standing to proceed as owner of the properties at 467 and 451 Iyannough Road/Route 28, Hyannis, Massachusetts shown on Town of Barnstable Assessor's Map 311, as Parcels 027, 081 and 082 respectively, and which are more particularly described in the deed recorded with the Barnstable County Registry of Deeds in Book 28116, Page 008, consisting of approximately 2.108 acres, located within the Downtown Hyannis Growth Incentive Zone (GIZ), has filed an application to amend the original Regulatory Agreement with the Town of Barnstable under Chapter 168 and Chapter 240 of the Barnstable Code to incorporate a food service establishment/coffee shop with a drive-through within Building B.

The Developer has undergone several public hearings on the Amended Agreement application and received a unanimous vote from the Planning Board recommending the execution of the Regulatory Agreement on November 22, 2021.

The Developer has received approvals from Site Plan Review and Planning Board. The development is not subject to review by the Cape Cod Commission as a Development of Regional Impact as it does not trigger any Cape Cod Commission jurisdictional thresholds.

The Developer proposes to incorporate a 2,500 square foot food service establishment/coffee shop with a drive through to be located in Building B.

In order to understand the impact that the proposed food service establishment/coffee shop with a drive through would have on overall traffic, the Developer coordinated with WorldTech Engineering to provide a Traffic Impact and Access Study.

Additionally, the Developer agreed to and paid for a peer review of World Tech Engineering's Traffic Impact and Access Study which was achieved by Vanasse & Associates Inc. Vanasse and Associates provided comments with regard to the composition of the Traffic Impact and Access Study as a whole as well as comments with regard to the proposed site plan. Vanasse stressed that the use for the balance of Building B (3,500 square feet) should be reconciled as the use would impact both the trip generation and parking calculations for the overall development. In response, as defined in Condition #8, the Developer agreed that the remaining 3,500 square feet would be restricted strictly to office use or low impact retail not to exceed the traffic impact established for office use within the Traffic Impact and Access Study. Office was further defined not to include medical or dental offices or clinics unless approved by the Planning Board at a public hearing.

Vanasse also recommended incorporation of several site improvements including additional wayfinding signs and modifications to the parking layout such as angled parking for the row of spaces east of the Building B to reflect the one-way traffic flow and the reduced drive aisle width to accommodate the drive-through which the applicant incorporated. The Developer has also made improvements to the median on Route 28 including the addition of two flexible bollards, to be coordinated with MassDOT for approval in an effort to further limit the ability to take a left turn into and out of the site.

Additional site improvements include enhanced pedestrian circulation through the addition of a new crosswalk and incorporation of a bike rack as a transportation demand management.

The Amended Redevelopment will provide the following traffic mitigation benefit:

- The Applicant has agreed to provide \$100,000 towards the study and/or design of roadway and multi-modal improvements along the Route 132 and/or Route 28 corridor(s).

**FINANCIAL IMPACT:** As a result of the traffic impacts to the surrounding roadways, the Applicant has agreed to provide \$100,000 towards the study and/or design of roadway and multi-modal improvements along the Route 132 and/or Route 28 corridor(s). This mitigation payment will provide the Town with resources to study and improve the corridors surrounding the Rotary.

**STAFF ASSISTANCE:** Elizabeth S. Jenkins, Director of Planning and Development; Kate Maldonado, Assistant Director of Planning & Development; Jim Kupfer, AICP, Senior Planner; Kathleen Connolly, Assistant Town Attorney

**B. NEW BUSINESS (May be acted upon) (Roll Call Majority)**

**BARNSTABLE TOWN COUNCIL**

**ITEM: 2022-070  
INTRO: 01/06/2022**

**2022-070 RESOLVE DIRECTING THE TOWN MANAGER OR HIS DESIGNEE(S) TO IDENTIFY AND UNDERTAKE ANY STEPS NEEDED FOR THE TOWN TO CONTINUE TO MEET CRITERIA 2, 3 AND 4 OF THE GREEN COMMUNITY DESIGNATION AND GRANT PROGRAM**

**WHEREAS**, the Green Community Designation and Grant Program (the “Program”) established pursuant to G.L. c. 25A, § 10, the Green Communities Act, sets forth five criteria which municipalities must meet in order to be designated as a Green Community;

**WHEREAS**, Criteria 2, 3 and 4 are within the purview and authority of the Town Manager;

**WHEREAS**, Criteria 2 requires the Town to adopt an expedited application and permitting of one year at most, under which facilities interested in locating their facility in a designated renewable zone may be sited within the Town, and such expedited permitting process was adopted by the Town in 2010;

**WHEREAS**, Criterion 3 requires the Town to establish an energy use baseline inventory for municipal buildings and facilities, street and traffic lighting and vehicles; and adopt an Energy Reduction Plan demonstrating a reduction of twenty percent (20%) of energy use after five (5) years of implementation, and such energy use baseline was established in 2019, along with the preparation by staff of an Energy Reduction Plan to achieve the 20% reduction in five years; and

**WHEREAS**, Criterion 4 requires the Town to adopt a Fuel-Efficient Vehicle Policy requiring all municipal departments and divisions to purchase fuel-efficient vehicles; develop and maintain a vehicle inventory for all four-wheeled vehicles; and provide a plan for replacing non-exempt vehicles with vehicles that meet specified fuel efficiency ratings, and such Policy was adopted by the Town Manager in 2010;

**THEREFORE, BE IT RESOLVED:** That the Town Council does hereby direct the Town Manager or his designee(s) to review the steps that have been taken by the Town to meet Criteria 2, 3 and 4 of the Program, and identify and undertake actions and updates, if any, which are needed for the Town to meet or continue to meet those criteria, including, but not limited to, adoption by the Town Manager of the Energy Reduction Plan prepared by staff, monitoring the Town’s efforts in complying with the 2010 Fuel-Efficient Vehicle Policy, and, if appropriate, re-issuing or reaffirming any relevant policy directives.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

**B. NEW BUSINESS (May be acted upon) (Roll Call Majority)**

**BARNSTABLE TOWN COUNCIL**

**ITEM # 2022-071  
INTRO: 01/06/2022**

**2022-071 APPROVAL OF THE APPOINTMENTS TO THE APPOINTMENTS  
COMMITTEE**

**RESOLVED:** That the Town Council does hereby approve the Town Council President’s appointments of Councilors David Bogan, Jennifer Cullum, Jeffrey Mendes, Paul Neary and Tracy Shaughnessy as members of the standing Appointments Committee of the Town Council.

**SPONSOR:** Matthew P. Levesque, Town Council President

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM # 2022-071**  
**INTRO: 01/06/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Matthew P. Levesque, Council President  
**DATE:** January 06, 2022  
**SUBJECT:** Approval of the Appointments to the Appointments Committee

**BACKGROUND:** The Appointments Committee is a standing committee of the Town Council which consists of five members. Section 37-3 of Chapter 37 of the Code of the Town of Barnstable provides as follows:

The Councilors serving on the Appointments Standing Committee will be appointed by the President of the Council from a list of names of those Councilors who wish to serve on the Appointments Committee. The total Council will be apprised of the names of those Councilors who are willing to serve. The full Council will have the final vote on all appointments to the Appointments Committee. The following Councilors have indicated their interest in serving on the Appointments Committee:

David Bogan; Kristine Clark; Jennifer Cullum; Jeffrey Mendes; Paul Neary; Tracy Shaughnessy; Gordon Starr; and Eric Steinhilber.

After consideration and subject to approval of the full Council, I am appointing the following Councilors to the Appointments Committee: David Bogan; Jennifer Cullum; Jeffrey Mendes; Paul Neary; and Tracy Shaughnessy.

**STAFF SUPPORT:** Karen L. Nober, Town Attorney