

**TOWN OF BARNSTABLE
TOWN COUNCIL MEETING
July 16, 2009**

Council President Frederick Chirigotis called the meeting of the Barnstable Town Council to order at 7:00 pm, on Thursday, July 16, 2009, at the Barnstable Town Hall, 2nd Floor Hearing Room, 367 Main Street, Hyannis, MA 02601.

PRESENT: Richard Barry (7:15), Janice Barton, Ann Canedy, Frederick Chirigotis, James Crocker, Jr., Leah Curtis, Henry Farnham, Janet Joakim, J. Gregory Milne, James Munafo, Jr., Thomas Rugo, James M. Tinsley, Jr. and Harold Tobey.

President Chirigotis led the Council in the Pledge of Allegiance and a moment of silence.

PUBLIC COMMENT

Milton Berglund, spoke about the negative vote of June 25 on the sewer collection system expansion at Stewart's Creek. He felt the council was prejudiced by the comments on sewerage made by the residents of Wequaquet Lake, the other item discussed. He asked the council to reconsider the Phase II vote at the next available opportunity between six months or less. He implored the council to act because to do nothing is not an option

Other speakers rose to express their agreement.

- Dan Pendergast agrees. He presented a petition signed by 40 affected residents. (See exhibit A).
- Paul Wasilewski spoke in favor. It will cost more money later on.
- Michael Abodeely elaborated on the poor conditions and horrible pollution at the creek and Keyes Beach. The Army Corps of Engineers, who will dredge, rechannel and provide a larger culvert, need Stewart's Creek to be cleaned up.
- Daphne Abodeely stated that the beaches and related amenities need to be addressed to benefit both the commercial and tourist interests.
- John York said his children recall Stewart's Creek as an open body of water for play, fishing and boating. He described the health threat of the area, including a broken fence, which no longer barred entrance to the area, and poorly placed and broken signs.
- Tony Pelletier of the Hyannis Civic Association said they would also like reconsideration of the project. He felt people who would have spoken in favor of Stewart's Creek at the last meeting, did not because they were not prepared for the high emotions of those who spoke on the Lake Wequaquet item.
- Jeff Coombs stated that his wife and Mr. & Mrs., Kevin Burke, who could not be present, also request reconsideration. He too mentioned the impact of the Wequaquet Lake discussion. He fears not sewerage Stewart's Creek may jeopardize the Army Corps commitment to do repairs.

Att'y. Barry Weiner represents the property owners with properties in the Centerville DCPC beach area. The draft of regulations does not represent a consensus of people on the advisory group. They will reach out to have questions answered before the vote on Aug 6.

Al Baker commented on Councilor Curtis's departure. It will be hard to fill her shoes as well as a great loss to Precinct 12. On the Stewart's Creek issue, he agreed that the council was overwhelmed by what the Wequaquet residents didn't want and it was terribly unfair.

Meg Loughlin, President of the Centerville Civic Association spoke in favor of adopting the regulations for a Centerville business district. What happens in the various villages impacts all town residents. Antiquated zoning allows out-or-date and out-of-place structures to exist.

Steve Brown, Centerville, President of the Red Lily Pond Project Association said the board of directors supports the DCPC. Many volunteers were present in audience. The documents are a good result of the democratic process in place that created them. It will protect the character of the area.

COUNCIL RESPONSE TO PUBLIC COMMENT

Councilor Canedy asked about the deadline for stimulus money for Stewart's Creek and whether Phase 1 was still on track. The council should revisit the funding options as well as adding some residents, both for and against, to broaden Wastewater Committee.

- Town Manager John Klimm clarified the status of stimulus. There has been no final yes or no from the federal government. The town had been given to the end of July, now it will be August. The longer the wait, the less likely it will be.
- DPW Director Mark Ells said they have proceeded with the design which will be submitted by 8/1. He reviewed several other deadlines; there has been no official change of 6/30 date. He feels the town still could obtain a 2% loan with an October deadline. Ells will proceed with Phase 1 to be in place for the funds. The per-property cost would change with only one phase done. The town would need to have it bid and awarded by Feb. 2010 deadline.

Town Attorney Ruth Weil spoke about the process for a reconsideration vote. Someone who voted on the prevailing side (No) on the original vote would move to suspend the rules then move to reconsider. She felt there was the possibility that bond council might not find it acceptable. President Chirigotis said that a new order would have to wait 6 months or there would need to be substantial changes to the order.

Councilor Farnham heard from folks that the Lake Wequaquet issue was polarizing. He wondered if this could be fast-tracked without risking bond approval. Alternatively a somewhat different item should be considered as a first reading to comply with the six month rule. We should try to save residents money if Stimulus funds are still available for this project.

Feedback from the council was to proceed to fast track the item. Much discussion ensued on how exactly to proceed. Many ideas were brought forth and issues raised. President Chirigotis suggested creating a sufficiently different new item that would be submitted at the end of this meeting as a Late File. The council agreed that a new item would avoid any bond counsel issues. The intent was to move the new late file to a public hearing on August 6th. There would be sufficient time for proper advertising. Attorney Weil was tasked with creating the new item.

Councilor Curtis commended the residents who spoke on Stewart's Creek and hopes they will be present on the 6th if this goes forward. Councilor Joakim also encouraged people to be present night of the vote.

Recess 8:01 PM - 8:14 PM

Former Town Councilor Gloria Rudman was allowed to make a few final comments on Stewart's Creek. The problem existed at least 15 years ago from effluent and the golf course, causing nitrogen build-up. The sewerage cost a lot of money back then – about \$15,000 to \$18,000. It was done because it was important for the public value of the town. If it is let go now, in 5 to 10 years there will not be home buyers or tourists and the cost will be much greater.

ACT ON MINUTES

Upon a motion duly made and seconded it was voted to postpone action on the minutes of June 2, 2009 to Aug. 6, 2008. They were not available.

VOTE: Unanimous

Upon a motion duly made and seconded it was voted to accept the minutes of the June 18, 2009 with the following corrections: Councilor Canedy asked that the sentence "It makes perfect sense since these monies are only for drinking water" be deleted.

VOTE: Unanimous (Curtis abstained)

Upon a motion duly made and seconded it was voted to accept the minutes of the June 25, 2009 as written.

VOTE: Unanimous

COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS, STAFF, CORRESPONDENCE, ANNOUNCEMENTS AND COMMITTEE REPORTS

Councilor Curtis took a brief opportunity to thank all the constituents she has represented and thank her colleagues for teaching her more than she could ever have expected to learn. The progress of the community stands on a tripod of legislators, administrators and people who come forward to serve on boards. It has been a great privilege.

Councilor Curtis received a standing O.

President Chirigotis presented Councilor Curtis with a proclamation (See Exhibit B) which he read.

Councilor Munafo expressed concern about the financial impact of dealing with wastewater during this time of economic stress. He has made inquiries to the county and state regarding options. He implores the community, as a whole, to work together to find solutions that will relieve the financial burden, such as, for example, delaying the hookup and the betterment until a property is sold.

Councilors Joakim, Barton, and Canedy, announced upcoming events.

Councilor Barton would like to be contacted before August 6th to answer questions on the School Committee's technology funding request. Councilor Milne hopes the late file will come up tonight under New Business. He also commented regarding the use of septic systems and Cape-wide pollution. The Conservation Law Foundation is exploring ways to solve this problem and restore the bays, even if it means legal action.

ORDERS OF THE DAY

OLD BUSINESS

2009-128 APPROPRIATE AND TRANSFER FOR LIGHTING IN ASELTON PARK

Upon motion duly made and seconded it was moved to open a public hearing on 2009-128 at 8:35 PM.

VOTE: Unanimous

Upon motion duly made and seconded it was voted to close the public hearing at: 8:35 PM

VOTE: Unanimous

Councilor Milne gave the rationale.

Councilor Munafo read some additional information entitled the Aselton Park Lighting Equipment Replacement. (See Exhibit C)

- Councilor Curtis wants to assure money spent is for the most important issues and wondered if replacing functioning poles is a priority.
- Councilor Munafo said the Lighting Study Committee looked at issues and prioritized them. They want to tie the lighting together to enhance the overall ambience and believe striking a balance is the best and highest use. Curtis would like to hear from anyone not on the lighting committee.
- Councilor Farnham asked about the current balance of the fund and annual contribution to the fund.
- Manager Klimm said there was approximately \$150,000 in the account and it is replenished every year. This will use all the FY 09 money, but it will be replenished. The second project is the walkway at the Sea Street beach area.
- Councilor Tinsley added that the illumination from the new poles will be much better. Even though the current fixtures work they do not work as well. It is aesthetics for a tourist area and he feels it is money well spent.
- Councilor Canedy prefers to use funds to help the DPW on dock issues.
- Councilor Milne pointed out that the whole of Pleasant Street is currently unlit. This lighting will entice people as they disembark at the docks to walk the walkway to Main Street, an area the town has invested money to reinvent.
- Councilor Barton suggested reuse of the other lights elsewhere or recycling and/or turning them into scrap metal.
- Councilor Munafo said there might be another use but they have no real value.
- Councilor Joakim asked if the walkway through Aselton Park is unlit. One section is unlit.

- Councilor Crocker asked DPW to store the poles and see if village associations can use them for a good will donation. Ells said he does try to reuse everything he can.

A motion was made and seconded to move the question.

VOTE: Unanimous

2009-128 APPRIOPRIATE AND TRANSFER FOR LIGHTING IN ASELTON PARK

Upon motion duly made and seconded, it was

ORDERED: That the Barnstable Town Council hereby appropriates \$150,000 for the continuation of the lighting of the walkway to the sea through Aselton Memorial Park and to meet the appropriation that the town transfers a sum of money from the embarkation fee special revenue fund

VOTE: - 10 Yes, 3 No (Roll Call) (No: Canedy, Curtis, Farnham)

2009-137 DCPC IMPLEMENTING REGULATIONS-CENTERVILLE VILLAGE DISTRICT

Joanne Buntich, Growth Management Director, submitted a substitute text with spelling and punctuation corrections, which she explained. She announced that the Planning Board voted unanimously to recommend approval of Item 2009-137 to the council at their last meeting.

Councilor Canedy is uncomfortable with the discretionary piece under Impervious Surface. She feels giving discretion to the building commissioner to determine whether a surface has become impervious is subjective and “discretion” should not be included in a definition.

Councilor Canedy made a motion which was seconded to delete under Impervious Surface the following: “and may, at the discretion of the Building Commissioner, shall be considered impervious surface.”

- Councilor Crocker said the original language seems fairly flexible and the criteria are clear.
- Councilor Milne thought it might be more effective if something about drainage be included, if much of the surface becomes impervious. Buntich pointed out that it would fall under the discretion of Building Commissioner.
- Councilor Crocker said the Building Commissioner IS the person to make that determination.
- Councilor Tobey feels comfortable with how it has been presented.

A motion was made and seconded to use the substitute text provided.

VOTE: Unanimous

Councilor Joakim added that a good reason to leave it to building commissioner is because he will know about any new materials may be developed not included here. President Chirigotis agreed.

A motion was made and seconded to move the question on Councilor Canedy’s amendment.

VOTE: Unanimous

On the amendment:

VOTE: 10 No, 2 Yes (Canedy), 1 Abstention.

Councilor Tobey made a motion which was seconded to adopt Item 2009-137 as amended by the substitute text.

Director Buntich said there might be additional amendments. President Chirigotis asked for additional discussion.

Liza Cox, Nutter McLennan & Fish, Attorney on behalf of the Centerville Library, said their comments have been incorporated and they support the item’s adoption.

Phil Boudreau, Attorney representing 4 Cs Ice Cream and Centerville Motor Lodge, presented an amendment on their behalf relative to the Design Guidelines. He explained the reasoning for the amendment, copies of which were provided to the council and clerk. He also objects to the formula provisions, also covered by the architectural provisions section, which do not allow corporate branding. In addition he feels a DCPC is a big deal and should not be entered into lightly.

Councilor Rugo made a motion to adopt the suggested amendment (text follows). Councilor Canedy seconded the motion.

Text of amendment:

“I move that Section 240-130.6 C Application be amended by adding the following after the first sentence thereunder:

“These Design Guidelines shall not apply to walk in coolers, freezers or their accessories for an Ice Cream Specialty Retail use. Any such coolers, freezers and accessories shall be attached to the side or rear of the principal structure and shall be appropriately screened from street view.”

VOTE: Unanimous

Councilor Rugo made a motion which was seconded to move the question in Item 2009-137.

Councilor Munafo made a Charter Objection. Councilor Curtis asked for his reason. He replied “Councilor privilege.”

Councilor Rugo made a motion which was seconded to reconsider Item 2009-128.

Councilor Rugo asked if Aug 6th was too late to vote on the DCPC. Buntich said it was not. The Cape Cod Commission must approve the regulation by September 10th. An August council vote would not make that deadline impossible.

Councilor Canedy did not agree with making a Charter Objection but supported Councilor Munafo’s right to do so and disagreed with retaliatory motions for reconsideration. She suggested taking this up at the next meeting.

Councilor Rugo withdrew his motion relative to 2009-128. He made another motion to schedule a special meeting before July 30th.

- President Chirigotis suggested July 23rd.
- Councilor Crocker suggested scheduling the item on the August 6th.
- Councilor Rugo is concerned about the number for a 2/3 vote. He wants the item approved by a full board and, after August 1st, there will be 12 sitting members yet the number required for 2/3 will still be 9, not 8.
- Councilor Joakim feels there has been ample opportunity to ask questions, she supports the motion for a special meeting.
- Councilor Milne spoke in support of a special meeting on July 23 to consider the item with a full body of the council.

Councilor Tobey asked Councilor Munafo to withdraw his Charter Objection. Councilor Curtis supported the request.

Councilor Munafo suggested a recess. He would be willing to listen, however, did not feel he would change his mind.

Recess 9:35 PM – 9:50 PM

2009-138 AMEND REGULATORY AGREEMENT ORDINANCE TO INCLUDE THE CENTERVILLE VILLAGE DISTRICT

(Continued public hearing)

No public was present

Upon motion duly made and seconded it was voted to close the public hearing at 9:50 PM.

VOTE: No objection

Joanne Buntich gave the rationale.

Councilor Barry asked whether the council could amend the regulatory agreement when there is no Centerville district.

Councilor Munafo asked for a Point of Order and withdrew his Charter Objection.

Town Attorney Weil said either item could be voted without the other.

President Chirigotis put **Item 2009-137** back on the floor.

Councilor Munafo made an amendment, which was seconded, to Section 240-130.3 Permitted Uses A. Use limitations as follows:

Delete the entire section except the final sentence which reads “Drive-up windows and/or drive-through facilities are prohibited.” And, under B. Principal Uses, deleting “Subject to use limitations as described in S240-130.3A”

Councilor Crocker made a related amendment to strike the asterisks under part B of the same section since the need is eliminated once “Subject to use limitations as described in S240-130.3A” is eliminated. Munafo took it as a friendly amendment.

Councilor Barton asked if there would be sufficient allowances to prevent abuses, if the language is removed. Buntich said they would have made the language on corporate branding limitations stronger had this issue been known. Munafo suggested there could be such changes made in the future.

A motion was made and seconded to move the question on the amendment.

VOTE: 12 Yes, 1 No (Milne)

On the Munafo/Crocker motion replacing Section 240-130.0 Permitted Uses as follows:

A. Use imitations

Drive-up windows and/or drive-through facilities are prohibited.

B. Principal uses

- (1) Ice Cream Specialty Retail
- (2) Mixed Use Development
- (3) Professional or Business Office.
- (4) Single Family Residence
- (5) Small Scale Food Service
- (6) Small Scale Retail
- (7) Bed and Breakfast
- (8) Inn

VOTE: 4 Yes, 9 No (Roll Call) (Yes: Barton, Crocker, Farnham, Munafo)

An error in the text under Section 240-130.5 NOTES (1) (last sentence) which currently reads “The maximum height for flat roofed structures is two stories and 24’” was pointed out.

By a motion duly made and seconded, the following substitution was proposed:

“The maximum height for flat roofed structures is limited to two stories at a maximum of 24’.

VOTE: Unanimous

A motion was made and seconded to move the question.

VOTE: No objections

2009-137 DCPC IMPLEMENTING REGULATIONS-CENTERVILLE VILLAGE DISTRICT

Upon a motion duly made and seconded it was

ORDERED:

Preamble: This ordinance is adopted as an implementing regulation of the Centerville Village portion of the Centerville Village Craigville Beach District of Critical Planning Concern (DCPC). Included in this order in **Section 1** amends the zoning map to create the Centerville Village District; **Section 2** adopts the Centerville Village Implementing Regulations; **Section 3 has been combined with Section 1 of this order** and **Section 4** amends the Sign Code § 240-67 to add “Centerville Village District” to that section.

Section 1

Centerville Village District Map

That the official zoning map of the Town of Barnstable is hereby amended by adding the Boundary of the Centerville Village District replacing portions of the Business A, RC and RD-1 district in the vicinity of Main Street and South Main Street in Centerville and to rezone portions of the BA zoning district that lie outside the Centerville Village District boundary to the RC zoning district as shown on a map on file with the Town Clerk entitled "Proposed Amendment to the Town Zoning Map Creating the Centerville Village District" dated May 28, 2009 and "Proposed Amendment to the Centerville Zoning Map Sheet 4 of 7" dated May 28, 2009.

Section 2

Centerville Village District Implementing Regulations

That Chapter 240, Zoning Ordinance is hereby amended by adding a new Article XIV District of Critical Planning Concern Implementing Regulations and adding Centerville Village District Implementing Regulations:

Article XIV District of Critical Planning Concern Regulations

§240-130 Centerville Village District

Authority

This Article is adopted under the authority of the Home Rule Amendment, Article 89 of the Constitution of the Commonwealth, and the Cape Cod Commission Act, Chapter 716 of the Acts of 1989.

§240-130.1 Purposes and Intent

A. The purposes and intent of this section is to guide development and redevelopment in Centerville Village that:

- (1) Promotes a location-appropriate scale and traditional mix of business, institutional and residential land uses that contribute to and respect the historic character and historic neighborhood development patterns;
- (2). Acknowledges the historic context of the village including the National Register District which encompasses properties in the northern portion of the district;
- (3) Protects and preserves the historic and scenic streetscape and minimizes traffic congestion;
- (4) Provides a variety of functions that support residents' day-to-day use of the district;
- (5). Supports and enhances the diverse local economy and retains established village goods and service offerings;
- (6) Preserves and protects the traditional New England village character of Centerville through architectural design that replicates in scale and character the best examples of traditional neighborhood design from the historic towns and villages of Cape Cod and New England to enhance the aesthetic quality of Barnstable as a whole.

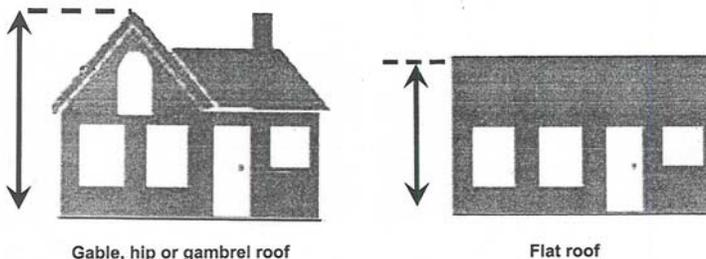
B. The further purpose and intent of this section is to enable the Town of Barnstable to enter into development agreements (hereinafter "regulatory agreements") under Chapter 168 of the Code of the Town of Barnstable (Barnstable Code) within the Centerville Village District (CVD).

§ 240-130.2 Definitions

As used in the CVD, the following terms shall have the meanings indicated:

Apartment - One or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit located in a building containing two or more such rooms or suites or located in a building devoted primarily to nonresidential use or in a mixed use building.

Bed and Breakfast - Tourist and guest accommodations located within an owner-occupied, single-family residential dwelling unit, let for compensation for brief periods of time, customarily less than two weeks long, temporary abode of visitors who have a permanent



Building Height – The vertical distance between the Grade and the highest point of a gable, hip or gambrel roof; the highest point of the coping of a flat roof.

Grade - The referenced plane of the average of all finished ground level adjoining the building or structure for a distance of 6 feet from all exterior walls.

Half Story – That space above the plate line but below the ridgeline in an area commonly called the “attic space”, provided that the gross floor area of the half story shall not exceed 66% of the gross floor area immediately below the half story.

Ice Cream Specialty Retail Use - An establishment specializing in the retail sale of ice cream for consumption on or off site or carry out consumption that may include a seating area for food service use as an accessory use to the ice cream specialty retail or an ice cream retail use in existence at the time of the adoption of this ordinance.

Accessory food service use may sell, and serve by wait staff a variety of foods that may be prepared on site. Ice cream specialty retail and any accessory food service use are subject to formula business limitations as described herein. Ice cream specialty retail may include on-site ice cream product preparation for wholesale sales provided however; in no case shall wholesale sales of ice cream product for use off- site become the principal use; truck distribution and delivery activity necessary to the wholesale sale of ice cream product for off-site use shall not create additional congestion, and the use shall not generate noise that violates Town Ordinances, or detract from the established character within the CVD.

Impervious Surface A surface which prevents the penetration of precipitation or other liquids into the ground, including roofs, concrete, asphalt, natural stone, sidewalks, etc. Any area designed for vehicle use or vehicle parking covered with porous pavers may become impervious over time (e.g.,) and may, at the discretion of the Building Commissioner, be considered impervious surface.

Inn - A commercial structure used for overnight lodging accessed through interior hallways which may include the provision of meals and incidental related services to lodgers or a motel or motor inn use in existence at the time of the adoption of this ordinance.

Library - A building or room that houses a collection of books, records, literary documents or other reference materials for borrowing, reading, study, education or reference and which is owned or operated by a non-profit educational corporation.

Lot Area - The upland area of the lot.

Mixed Use Development - Development including at least one residential unit and at least one non-residential use on a single lot or several non-residential uses on a single lot.

Non-Profit Educational Use – An educational use conducted by a not for profit corporation whose articles of incorporation permit it to engage in educational activities and “educational purposes” as its principal permitted use within the meaning of Massachusetts General Laws, Chapter 40A, sec. 3, including but not limited to libraries and museums.

Professional or Business Office - Office, but not including medical or dental offices.

Religious Institution – An institution engaged in “religious purposes” within the meaning of Massachusetts General Laws, Chapter 40A, Section 3.

Setback- The required distance between every structure and lot line of the lot on which it is located.

Single Family Residence – A detached residential building designed for and occupied by a single family.

Small-Scale Food Service – An establishment where food is served to customers by wait staff. Small-scale food service does not include restaurants designed to serve a large volume of customers. Small-scale food service is subject to formula business limitations as described herein. These uses are intended to increase pedestrian traffic.

Small-Scale Retail - Small stores and businesses, including but not limited to, corner groceries, artist space, bookstore, galleries and other small retail uses typically found in small New England towns. Small-scale retail does not include retail or commercial buildings or storage designed to serve a large volume of customers e.g. gasoline and oil filling stations, garages for automotive or machine repair. Small scale retail is subject to formula business limitations as described herein. These uses are intended to increase pedestrian activity.

Story - That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above and having at least 1/2 its height above grade.

Structure- Anything constructed or erected on the ground or which is attached to something located on the ground. Structures include buildings, sheds, swimming pools and towers, but shall exclude fences of 6 feet or less in height, flag poles and retaining walls.

Upland – All lands not defined herein as wetlands.

Wetlands – The land under the ocean or under any bay, lake, pond, river, stream, creek or estuary; any wet meadows, marshes, swamps, bogs, areas where high groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrata for a plant community for at least five months of the year, lowland subject to any tidal action or annual storm flooding or flowage, or any flat, beach, dune or other shifting sand formation.

Section 240-130.3 Permitted Uses

The following principal and accessory uses are permitted in the Centerville Village District subject to the use limitations outlined below. Other uses of an appropriate scale and function may also be considered subject to a Regulatory Agreement and are subject to the use limitations outlines below. Municipal uses are exempt from these regulations.

A. Use Limitations

Permitted retail establishment, lodging establishment, restaurant, or take out food franchise shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized (“Formula”) array of services and/or merchandise, trademark, logo, service mark, symbol, décor, architecture, layout, uniform, or similar standardized features and which causes is it to be substantially identical to more than fourteen (14) other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.

B. Principal uses.

- *Ice Cream Specialty Retail
- *Mixed Use Development
- *Professional or Business Office.
- Single Family Residence
- *Small Scale Food Service
- *Small Scale Retail
- *Bed and Breakfast
- *Inn

*Subject to use limitations as described in §240-130-3 A.

C. Accessory uses.

(1) Automated banking facilities (ATM) within a principal building or a walk-up facility located in a rear or side yard that also meets landscaping and lighting guidelines of this section.

(2) Garages accessory to a single-family residence. Such structures shall be located in the rear or side yard. The footprint of the garage shall not exceed 40% of the footprint of the single-family residence and may consist of one and one half stories with a pitched roof unless otherwise permitted for residential use.

(3) Apartment

A. Exempt Uses

(1) Religious Institutions, accessory day care centers, and Non-Profit Educational uses are permitted as exempt uses within the CVD. These uses shall, however, be subject to and in conformance with the reasonable bulk, density, design and development regulations of the CVD as set forth in Sections 240-130.1A Purposes and Intent, § 240-130.5 Dimensional, Bulk and Other Regulations, § 240-130.6 Design Guidelines, and § 240-130.7 Site Development Standards.

(2) Where the exempt use does not comply with said regulations, the Zoning Board of Appeals shall, by modification permit, modify said regulations if compliance with the regulation substantially diminishes or detracts from the usefulness of a proposed development or impairs the character of the development so as to affect its intended use, provided however that the relief granted will not create a public safety hazard along adjacent roadways and will not create a nuisance to other surrounding properties.

(3) A modification permit shall be subject to the same procedural requirements as a special permit except that approval of a modification permit shall require a simple majority of the members of the Board.

Section 240-130.3

A. Continuation. Legally established structures, uses and site improvements in existence at the time of the adoption of this ordinance shall be allowed to continue.

B. Change, Expansion or Alteration of Uses and Structures.

(1) As of right

- a. The normal and customary repair and maintenance of a building or structure is permitted as of right.
- b. The alteration and expansion of a building or structure is permitted as of right provided that the alteration or expansion conforms in all other respects with all applicable requirements of this chapter.

(2) By Special Permit

Alterations or expansions of a building or structure that do not qualify under as of right provisions shall be permitted only by a special permit from the Zoning Board of Appeals, the Special Permit Granting Authority (SPGA) for the CVD. In granting such special permit, the Board must find that the proposed alterations and/or expansion are not substantially more detrimental, by standards set out herein, to the surrounding neighborhood under this Chapter § 240-130.1A Purposes and Intent, 240-130.4A Use Limitations and, where applicable, § 240-130.2 Definitions.

C. Special Permit for Dimensional Relief

The SPGA may provide relief from minimum lot area, minimum lot frontage, maximum building setback, minimum yard setbacks, facade length requirements, ground floor window requirements when such relief ensures that the proposed development is consistent with the § 240-130.1 A.

Purposes and Intent and the applicant demonstrates undue hardship without desired relief.

D. Re-establishment of damaged or destroyed building or structure.

(1) The re-establishment of a previously legally established use and/or building or structure which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted as of right, provided that the Building Commissioner has determined that all the following conditions are met:

- (a) The reconstruction or repair will not, as determined by the Building Commissioner, materially increase the gross floor area or height of the building or structure beyond that which previously existed, nor materially increase the footprint of the structure, or materially change the grade.
- (b) If the building's location on the lot is to be changed, it will change in a manner that will be closer to complying with the dimensional and bulk regulations.
- (c) The reconstruction or repair will not constitute an expansion or intensification of any use.
- (d) In the case of any use in which it would otherwise be required, the site plan review process has been followed.
- (e) Design and architecture of damaged or destroyed buildings and structures in existence at the time of the adoption of this regulation may be replicated. If the Building Commissioner finds that the structure is to be rebuilt to replicate what existed before the damage or destruction, the CVD design guidelines do not apply.
- (f) A building permit has been applied for within two years from the date of damage or destruction,

2. Discontinuance: Any legally established structure which no longer complies with the provisions of the CVD that has been damaged or destroyed shall be discontinued unless a building permit has been applied for within two years from the date of damage or destruction, and construction is continuously pursued to completion.

Section 240- 130.4 Additional Provisions

A. Other regulations

The following provisions of the Barnstable Code are hereby incorporated into this regulation: § 240-7 Application of District Regulations; § 240-9.C & D; § 240-10 Prohibited Uses; § 240-34 Flood Area Provisions; § 240-43 Accessory Uses; § 240-46.A & B Home Occupations; Article VI Off Street Parking Sections 240-52, 240-53.B through .E ; and Sign Regulations § 240-59 through 62, and Section 240-67; Article XI Growth Management Sections 240-110 through 122; Article IX Site Plan Review; Article XII Administration and Enforcement § 240-123 – 240-124; § 240-125 C Special Permit Provisions as these provisions of the Barnstable Code cited in this section may be amended from time to time.

B. Conflicts

Unless otherwise stated, the requirements of the Centerville Village District shall apply to uses and structures within the Centerville Village District. In the event of a conflict, these regulations shall apply.

C. Severability

The provisions of this chapter are severable. If any court of competent jurisdiction shall invalidate any provision herein, such invalidation shall not affect any other provisions of this chapter. If any court of competent jurisdiction shall invalidate the application of any provision of this chapter to a particular case, such invalidation shall not affect the application of said provision to any other case within the Town.

Section 240-130.5 Dimensional, Bulk and Other Requirements

Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height		Maximum Lot Coverage By Structures	Total Impervious Surface
		Front ² (feet)	Rear (feet)	Side (feet)	Feet	Stories		
20,000 SF or Lot area of legally established	20	20' or Setback of existing legally established structure from front	0	0	36 ¹	2 ½	35%	80%

lot as of 06/18/2009		lot line as of 06/18/2009 whichever is less						
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NOTES:

(1) Height - Maximum building height. The maximum height of buildings or structures is 36 feet or two and one half stories whichever is less at the highest point of the roof for roofs with a pitch of at least six (6) inches in each foot and at the highest point of a gambrel roof. The maximum height for flat roofed structures is limited to two stories at a maximum of 24'.

(2)Setbacks

- a) The building setback may be modified through a special permit from the Zoning Board of Appeals upon demonstration to the satisfaction of that board that redevelopment cannot meet the minimum setback without undue hardship or due to topography, lot shape or constraints of existing structures.
- b) Wherever possible parking shall be located within side or rear yard setbacks.

Section 240-130.6 Design Guidelines

A. Purpose:

The purpose of these design guidelines is to enhance the traditional small-scale village character currently found in the CVD through the use of compatible building materials, appropriate scale and architectural details currently found within the district or immediate surrounding area. New structures are encouraged to complement, but not necessarily duplicate, surrounding structures.

B. Objectives:

- 1. To encourage site planning and architectural design that will enhance the existing historic character of the CVD.
- 2. Ensure that redevelopment and new development is compatible with the existing character of the CVD while encouraging variety through flexibility in the application of these design standards.

C. Application:

The Design Guidelines set forth herein do not apply to legally established structures in existence as of the effective date of the CVD but shall apply to all new development, to any additions to existing structures and to all reconstruction projects except as provided for in § 240-130.3 D(1)(e). These Design Guidelines shall not apply to walk in coolers, freezers or their accessories for an Ice Cream Specialty Retail use. Any such coolers, freezers and accessories shall be attached to the side or rear of the principal structure and shall be appropriately screened from street view.

(1) Massing: Buildings or portions of buildings with a mass, including rooflines, over 32 feet in length must divide their elevations into smaller parts through a variety of architectural elements including but not limited to dormers or additive massing as well as pronounced changes in wall planes. Flat and shed roof architectural elements are limited to a length of 20 linear feet and only in combination with other gable or hip roof elements; except that ground floor open porches may have a longer expanse of shed roof on a structure that otherwise meets these massing provisions.

(2) Roof Pitch: Except as permitted under massing herein, roof pitch and pattern for new structures and additions to existing structures shall complement the roof pitches found on the main rooflines of existing structures within the CVD and the immediate surrounding area or at least 4 in 12 where the roofs of surrounding structures are flat or only slightly pitched

(3) Ground floor windows for non-residential development:

- (a) All new non-residential development, including non-residential portions of mixed use developments, shall provide ground floor windows along street facades, including windows that allow view into working areas or lobbies, pedestrian entrances, or display windows. The glazing pattern shall be aligned in a regular and traditional pattern as found within the CVD and the immediate surrounding area.
- (b) Window glazing or films that inhibit two-way visibility, such as darkly tinted and mirrored windows, are prohibited as ground floor windows. Mirrored windows are prohibited throughout the CVD.
- (c) Street façade blank walls greater than four (4) feet in length that do not include display areas, functional landscape structures such as a trellis, windows, architectural features, and/or doorways are prohibited.

(4) Architectural details and materials:

- (a) Architectural character of buildings must complement the historic character of buildings found within the CVD and the immediate surrounding area.
- (b) Façade materials shall be high quality, authentic materials such as wood, stone or brick. Manufactured materials intended to duplicate the look of natural materials may be allowed.

- (c) External side elements including but not limited to screening devices, site walls, enclosed service, loading and refuse areas and mechanical equipment shall be designed as an integral part of the building's architectural character.
- (d) Primary entrance to buildings, other than single family homes, shall be distinguished with façade variations, porticos, roof variations, recesses or other integral architecturally appropriate building elements.
- (e) Extended bands of corporate or franchise colors are prohibited in the CVD.
- (f) Metal sided buildings are prohibited in the CVD.
- (g) The following design features shall be incorporated into structures within the CVD where architecturally appropriate. Structures shall include at least one of the following elements:
 - [1] Gable
 - [2] Offsets on the building face or roof of at least two inches
 - [3] Gable dormers
 - [4] Cupolas or other appropriate roof elements
 - [5] Covered porches

Section 240-130.7 Site Development Standards

All new development and redevelopment and change of use except as set forth in §240-130 within the CVD with the exception of single-family residences shall be subject to the provisions of Article IX Site Plan Review § 240-98 through § 240-105.

A. Access Management. To ensure traffic safety, pedestrian safety and maintain traffic flow the following standards for new access shall apply in the CVD:

1. New access on South Main Street and Main Street:
 - (a) Shall only be allowed where the Building Commissioner determines that the access will improve internal circulation or address safety at existing access.
 - (b) Interconnections between lots and uses are encouraged to prevent unsafe turning conflicts and increase pedestrian safety.
 - (c) New driveways on South Main Street and Main Street within 200 feet of any intersection shall not be permitted unless the Town Engineer determines that the proposed driveway location will not create new traffic safety hazards or increase traffic congestion.
2. New access shall not be more than 24 feet in width unless the Building Commissioner or Site Plan Review determines that a wider width is necessary for safety purposes.

B. Parking spaces, computation.

1. The parking standards contained within the Schedule of Off-Street Parking Requirement, 240-56 of the Barnstable Zoning Ordinance, shall establish the minimum parking requirements, with the following exceptions:
 - a. The use of shared parking for different uses having different peak hours of demand will be considered in evaluating compliance with § 240-56. A signed lease agreement or recorded easement between relevant parties sharing parking must be provided as part of the site plan approval.
 - b. A permitted use can be changed to another permitted use, and any permitted ~~principal~~ or accessory use can be intensified, without increasing the required off-street parking requirements of § 240-56, Schedule of Off-Street Parking Requirements, provided that:
 1. There is no increase in gross square footage of the building; and
 2. There is no reduction in existing parking spaces required pursuant to § 240-56; and
 3. A minimum of two on-site parking spaces per dwelling unit shall be provided. A one-car garage shall count as one parking space. A two-car garage shall count as two parking spaces.
2. Parking spaces shall be provided for new and/or expanded building area, and for new and/or expanded outdoor uses, as follows:
 - a. Parking space requirements for residential mixed use shall be subject to Section 240-130.7 B.1 above and for the residential units parking the parking requirement shall be one parking space per bedroom for one- and two-bedroom units or a total of two parking spaces for units with two or more bedrooms.
 - b. Parking space requirements for non-residential uses shall be subject to Section 240-130.7 B.1 above.
3. Reduction of required parking spaces may be allowed provided the Building Commissioner, who may waive up to two (2) spaces, or if parking is proposed to be reduced by more than two (2) spaces the Zoning Board of Appeals must find that:
 - a. Adequate shared parking is available consistent with § A. 1 above or,

b. There are other factors that support the reduction.

C. Landscaping.

All applications for new non-residential development and redevelopment shall be accompanied by a landscape plan that shows the location within the development of each species of trees, shrubs and/or other plantings, their suitability for the conditions at the proposed location and their size at maturity

1. Those portions of the front yard not occupied by pedestrian amenities and public spaces shall be landscaped.
2. Existing trees and other features of the land shall be protected in the development or redevelopment of the site.
3. Landscape materials shall be used that, at full growth, will not overwhelm the site location or interfere with views or pedestrian activity over time.
4. Landscaping plan will adequately provide street trees and will buffer parking areas from sidewalks and streets.

D. Lighting.

1. All exterior lighting shall use full cutoff light fixtures in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted.
2. Flood, area and up lighting shall not cast glare onto neighboring properties or oncoming traffic.

Section 3

Combined with Section 1

Section 4

Amend the Barnstable Zoning Ordinance § 240-67 Signs

That the Town of Barnstable Zoning Ordinance Chapter 240, § 67 Signs is hereby amended to read “Section 240-67 Signs in CVD, OM, HG, TD, VB-A, and VB-B Districts.”.

VOTE: Unanimous (Roll Call)

A motion was made and seconded to move the question on Item 2009-138

VOTE: Majority in favor

Opponents expressed concern about no opportunity to discuss the item.

2009-138 AMEND REGULATORY AGREEMENT ORDINANCE TO INCLUDE THE CENTERVILLE VILLAGE DISTRICT

Upon motion duly made and seconded it was

ORDERED, That Chapter 168 of the General Ordinance, Regulatory Agreements, is hereby amended by adding the Centerville Village District to the existing Regulatory Agreement District.

SECTION 1

That Chapter 168, Regulatory Agreement Ordinance, is amended by adding the Centerville Village District to the Hyannis Regulatory Agreement District Map as shown on a map on file with the Town Clerk entitled “Hyannis Regulatory Agreement District Map”, dated March 9, 2007, by amending said map as shown on the map entitled “Proposed Amendment to Regulatory Agreement District Map Adding the Centerville Village District” dated May 28, 2009.

SECTION 2

That Chapter 168, the Regulatory Agreement Ordinance, is hereby amended by striking out Section 168-1 A and inserting in place thereof the following:

It is the purpose and intent of this chapter to enable the Town of Barnstable to enter into development agreements (hereinafter "regulatory agreements") in the areas delineated on the attached map, dated May 28, 2009, entitled "Regulatory Agreement Districts."

SECTION 3

That Chapter 168, the Regulatory Agreement Ordinance, is hereby amended by striking out Section 168-1 B and inserting in place thereof the following:

This chapter shall apply within the Regulatory Agreement Districts, shown on the attached map.

VOTE: 9 Yes, 4 No (Roll Call) (No: Canedy, Farnham, Milne, Munafò)

NEW BUSINESS

2010-001 APPOINTMENTS

Upon a motion duly made and seconded this item was referred to a second reading on August 6, 2009.

VOTE: No objection

Councilor Canedy asked if children appointed needed a special dispensation if parents work for the town. Attorney Weil will check and report back at the next meeting.

2010-002 ADMINISTRATIVE CODE AMENDMENT - BOARD OF HEALTH ALTERNATE MEMBER

Upon motion duly made and seconded it was:

ORDERED,

That Section § 241-21 of the Administrative Code relating to the Board of Health is hereby amended by striking out numbered paragraph "(A)" and inserting in place thereof the following:

That Section § 241-21 of the Administrative Code relating to the Board of Health is hereby amended by striking out numbered paragraph "(A)" and inserting in place thereof the following:

"A. Term of office. There shall be a Board of Health consisting of three regular members, one of whom shall be a physician, PLUS one alternate member. The alternate member shall have voting rights at meetings if there is an absence of a regular member."

Councilor Curtis gave the rationale. All members of the Appointments Committee support this because it is an issue for the Board of Health.

Councilor Farnham made a friendly amendment to change 'and one alternate member' to 'plus one alternate member. Councilor Milne hopes the alternate would have preference if a position opens up on the board. Alternates should be considered a 'farm team' to the board. Councilor Munafò pointed out that this was a first reading and it could not be voted this evening. Attorney Weil said the board was under pressure.

A motion was duly made and seconded to suspend the rules in order to vote this evening.

VOTE: 12 Yes, 1 No

A motion was made and seconded to move the question.

VOTE: Unanimous

On Item 2010-002 as amended.

VOTE: Unanimous

Late File:

2010-015 APPOINTMENTS

Upon a motion duly made and seconded it was

RESOLVED, that the Town appoint the following individual to a multiple-member board/committee/commission:

BOARD OF HEALTH

Susan G. Rask, 363 Santuit-Newtown Road, Marstons Mills, as an alternate member, to a term expiring 6/30/2012

Councilor Curtis gave the rationale. The Board of Health needs the member to be on ASAP. Councilor Joakim thanked Sue Rask. Councilor Milne said she served on the Board of Health for 14 years and works in the field.

A motion was duly made and seconded to suspend the rules in order to vote this evening.

VOTE: Unanimous

On the item.

VOTE: Unanimous

2010-003 APPROPRIATION & TRANSFER ORDER TO FINALIZE COASTAL RESOURCES MANAGEMENT PLAN

Upon a motion duly made and seconded this item was referred to a public hearing on August 6, 2009.

VOTE: Unanimous

2010-004 GRANT ACCEPTANCE OF \$5,000 FROM BJ'S CHARITABLE TRUST

Upon a motion duly made and seconded it was

RESOLVED: That the Town of Barnstable hereby accepts a grant of \$5,000 to the Barnstable Senior Services Division from the BJ's Charitable Foundation to support meal costs for the Barnstable Adult Supportive Day Program.

Madeline Taylor, Director of Senior Services, gave the rationale.

A motion was made and seconded to move the question.

VOTE: Unanimous

On the item.

VOTE: Unanimous

2010-005 GRANT ACCEPTANCE OF \$400 FROM CAPE CONSORTIUM

Upon a motion duly made and seconded it was

RESOLVED: That the Town of Barnstable hereby accepts a grant of \$400 to the Barnstable Senior Services Division from the Cape Consortium for At-Risk Elders to support outreach efforts to isolated seniors.

Director Taylor gave the rationale. Rose Digregorio was responsible for applying for both grants.

A motion was made and seconded to move the question.

VOTE: Unanimous

On the item.

VOTE: Unanimous

2010-006 GRANT ACCEPTANCE OF \$24,643 PORT SECURITY GRANT FROM DEPARTMENT OF HOMELAND SECURITY, FEMA

Upon a motion duly made and seconded it was

RESOLVED: That the Barnstable Town Council does hereby accept a Port Security Grant from the Department of Homeland Security, FEMA in the amount of \$24,643 for the purpose of installing a camera system for Hyannis Harbor.

Town Manager John Klimm gave the rationale.

- Councilor Farnham asked if these were wireless or battery operated cameras. Community Services Director, Lynn Poyant, will find out.
- Harbormaster, Dan Horn, said this will add three more cameras. They provide video which is very clear and very helpful.
- Councilor Munafo asked if this was a federal grant. It is.
- Councilor Milne hopes these are placed in strategic locations that may see speeding of ferries and other boats.
- Councilor Rugo hopes the cameras cannot focus in on homes. Horn said access is controlled by IT will be controlled to avoid eavesdropping. Manager Klimm said that besides himself, there will be only 3 or 4 people who will have access to monitor.

A motion was made and seconded to move the question.

VOTE: Unanimous

On the item.

VOTE: 11 yes, 2 No (Canedy, Munafu)

2010-007 GRANT ACCEPTANCE OF \$34,000 FROM HYCC FOUNDATION

Upon a motion duly made and seconded it was

RESOLVED: That the Barnstable Town Council hereby accept \$34,000 from the Hyannis Youth and Community Center Foundation for the conveyance of \$12,000 from Cape Cod Five Cents Savings Bank Charitable Foundation, \$10,000 from the Barnstable High School Hockey Boosters, \$10,000 from the Sammy Montana D'Olimpio Fund for Suicide Prevention and \$2,000 from the Robert and Suzanne Kittredge Foundation for the construction of the new Hyannis Youth and Community Center.

Manager Klimm gave the rationale regarding the next three items. The town is within budget and on time with the new youth center construction. Lynne Poyant explained the donations.

VOTE: Unanimous

2010-008 ACCEPTANCE OF \$26,683.03 IN-KIND DONATION FROM SHEPLEY WOOD PRODUCTS

Upon a motion duly made and seconded it was

RESOLVED, that the Town Council hereby accept an in-kind donation from Shepley Wood Products valued at \$26,683.03 for the new Hyannis Youth and Community Center.

Manager Klimm gave the rationale. Poyant said one of the rooms will be named The Shepley.

VOTE: Unanimous

2010-009 ACCEPTANCE OF \$4,995 FROM WAREHAM YOUTH HOCKEY

Upon a motion duly made and seconded it was

RESOLVED, that the Barnstable Town Council hereby accepts \$4,995 from Wareham Youth Hockey for items declared surplus prior to the demolition of the Joseph P. Kennedy, Jr. Memorial Skating Rink.

Manager Klimm gave the rationale.

VOTE: Unanimous

2010-010 TRANSFER ORDER TO REPAIR EAST BAY BREAKWATER LIGHTED MONOPOLE

Upon a motion duly made and seconded it was

ORDERED, that the Town Council hereby transfers the sum of \$13,371 from the remaining balance in Town Council Order 2007-149 for the purpose of funding the repair of the East Bay Breakwater Lighted Monopole.

Manager Klimm gave the rationale.

VOTE: Unanimous

2009-011 APPROPRIATION & LOAN ORDER – WIND TURBINE & PHOTOVOLTAIC INSTALLATION AT HYANNIS WPC FACILITY

Upon a motion duly made and seconded this item was referred to a public hearing on August 6, 2009.

VOTE: 12 yes, 1 no (Curtis)

2010-012 DCPC IMPLEMENTING REGULATIONS – CRAIGVILLE BEACH DISTRICT

Upon a motion duly made and seconded this item was referred to a joint public hearing with the Planning Board on August 6, 2009.

VOTE: Unanimous

2010-013 APPROPRIATION & LOAN ORDER – COMMUNITY PRESERVATION NEW TOWN HALL

Upon a motion duly made and seconded this item was referred to a public hearing on August 6, 2009.

VOTE: Unanimous

LATE FILE

2010-017 APPROPRIATION & LOAN ORDER – SEWER COLLECTION SYSTEM EXPANSION

Upon a motion duly made and seconded this item was referred to a public hearing on August 6, 2009

VOTE: Unanimous

LATE FILE

2010-014 APPROPRIATION & TRANSFER ORDER – SCHOOL DEPARTMENT FACILITY AND TECHNOLOGY

Upon a motion duly made and seconded this item was referred to a public hearing on August 6, 2009.

VOTE: Unanimous

Councilor Crocker made the following motion. The motion was seconded.

“Under Town Council Rule 9, Rejected Measures, I move to submit 2010-017 Appropriation and Loan Order for Stewart’s Creek West Side Phase II for first reading.”

Councilor Crocker explained rejected measures.

VOTE: Unanimous

TOWN MANAGER COMMUNICATIONS - None

A motion was duly made and seconded to adjourn the meeting at 10:55 PM.

VOTE: Unanimous

Respectfully submitted,

Lucia Fulco
Assistant Town Clerk