



Town Council Meeting
February 17, 2022



A quorum being duly present, President Matthew Levesque called the February 17, 2022, Town Council meeting to order at 7:00 PM.

An announcement was made by President Levesque regarding the meeting being televised live and questioning if anyone was actively taping the session to please make their presence known. This session is recorded and broadcast on Channel 18.

PRESENT: (On Zoom) Nikolas Atsalis, David Bogan, Kristine Clark, Jennifer Cullum, Jessica Rapp Grasseti, Paul Hebert, Matthew Levesque, Jeffrey Mendes, Paul Neary, Paula Schnepf, Gordon Starr, Eric Steinhilber **ABSENT:** Tracy Shaughnessy

The Pledge of Allegiance was led by Councilor Neary followed by a moment of silence.

PUBLIC COMMENT:

Timothy Regan spoke on the need for public housing on Cape Cod. We need to get the units at Twin Brooks on line quickly.

Betty Ludtke spoke about the poor perception of Hyannis to many people, hopes we can work on a regional plan to solve the housing problem. Hyannis has such a bad reputation let's work on that.

Tara Vargas Wallace advocating for the existing Lennar Multifamily Communities (LMC) proposal, extremely scary not knowing if you are going to have a place for your child to lay their heads at night, due to low housing stock, please go through the existing LMC proposal quickly.

Kristin Leary is opposed to the variance for a drive-through at the rotary that will be coming before the Council.

Response to Public Comment:

(Schnepf) the LMC project is currently in the hands of the Cape Cod Commission, not yet that before the Town Council.

Town Manager's Report (Exhibit A)

Per the Superintendent of Schools masks are optional as of February 28th in school, but still mandatory on buses and at the School Nurses office.

Elizabeth Jenkins Director of Planning and Development – provided an update on the Local Comprehensive Plan (LCP) Committee. Currently, the village applications received are as follows: Centerville-5, Cotuit-4, Marstons Mills-4, Hyannis-3, Barnstable-1 and no applicants from West Barnstable at this time.

Councilor Questions and Comments

(Rapp Grassetti) was there anyone from Osterville who put in an application? (Jenkins) yes, three people from Osterville.

- Budget Action Calendar for FY 2023.
- Abatement Application for FY22 Real Estate and Personal Property taxes.
- FEMA plans to perform on-site damage assessment for Sandy Neck and Blish Point
- Vineyard Wind (VW) regarding the status of Phase I and Park City Wind (Phase 2)
- Discover Barnstable the official podcast of the Town Barnstable's Mission
- Coronavirus State Fiscal Recovery Fund dollars
- Barnstable Youth Commission and Recreation Division will present the 6th Annual Youth Job Fair
- Barnstable Town Clerk's office has nomination papers for the state primary
- Cape Cod Commission and the Town of Barnstable to conduct an assessment of the Low Lying Roads in Barnstable

Councilor Questions and Comments:

(Clark) Will the workshop on Low Lying Roads be recorded and put up on the website. (Ells) will check with the Cape Cod Commission and Communications Director Poyant.(Rapp Grassetti) Thanked the staff for the plowing of the roads in our snow event, do we have enough plow drivers? (Ells) we are in good position to respond, I will refer to Director Santos (Santos) we have a full roster of contractor and staff this year (Rapp Grassetti) how many is that? (Santos) 80 employees and 85 contractors. (Starr) regarding the sidewalks on Route 6A, Rep. Tim Whelan has pushed this along, can we be shovel ready for the sidewalks (Ells) Yes (Schnepp) Will we have a Citizen's Academy now that COVID-19 cases have diminished (Ells) We have been discussing bringing back the Citizen's Academy. (Schnepp) The funds you mentioned for Barnstable Youth Commission is that money earmarked for a particular program. (Ells) there is no restriction on those funds for the Youth Commission. (Bogan) With regard to the applicants to the LCP Committee, I will be working with Councilor Cullum and the Town Manager in reviewing all the applications (Schnepp) would you discuss the letter that you received from the Environmental Protection Agency (EPA) regarding the radiated water. (Ells) I was asked if I would like to see the comments the EPA made, which I have forwarded to you and President Levesque and will review with staff. (Levesque) will have Cynthia Lovell forward the letter to the rest of the Council.

Dan Santos, Director of Public Works provided an update on the Comprehensive Wastewater Management Plan (CWMP) utilizing a Power Point program.

Councilor Questions and Comments:

(Clark) What is the status with the Conservation Law Foundation (Nober) Would be happy to update the Council at a future meeting (Hebert) Strawberry Hill Road, put in one pipe and then came back to connect to the property lines, will they come back again (Santos) that would be done by the company you contract with to connect to the home (Hebert) No new pipes (Santos) Correct (Rapp Grassetti) Curious to see a draft of the plan (Ells) will forward the information to the Council, there are a number of projects we will be bringing forward for the American Rescue Plan Act (ARPA) funds.

Massachusetts Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) and Your Health Study Laurel Schaidler, PhD, Senior Scientist, Silent Spring Institute

Shared some slides of the Massachusetts PFAS and Health Study for the residents of Hyannis, being conducted by the Centers for Disease Control and Prevention (CDC). The water was

contaminated by the use of firefighting foams in Hyannis and in Ayer, MA.

Councilor Questions and Comments:

(Mendes) Could you tell us other occupations that could have exposure to PFAS (Schaidler) People who worked directly with the chemicals in making the products (Atsalis) Do all non-stick pans have PFAS in them (Schaidler) Great question, most do, they are safe if they say PFAS free, if you have a Teflon pan as long as they are not burned or flaking off, you can use them. (Clark) Is there a way that you could send a copy of the postcard, and brochure to be added to my newsletter, is there a link to list of the products that contain PFAS (Schaidler) Not aware of a complete listing, always hearing about other items such as climbing ropes, anti-fogging spray for glasses, guitar strings, I can give you a list of products that does not have PFAS! (Clark) Link that could help our residents it would be helpful. (Neary) Curious about the well testing at the Cape Cod Community College do you have any PFAS results (Schaidler) we only have the nitrate test results so far, don't have the PFAS results as yet. (Ells) we have links on our website relative to PFAS, we need to educate and implement the information on emerging contaminants.

ACT ON MINUTES:

Upon a motion duly made and seconded it was to accept the minutes of February 3, 2022 as presented.

VOTE: PASSES 10 YES, Roll Call: Atsalis, Bogan, Clark, Cullum, Hebert, Mendes, Neary, Schnepf, Starr, Steinhilber. 2 ABSTAIN (Rapp Grasseti, Levesque)

COMMUNICATIONS- from elected officials, boards, committees, and staff commission reports, correspondence and announcements:

(Cullum) Update on the Appointments Committee will have an application window of thirty (30) days that will be posted, also will be getting the word out through social media, check the web page for openings; thanked Elizabeth Jenkins for the LCP Committee discussion on WCAI radio. (Bogan) Acknowledge Cindy Cotton of Osterville Village Library for her nomination as a 'Change Maker Award," for commitment to the community during the pandemic. Thanks to Cindy Cotton. (Levesque) attended a presentation from Cape Cod Tech to the Brazilian Community, fabulous presentation reaching out to the community.

5 minute break

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 INTRO: 01/06/2022, 02/03/2022, 02/17/2022

Director of Planning and Development, Elizabeth Jenkins introduced Assistant Director, Kate Maldonado, and Senior Planner, James Kupler and continued with the rationale. Attorney Princi and the applicant Alan Cloutier followed up along with Matt Eddy regarding the traffic flow.
Open public hearing:

Felicia Penn asked the Council to remember two words "safe and legal," which are the words used for another regulatory agreement. Hyannis prohibits a drive-through except for banks, public safety is important; there is more traffic on this road. This road cannot handle any more prohibited drive-through locations. Hyannis is counting on you.
Close public hearing

Councilor questions and comments;

(Neary) sponsored this item, two years ago this parcel was in very poor condition, and construction of Walgreen's was built with a drive-through for prescription pick up. This went through the Planning and Zoning Committees. Future tenants were not identified for the second building. The property has enhanced the location it looks 10,000 times better. A Starbucks wants to go into the 2nd property and asked for an additional drive-through window. Studies were done and the modified agreement was accepted by the committees. This zoning prohibition should be reviewed, nine yes votes are necessary to pass this item. I will vote in favor. (Starr) for this project it is up to the Council to use good judgment whether to pass this item. This project is in the Hyannis Gateway Zoning District, can you have a drive-through by right in this district? (Jenkins) they are prohibited in this district. (Starr) so do we need a special permit to get one? (Jenkins) No (Starr) so we have to change the zoning or a waiver? (Jenkins) the regulatory agreement is a negotiating what is allowable on the site, this would be a deviation (Starr) prohibited in this zoning district, how do you put anything in without increasing traffic (Jenkins) that is the permitted use if the traffic would increase it does require a special permit by the Planning Board (Starr) how many trips will be generated (Jenkins) projected trip generation, overall 1,160, pass by trips 780 are considered for a total of 880 total land use. Traffic study states 780 already in the network (Jenkins) 46 percent of the traffic (Starr) level of service during the summer is rated an "F" in the summer (failing) conclusion of the traffic study does not mention this "F." This is a regional artery; the rotary is controlled by the Mass Department of Transportation (DOT), we cannot ask for mitigation. We know the rotary is a tough place to get through. There is nothing in the pipeline to improve the rotary. (Cloutier) asked to clarify the 880 trips is after the pass bys. We put a cap on it to make sure we were not under representing the impact. Difference between 880 and the 270, was Starbucks versus retail in that area. (Schnepp) Seem like other projects coming up to the rotaries there have been median strips put in place, is that an option (Jenkins) the road is owned by the state, we have done that to improve traffic and to mitigate them, to improve overall safety, the BJ's gas station is one that we mediated to prevent the left hand term. Route 28 is under the jurisdiction of the Mass DOT (Schnepp) can we prevent left turns into the location? (Jenkins) that was brought up by the Planning Board, to do a right in and a right out to deter left hand turns pork chop (Schnepp) went to the site to see the traffic pattern, it appears to be very confusing, will there be additional improvements to the site modifications. (Jenkins) site modification of signage, angled parking spaces, suggested bollards to prevent left hand turns (Schnepp) If I have to take a right hand turn back onto Route 28 and I want to go into Hyannis how do I do that. (Jenkins) you can go out around the Walgreen's and then right onto Barnstable Road to go around the rotary (Schnepp) I find this is a safety issue, and you won't be able to stop people from trying to turn left towards the rotary. Parking is fairly limited for Building B, there are spaces in the front the sides and the back (Eddy) sidewalks are provided. (Cullum) will the Starbucks in the Christmas Tree Plaza close when this one opens (Princi,) No, not that we are aware of (Cullum) what is the pork chop entry (Eddy) yes, other pork chop entry exit is at the CVS in Centerville, and Whole Food Store on Route 132. (Cullum) So we will have four Starbucks very close to each other. It matters, tired that we are constantly behind the eight ball for passing things, the questions are valid, process are in place for a reason. I like Starbucks, they are a good partner. We are trying to make things right for our community. (Hebert) I filed an appearance of a conflict of interest, one no on reported to me on the police report how many accidents happen around the rotary in that area? (Princi) the police did not weigh in, not aware that area has more or less than other locations (Hebert) population is aging in our town, lots of tourist, normal tension to go into the rotary traffic, confusion, the signage, it adds to the potential of serious accidents. (Rapp Grasseti) have a question for the Building Commissioner, this is already built with drive-through on the asphalt, when that was built was it permitted? (Bornstein) When we started to build during Covid-19, everyone wanted a drive thru, the Building

Department has a copy of the modified plans and it was approved. Five percent of Starbucks is mobile apps. (Rapp Grasseti) I cannot support this, going through the drive-through, you have people exiting the drive-through at Walgreen's both lanes between the two building one way, it is very confusing. Do we know who the tenant will be in building two? (Bornstein) The other tenant is a mattress store for which is low impact. (Rapp Grasseti) The applicant would not need to be before us if the tenant was simple retail. (Atsalis) went to the Walgreen's watched the traffic while parked in the parking lot. Starbucks that wants to go in will only go in there if there is a drive-through. Antiquated road system and the rotary are causing the problems not the drive-through locations. Starbucks at the Christmas Tree Plaza is very dangerous. We are making a big issue on a very small plaza, have faith in the Planning Department, I will support the project. Can you provide an example of multi road improvements (Kupter) Physical improvements, this is a unique site, roadways for all users, money to go to improvements for multi modal sidewalks, bicycles, walking, etc. (Atsalis) When looking at a project like this do you take public safety into account (Jenkins) Yes. (Mendes) Christmas Tree Plaza is a zoo, that place is dangerous. (Bogan) I share the concern for our processes, share the clunkiness, Whole Foods, I have gone left into it, no sign that says I can't; this is going to exacerbate a ridiculous traffic situation, cannot support that bad decision (Clark) Please make the meeting materials be available on the Town Council's website to be more retrievable. The 188 page document says draft on it, thought it was unusual. Honor the process set before us, in that report we have an "F" I can't see how this proposal benefits our community safely. (Starr) people talk about this stretch of road, a lot of people will go around the rotary twice. We are being asked to bypass the zoning that has been in place for 17 years. We are not voting on a Starbucks, we are voting in a coffee shop, which we need to change the zoning to add a coffee shop. (Bornstein) Address a few concerns; we are going to have traffic no matter what. We originally looked to do a Dunkin Donuts it has too much volume. All Starbucks can handle is 6 to 700 transaction on a given day. We have traffic that is not going away. We have worked with the town with the Planning Board; we have made it as good as we could have. (Starr) This land use will increase 1,516 trips a day, the Planning Board does not require the developer to go before Mass DOT (Jenkins) The Planning Board initially approved the curb cut, the applicant would have to go before the Mass DOT. (Starr) what is the Planning and Developments role in this, it has been in front of you for 13 months but you do not have an opinion (Jenkins) the Regulatory Agreement ordinance delegates negotiation, the decision makers are given as much information as possible to help you make the decision based on data (Steinhilber) the delay that was determined by two studies, it would be a shame to vote this down. (Hebert) This comes before us as a council to make a decision, my gut is telling me there is a safety issue here, if the Planning Department approves it makes my decision easier. (Levesque) The median by Wendy's was moved down to BJ's to mitigate safety; BJ's was willing to pay for extending the island for safety. In the regulatory the two bollards are to deter the left hand turn, but it will not stop them. Have the two curb cuts gone before the DOT, (Eddy) Minor modifications made to add a little more of a deterrent to stop left hand turns. Still waiting for the response (Levesque) so that has not happened yet (Eddy) Flexible bollard may scrape the side of your car. (Levesque) have not approved those additions to the curb cuts (Eddy) This is what the town wants to see for the curbs then we go before the DOT. (Levesque) was a big proponent of this development, I voted for the Walgreen's and a retail space. I believe the Starbucks makes it more cumbersome.

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:

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

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

SOUTHERLY by 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

WESTERLY by 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:

NORTHERLY by Route 28, a public way, as shown on a plan hereinafter mentioned, 150.00 feet;

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

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

WESTERLY by 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

VOTE: FAILS 5 YES: Atsalis, Cullum, Mendes, Neary, Steinhilber 7 NO: Bogan, Clark, Rapp Grassetto, Hebert, Levesque, Schnepf, Starr.

2022-134 ORDER PURSUANT TO M.G.L. CHAPTER 40A, SECTION 5 SUBMITTING TO THE PLANNING BOARD A PROPOSED ZONING AMENDMENT ESTABLISHING A TEMPORARY MORATORIUM ON THE CONSTRUCTION OF LARGE SCALE GROUND MOUNTED SOLAR PHOTOVOLTAIC SYSTEMS INTRO: 02/17/2022

ORDERED: That the attached two-page proposal to amend the Town’s Zoning Ordinance to

establish a Temporary Moratorium on the Construction of Large Scale Ground Mounted Solar Photovoltaic Systems” submitted to the Town Council on February 9, 2022 by 10 registered voters is hereby submitted to the Planning Board for review pursuant to the provisions of M.G.L. Chapter 40A, Section 5.

VOTE: to a the Planning Board PASSES 11 YES, I RECUSED (Bogan)

Roll Call: Atsalis, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnep, Starr, Steinhilber.

2022-135 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO: 02/17/2022

RESOLVED: That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Registrar of Voters:** Lisa Gage, Barnstable; Michael R. Curtis, Cotuit

VOTE: To a 2nd Reading on 3/3/2022-PASSES 12 YES

Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnep, Starr, Steinhilber.

2022-136 AMENDMENT TO THE ADMINISTRATIVE CODE TO DESIGNATE MEMBERS OF THE LOCAL COMPREHENSIVE PLANNING COMMITTEE AS SPECIAL MUNICIPAL EMPLOYEES FOR PURPOSES OF THE STATE CONFLICT OF INTEREST LAW INTRO: 02/17/2022

ORDERED: That the Town Council does hereby designate the members of the Local Comprehensive Planning Committee as special municipal employees for the purposes of G.L. c. 268A, the state conflict of interest law, and that the Code of the Town of Barnstable Section 241 Attachment 1 of the Administrative Code is hereby amended by adding the Local Comprehensive Planning Committee to the list of multiple member bodies so designated.

VOTE: To a 2nd Reading on 3/3/2022 –PASSES 12 YES

Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnep, Starr, Steinhilber.

2022-137 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$68,000 FOR THE PURPOSE OF ADDRESSING INFRASTRUCTURE AND CODE COMPLIANCE ISSUES IN SEVERAL BUILDINGS WITHIN THE GOLF OPERATIONS DIVISION INTRO: 02/17/2022

ORDERED: That the amount of **\$68,000** be appropriated for the purpose of remediating various facility infrastructure and code compliance issues at Hyannis Golf Course and Olde Barnstable Fairgrounds, and that to fund this appropriation, that the remaining available balance of \$27,000 in Town Council Order 2018-072 and the remaining available balance of \$12,000 in Town Council Order 2018-073 be transferred, and that \$29,000 be provided from the Golf Enterprise Fund reserves, and the Town Manager is authorized to contract for and expend the appropriation for the stated purpose.

VOTE: To a Public Hearing on 3/3/2022-PASSES 12 YES

Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnep, Starr, Steinhilber.

VOTE: ADJOURNMENT:

Upon a motion duly made and seconded it was

VOTED TO ADJOURN:

VOTE: PASSES 12 YES

Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grasseti, Hebert, Mendes, Levesque, Neary, Schnepf, Starr, Steinhilber.

Adjourned at 10:50 PM

Respectfully submitted,

Ann M Quirk
Town Clerk/Town of Barnstable

NEXT MEETING: March 3, 2022

Exhibits:

A Town Manager update