



**Town of Barnstable**  
Planning & Development Department  
Staff Report



**Subdivision Modification No. 825 – 74 Summerbell Avenue/Spring Avenue**

**Date:** August 23, 2017  
**To:** Mary Barry, Chair, Planning Board  
**From:** Elizabeth S. Jenkins, Planning & Development Director

**Applicant:** John & Sheree Kay  
(with assent of Bristol County Savings Bank)  
**Property:** 74 Summerbell Avenue & Spring Avenue  
**Map/Parcel:** 226/064  
**Zoning:** Craigville Beach District– CV Craigville Village Neighborhood

### Update

The Board held a public hearing on an identical subdivision modification on June 26, 2017. At that hearing, concern was expressed that there was an error in the requisite public notices. Upon mutual agreement of all parties this request was re-advertised. Correspondence from the concerned party has been received and is attached.

### Summary

The subject property is located in the Christian Camp Meeting Association area of Centerville. The proposed rescission and lot reconfiguration is shown on a plan entitled "Definitive Plan of 74 Summerbell Avenue, Centerville, MA", dated February 21, 2017.

This application proposes to eliminate a 20-foot portion of Spring Avenue and incorporate that land with an abutting lot at 74 Summerbell Avenue. That lot is an approximately 3,050 square foot lot developed with a 1,424 sq.ft (2,976 gross sq.ft) dwelling constructed in 1875. Spring Avenue is an undeveloped way, with the exception of a gravel pedestrian pathway.

The subject way was created and delineated by an 1872 Subdivision Plan recorded at the Barnstable Registry of Deeds in Plan Book 24 Page 49 (also Plan Book 24 Page 1). That pre-Subdivision Control plan created some 271 "cottage" lots most measuring 30 by 60 feet.

The Application was submitted by John and Sheree Kay with the assent of Bristol County Savings Bank.

A Definitive Subdivision Application (Form D) was re-filed on May 16, 2017. Notifications and were transmitted to affected public agencies for review and comments as required under Section 801-24.E and noticed as required by the Subdivision Rules and Regulations. No responses or public comments were received in response.

### **Draft Findings**

Based on the information contained in the application and presented at the public hearing, the Board may wish to consider the following findings of fact:

1. The Application was submitted by John and Sheree Kay as owners of 74 Summerbell Avenue, with consent of the Bristol County Savings Bank. The Kay's title to the property is recorded in Deed Book 29342 Page 108.
2. This application proposes to eliminate a 20-foot portion of Spring Avenue and incorporate that land with an abutting lot at 74 Summerbell Avenue.
3. The plan for this subdivision is entitled "Definitive Plan of 74 Summerbell Avenue, Centerville, MA" prepared for John & Sheree Kay drawn and stamped by Down Cape Engineering, Inc., dated February 21, 2017. The plan proposes to eliminate a 20-foot portion of Spring Avenue and incorporate that land with an abutting lot at 74 Summerbell Avenue.
4. The subject lots and ways were created prior to subdivision control and are shown on an 1872 Subdivision Plan entitled "Perry's Plan of Cottage lots No 1 Christian Camp Grounds at Centerville Barnstable Co. Mass" recorded at the Barnstable Registry of Deeds in Plan Book 24 page 1 (a copy of which is also recorded in Plan Book 24 page 49. The subject lots are shown on that plan as Lot Nos. 142 and the southern half of 145.
5. The fact that Spring Street is shown on official town maps and that the plan proposes a change in the layout of the Ways triggers Subdivision Control Law pursuant to MGL Chapter 41 Section 81-Q.
6. There is no new roadway or utility construction or improvements being proposed by this subdivision plan and the plan does not propose to create any new developable lots.

### **Draft Motion**

Based on the information presented and findings of the Board, I move to approve the subdivision modification application No. 825 and to endorse the plan entitled "Definitive Plan of 74 Summerbell Avenue, Centerville, MA prepared for John & Sheree Kay" dated February 21, 2017, drawn and stamped by Down Cape Engineering, Inc upon the expiration of the appeal period of this decision.

**Herrand, Karen**

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**From:** Jenkins, Elizabeth  
**Sent:** Wednesday, August 16, 2017 7:22 PM  
**To:** Herrand, Karen  
**Subject:** FW: Subdivision 824-Recind a 20 Foot Portion of Spring Ave.-August 28, 2017

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**From:** Jim Lane [mailto:jarthurlane@hotmail.com]  
**Sent:** Wednesday, August 16, 2017 5:55 PM  
**To:** Jenkins, Elizabeth  
**Subject:** Subdivision 824-Recind a 20 Foot Portion of Spring Ave.-August 28, 2017

Dear Ms. Jenkins,

I appreciate your help in arranging for numerous Craigville Village neighbors to receive the Notice for the above subject Public Hearing. Our CCMA Attorney reviewed the plan, the June 16, 2017 Staff Report, and your Aug. 10, 2017 Notice of Hearing, and takes no exception. Neither our Attorney nor I will be available to attend the Aug. 28, 2017 Hearing.

Thank you for your efforts in allowing a continuance in order that the process could be corrected. The Form D Application and June 26th Agenda were not specific concerning the proposal for road rescission. It is only the 20' that will be impacted, and that will leave our 10' wide community pathway that has existed since 1872 undisturbed.

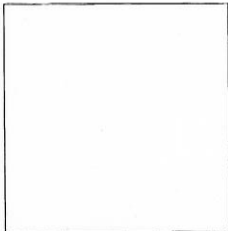
Craigville Village neighbors are concerned because they use Spring Avenue pathway and want to make sure it stays open for public use. Neighbors abutting Spring Avenue need to respect the boundaries of this historic pathway.

Please add this email to the record concerning this matter.

Thank you.

Jim Lane  
President-CCMA





FOR REGISTRY USE

### BARNSTABLE PLANNING BOARD

APPROVAL UNDER THE SUBDIVISION  
CONTROL LAW IS REQUIRED

DATE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### ZONING SUMMARY

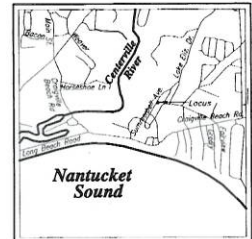
ZONING DISTRICT: CBD (CV) DISTRICT

MIN. LOT SIZE 87,120 S.F.  
MIN. LOT FRONTAGE 75'  
MIN. FRONT SETBACK 15'  
MIN. SIDE SETBACK 10'  
MIN. REAR SETBACK 10'  
MAX. BUILDING HEIGHT 30'

SITE IS LOCATED WITHIN THE AQUIFER  
PROTECTION OVERLAY DISTRICT

### NOTE:

THIS PLAN HAS BEEN PREPARED FOR THE PURPOSE OF  
RESCINDING A PORTION OF SPRING AVENUE AS SHOWN ON  
PLAN BOOK 24 PAGE 49. PORTION OF SPRING AVENUE  
WAS ABANDONED AND DEEDED TO LOCUS WITH DB 1228  
PG 194 THIS PLAN FORMALIZES THIS PROCESS.



### LOCUS MAP

NOT TO SCALE

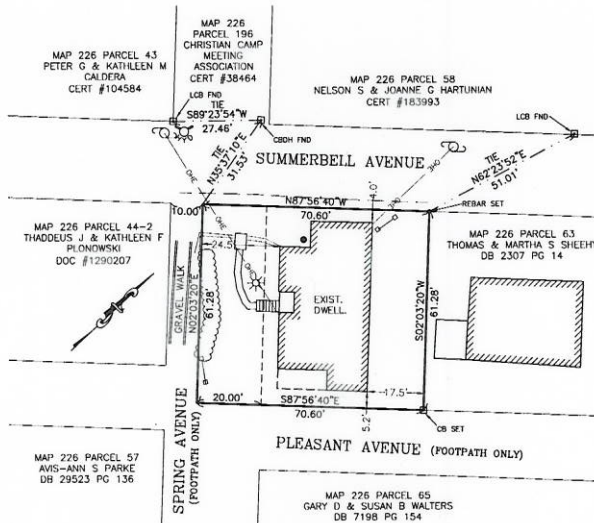
ASSESSORS MAP 226 PARCEL 64

### REFERENCES

DEED BOOK 29342 PAGE 108  
PLAN BOOK 24 PAGE 49

### OWNER OF RECORD

JOHN F JR & SHEREE P KAY  
40200 PASEO SERENO  
TEMECULA, CA 92591



I, ANNE QUIRK CLERK OF THE TOWN OF BARNSTABLE, CERTIFY THAT  
THE NOTICE OF APPROVAL OF THIS PLAN WAS RECEIVED AND RECORDED  
IN THIS OFFICE AND THAT NO NOTICE OF APPEAL WAS RECEIVED DURING  
THE TWENTY DAYS NEXT FOLLOWING THE RECEIPT AND RECORDING OF  
SAID NOTICE.

DATE: \_\_\_\_\_ TOWN CLERK

Scale: 1" = 20'  
0 10 20 30 40 50 FEET

I CERTIFY THAT THIS PLAN WAS MADE IN  
ACCORDANCE WITH REGISTRY OF DEEDS  
REGULATIONS EFFECTIVE JANUARY 1,  
1976, AND AS AMENDED JANUARY 7,  
1986.



DATE: 2-21-2017  
DANIEL A. OJALA, P.L.S.

### DEFINITIVE PLAN OF 74 SUMMERBELL AVENUE CENTERVILLE, MA

PREPARED FOR  
JOHN & SHEREE KAY

DATE: FEB. 21, 2017

down cape engineering, inc.  
civil engineers  
land surveyors  
939 Main Street (Rte 6A)  
YARMOUTHPORT MA 02675  
15-294 BOOKER.DWG

DCE #15-294

TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS

FORM D

APPLICATION FOR MODIFICATION OR RECISION OF DEFINITIVE PLAN 2017 MAY 16 AM 11:28

Date: 5 / 10 / 2017

Subdivision #: \_\_\_\_\_

To the Planning Board in the Town of Barnstable:

The undersigned authorized applicant(s) or owner(s) of all the land shown on the accompanying approved Definitive Subdivision plan located and described as follows:

Plan # \_\_\_\_\_ Title: Definitive Plan of 74 Summerbell Avenue

BARNSTABLE TOWN CLERK

Plan Date: 2 / 21 / 2017

Date of Planning Board Approval: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Assessor's Map and Parcel Number(s): 226-64

Zoning: CBD (CV) Area: 4,326 Number of Lots: 1

Drawn By: Down Cape Engineering, Inc

hereby submits this Application for a Modification ☒ or Recision ☒ of an Approved Definitive Subdivision Plan.

The Modification is described as follows: Rescind a portion of Spring Avenue. Layout to become part of Locus. Rights released and Portion of layout deeded to locus with DB1228/194. This filing is to formally rescind the road with a public hearing process

If a proposed Modification will result in changes to the Definitive Plan, the plan submission requirements for a Definitive Plan shall be followed and a Form C Checklist must also be completed and attached.

List all lots which have been conveyed: \_\_\_\_\_

\* Attach a list of lot owners and their addresses.

\*\* Attach a list of all abutters and their addresses as they appear on the most recent tax list.

List all mortgage holders of the land by lot:

Bristol County Savings Bank see attached authorization for rescission.

BARNSTABLE CODE

Permission of the owners affected by any change to the subdivision plan and of the mortgage holders must be obtained.

To the best of my knowledge the information submitted herewith is complete and accurate.

John F. Kay, Jr.  
Signature of Owner Address Telephone  
JOHN F. KAY, JR., 74 SUMMERBELL AVE, CENTERVILLE, MA  
Print Name of Owner

Sherrice P. F. Kay  
Signature of Owner Address Telephone  
Sherrice P. F. Kay  
Print Name of Owner

Daniel A. Ojala  
Signature of Authorized Applicant Address Telephone  
(508) 362-4541

DANIEL A. OJALA PE, PLS down cape engineering, inc  
Print Name of Applicant

Applicant's Authorization: Engineer / Surveyor for owners, signed above

Received by Town Clerk:

Date: \_\_\_/\_\_\_/\_\_\_ Time: \_\_\_ Fee: \_\_\_

Signature: \_\_\_\_\_

Please make check payable to the Town of Barnstable.

\_\_\_ Notification to the Town Clerk, date: \_\_\_/\_\_\_/\_\_\_

\_\_\_ Submitted to the Board of Health, date: \_\_\_/\_\_\_/\_\_\_



BARNSTABLE CODE

Permission of the owners affected by any change to the subdivision plan and of the mortgage holders must be obtained.

To the best of my knowledge the information submitted herewith is complete and accurate.

Signature of Owner \_\_\_\_\_ Address \_\_\_\_\_ Telephone \_\_\_\_\_

Print Name of Owner \_\_\_\_\_

Signature of Owner \_\_\_\_\_ Address \_\_\_\_\_ Telephone \_\_\_\_\_

Print Name of Owner \_\_\_\_\_

Signature of Authorized Applicant \_\_\_\_\_ Address \_\_\_\_\_ Telephone \_\_\_\_\_

Print Name of Applicant \_\_\_\_\_

Applicant's Authorization: \_\_\_\_\_

Received by Town Clerk:

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Time: \_\_\_\_\_ Fee: \_\_\_\_\_

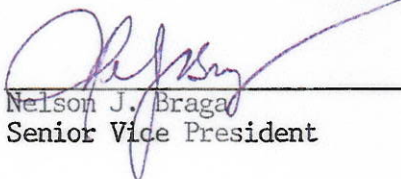
Signature: \_\_\_\_\_

*Please make check payable to the Town of Barnstable.*

\_\_\_\_ Notification to the Town Clerk, date: \_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_ Submitted to the Board of Health, date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Bristol County Savings Bank has no objection to the formal rescission of the portion of the right of way providing that it is within locus

  
\_\_\_\_\_  
Nelson J. Braga  
Senior Vice President



**Town of Barnstable**  
**Planning & Development Department**  
[www.townofbarnstable.us/planninganddevelopment](http://www.townofbarnstable.us/planninganddevelopment)



**Memorandum**

**TO:** Mary Barry, Planning Board Chair  
**FROM:** Elizabeth Jenkins, Planning & Development Director  
**DATE:** August 23, 2017  
**RE:** **Order No. 2017-159 - Petition to Amend Zoning Ordinance to Prohibit Group Homes**

On May 18, 2017 a proposal to amend the zoning ordinance was submitted to the Town Council by 12 registered voters in the Town. The attached three-page proposal seeks to “adopt an amendment to zoning by-laws prohibiting the establishment of Group Homes in a Single Family (hereinafter SF) Residential Districts”.

Massachusetts General Law Chapter 40A Section 5 provides procedures for adoption and amendment of municipal zoning ordinances. This section indicates that adoption of zoning amendments may be initiated by the submission of a proposed zoning ordinance to the city council by request of ten registered voters.

Proposed zoning ordinance, whether through government officers or through petition as here, must come forward in a form suitable for adoption into the zoning ordinance. The text of the proposed amendment submitted by the petitioners raises concerns as to form as it does not cite a specific section of the ordinance to be amended. It is unclear how the text of the zoning ordinance would be amended based on the proposal, specifically what districts would be impacted and what specific sections of the ordinance would be amended. Further, the phrase “Group Homes” is not defined either in the petition or in the current zoning ordinance.

According to the petitioners, this amendment was precipitated by the purchase and operation of a property at 95 Chase Street, Hyannis by the group Homeless Not Hopeless. This property is developed with a single-family home and is zoned Residence B. Homeless Not Hopeless, Inc. is a Massachusetts Chapter 180 non-profit corporation whose mission<sup>1</sup> is to assist the homeless in attaining a “sustainable, satisfactory lifestyle” through the provision of short-term housing and “access to the most modern technology and methods possible for pursuing employment, networking, obtaining housing, and gaining access...to resources specific to client needs.”

Massachusetts General Law Chapter 40A Section 3 (the “Dover Amendment”) states: “[no] zoning ordinance or bylaw [shall] prohibit, regulate or restrict the use of land or structures for religious

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<sup>1</sup> According to their articles of incorporation.



purposes or for educational purposes on land owned or leased by...[religious and governmental entities] and a nonprofit educational corporation.” The zoning exemption applies to primary and dominant educational uses. Educational uses have been defined by the Courts “according to the common and approved usages of the language”<sup>2</sup> recognizing that not all educational activities may be “within traditional areas of academic instruction” or taught by certified instructors<sup>3</sup> and that the activities may serve “nontraditional communities of learners.”<sup>4</sup> Additionally, G.L. c. 40A §3 also includes a provision which limits the imposition of local regulations on congregate living arrangements among non-related persons with disabilities that are not imposed upon families and groups of similar size or unrelated persons.

The Board should be aware that this proposal raises concerns about consistency with state law, specifically the Dover Amendment referenced above. Further, there is concern about potential conflict with the objectives of the ordinance and protections provided by the Federal Fair Housing Act and the Americans with Disabilities Act.

For the reasons outlined above, staff suggests that the Board should not recommend the ordinance in its current form. If the Board determines it can legally reach the merits, the Board has the option to recommend amendments to the proposal or to work with the petitioners to bring the ordinance forward in a suitable form.

The Planning Board is strongly encouraged to request assistance from the Town Attorney’s Office in evaluating these considerations prior to taking any action to further the substance of this petition.

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<sup>2</sup> *Moulton v. Building Inspector of Milton*, 312 Mass. 145, 148 (1942), quoting *Commonwealth v. S.S. Kresge Co.*, 267 Mass. 145, 148 (1929).

<sup>3</sup> *Cummington School of Arts, Inc. v. Assessors of Cummington*, 373 Mass. 597 (1977)

<sup>4</sup> *Regis College v. Town of Weston* 426 Mass. 280, 284-293 (2012)

**B. NEW BUSINESS (Refer to Planning Board)**

**BARNSTABLE TOWN COUNCIL**

**ITEM # 2017-159  
INTRO: 06/01/17**

**2017-159 ORDER, PURSUANT TO M.G.L. CHAPTER 40A SECTION 5, SUBMITTING  
PROPOSED ZONING AMENDMENT PROHIBITING THE ESTABLISHMENT  
OF GROUP HOMES TO THE PLANNING BOARD**

**ORDERED:** That the attached three page proposal to “adopt an amendment to zoning by-laws prohibiting the establishment of Group Homes in a Single Family (hereinafter SF) Residential Districts” submitted to the Town Council on May 18, 2017 by 12 registered voters is hereby submitted for review to the Planning Board pursuant to provisions M.G.L. Chapter 40A Section 5.

**SPONSOR:**

DATE	ACTION TAKEN
_____	_____
_____	_____

Petition to Adopt a Zoning Ordinance and By-law Prohibiting Group Homes (hereinafter, GH) in Residential Zone Areas.

WE THE UNDERSIGNED, owners of land on or near Chase Street, Hyannis, are negatively affected by the establishment of a GH seeking to be located at 95 Chase Street, Hyannis by Homeless not Helpless, Inc. (hereinafter, HnH) which has a current Principal Place of Business Address located at 119 Baxter Rd., Hyannis, 02601.

Petitioners, pursuant to M.G.L. Chapter 40A, Section 5, ask the Planning Board and Town Council to adopt an amendment to zoning and town by-laws prohibiting the establishment of GH in a Single Family (hereinafter SF) Residential Districts.

We cite the following reasons for our concern and dedicated opposition:

1. The project proposed by HnH is a GH proposed in a SF zone.
2. AGH is defined as: "A home where a number of unrelated people in need of care, support or supervision can live together."<sup>1</sup>
3. The multiple Projects of HnH have been improperly classified as a property for educational purposes and HnH has been claiming illegally exemption under M.G.L. 40A, Section 3, from local zoning regulations.
4. HnH has been blanketly labeled as educational and review needs to be considered and have them reclassified as a GH.
5. The Growth Incentive Zone (hereinafter GIZ) should be utilized for the HnH organization.<sup>2</sup>
6. The GIZ makes up 75% of Hyannis and the GH project proposed by HnH should be sited there. (See chart attached).
7. Chase Street is not within the GIZ.
8. Chase Street is a residential neighborhood which is populated with seniors, children, retirees, working single people, families in general and working families.
9. This proposed GH is a business and not a residential home.
10. The proposed GH will house some nine individuals, one as an on-site manager and eight persons, which we are told are recovering addicts and some formerly incarcerated individuals.
11. HnH requires of their renters, non related to one another, to each pay a monthly fee with penalties, which categorizes this as GH as well as a business property. It therefore belongs in GIZ zone.<sup>3</sup>
12. The town has a by-law in which no more than three unrelated persons may not rent rooms in any home in Barnstable and this home would be illegally run and in contradiction to the established by-law.

<sup>1</sup> <https://www.merriam-webster.com/dictionary/grouphome>

<sup>2</sup> <http://www.town.barnstable.ma.us/ComprehensivePlanning/051114-V01-FINAL-GIZ%20application.pdf>  
the Cape Cod Commission requesting the designation of a Growth Incentive Zone, allowing more local control by raising Development Regional Impact thresholds. This streamlined regulatory approach, in conjunction with recently approved zoning changes and an increased capacity to manage growth by the Town will provide a clear incentive for those interested in investing in Downtown Hyannis. This Growth Incentive Zone will allow the Town to direct opportunity to the center of the Village of Hyannis by supporting village-scale density and mixed use zoning furthering a town-wide plan to create a healthy community and a sustainable economy. Downtown Hyannis is an area of Barnstable with existing growth infrastructure and capacity but many underperforming properties. This plan maximizes the infrastructure advantage while minimizing the negative impacts of growth. It highlights the potential for people to live and work on a smaller environmental footprint reinforced by steps taken to offset growth in areas of Town where development threatens those human and environmental measures that determine our quality of life Hyannis is a Village important to the commercial and marine history of Cape Cod and the region.


<sup>3</sup> <http://homelesstohopeless.org/preliminary-application/>

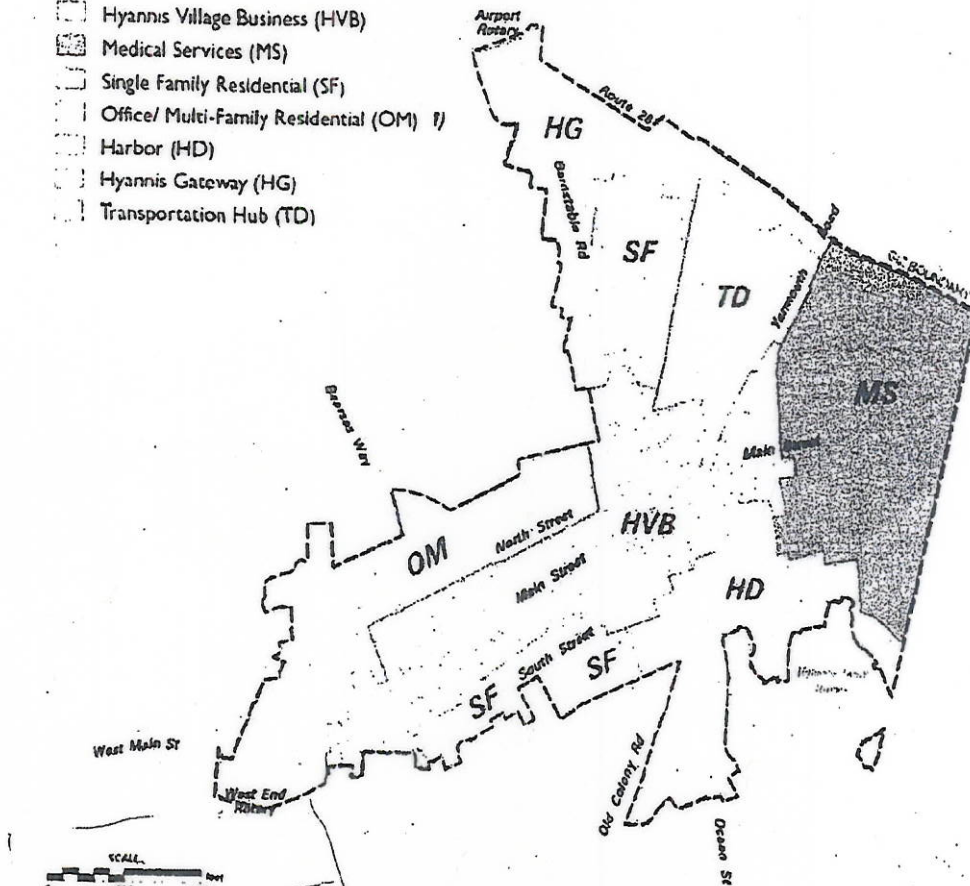


13. It is discriminatory to place a 3rd group home in violation of existing town by laws in the same precinct, Precinct (13).
14. HnH has already 3 other homes situated each within one mile radius of the proposed home at 95 Chase Street.<sup>4</sup>
15. Allowance of another GH in a SF zone will have a negative effect and diminish home values within the Chase Street neighborhood.
16. The owners of homes within the Chase Street neighborhood own year round homes, year round rental homes, and have summer rental homes that all stimulate the Hyannis Economy and they have a legal right not be discriminated against due to their location.
17. It is incumbent upon this council as a governing body to amend the town by-law that regulates these GH to consider making a change pursuant to M.G.L. 40A, Section 5.

1. SIGNATURE [Signature] ADDRESS 47 Redwood Ln
  2. SIGNATURE Laura Wentzel ADDRESS 7 Harvard St.
  3. SIGNATURE [Signature] ADDRESS 2 Harvard St
  4. SIGNATURE [Signature] ADDRESS 47 Redwood Ln
  5. SIGNATURE [Signature] ADDRESS 52 Harvard St
  6. SIGNATURE [Signature] ADDRESS 63 Harvard St.
  7. SIGNATURE [Signature] ADDRESS 402 South St
  8. SIGNATURE [Signature] ADDRESS 402 South Street
  9. SIGNATURE [Signature] ADDRESS 140 Chase St Hyannis, MA
  10. SIGNATURE [Signature] ADDRESS 180 Old Cocoa Rd Hyannis
- [Signature] 27 Foster Road, Hyannis
- Kathleen M. Manning 27 Foster Road, Hyannis

<sup>4</sup> 22 Main Street, Hyannis, 44 Newton Street, Hyannis, 119 Baxter Road, Hyannis.

-  Hyannis Village Business (HVB)
-  Medical Services (MS)
-  Single Family Residential (SF)
-  Office/ Multi-Family Residential (OM) ?
-  Harbor (HD)
-  Hyannis Gateway (HG)
-  Transportation Hub (TD)



turn. This problem is illustrated by the fact that, despite an increase in Hyannis' overall median income between 1990

**Map-1 Proposed GIZ Boundary**



# Town of Barnstable Planning Board



[www.town.barnstable.ma.us/PlanningBoard](http://www.town.barnstable.ma.us/PlanningBoard)

## Board Members

Mary Barry – Chair   Stephen Helman – Vice Chair   Steven Costello – Clerk   Paul R. Curley   David Munsell   Fred LaSelva

John Norman – Town Council Liaison

## Planning & Development Dept. Staff Support

Elizabeth Jenkins, AICP, Director

Anna Brigham, Principal Planner

Karen Herrand – Principal Assistant - [karen.herrand@town.barnstable.ma.us](mailto:karen.herrand@town.barnstable.ma.us)

## Town of Barnstable PLANNING BOARD Minutes August 14, 2017

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

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

**Notice of Recording:** This meeting is being recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. The Chair must inquire whether anyone else is taping this meeting and to please make their presence known.

### **Approval Not Required Plans:**

**11, 25, 30 & 34 Gardiner Lane and 617 & 633 Main Street and 106 East Bay Road, Osterville,** Nancy B. Samiljan, Trustee of Gardiner Lane and Main Street Realty Trusts and Niraj and Jill Shah, Map 141 Parcels 001, 104-002, 104-003, 104-004, 104-005, 105-001, 123-002 have submitted a plan entitled "Approval Not Required Plan of Land for Samiljan and Shah Various Lots on East Bay Rd., Main St., & Gardiner Ln., Osterville, MA – Plan Showing Re-Division of Lots Shown on P.B. 507, Pg. 2 & P.B. 563, pg. 44" dated July 31, 2017 drawn and stamped by John McElwee, P.L.S.

John McElwee of Coastal Engineering Co., Inc. in attendance. He explains that they are taking 7 lots and recreating them into 4 lots. The lots have frontage.

David Munsell asks for clarification about houses on each lot. Makes reference to the plan, see Exhibit A, reference to the two outlined plans.

Elizabeth Jenkins explains the existing and proposed colored plans that staff prepared. See Exhibit A (2 outlined plans). ANR does not have to meet zoning, just frontage and egress/access. This is to create a larger plan to restore this estate property.



**Chair Mary Barry entertains a motion to endorse/approve this ANR plan, moved by Stephen Helman, seconded by Paul Curley. David Munsell abstains. The vote is: Mary Barry, Stephen Helman, Paul Curley and Fred LaSelva yes. The vote passes.**

**Subdivisions:**

Subdivision No. 657. Request by Attorney Eliza Cox to release covenant for lots, 6, 7, 8 and 9.  
Address: 90, 110, & 130 Merchants Way and 20 Business Lane, Barnstable.

This item will be postponed to August 28, 2017, hearing per request from Attorney Eliza Cox.

**Zoning Amendments:**

Town Council Item No. 2018-014 Amending Chapter 240 of the Zoning Ordinance to Limit Land Clearance within the Ground Mounted Solar Photovoltaic Overlay District

Elizabeth Jenkins explains the proposed zoning amendment to the Board and history. Two different locations/land clearance regarding the installation of solar arrays.

There are currently two in place: The Transfer/Landfill in Marstons Mills and a joint project at the airport. There is a third at the stump dump site, but has not gone forward yet.

Previously Cotuit Water had proposed a solar array project, whereby there was considerable concern about this use/ wellhead protection areas and large amount of land to be clear cut. This did not move forward.

In response this is being presented, and suggestion to amend for zone 1. Land clearing within 800 ft. with primary radius around public water supply areas.

Reference to the proposed amendment, Exhibit B, and reference to small mapping showing zone 1 areas.

Steven Costello asks about the Cape Cod Community College solar array.

Elizabeth Jenkins replies that this was permitted with the use of the college, smaller accessory installation instead of large scale. This is a standalone utility project.

Fred LaSelva asks what was the final approval regarding the Cotuit project. Why /what was the driving force with the Cotuit project?

Elizabeth Jenkins answers that the project was withdrawn due to the concerns that were raised at this proposal at Town Council hearing. The Water District was looking to generate revenue, water tower to be replaced and to supplement their resources. Cost and benefit debate at Town Council with this.

**Paul Curley moves to open the Public Hearing.**

**Don Campbell, Water Board Commissioner for Cotuit Fire District's Water Dept.** He has just been notified about this. The Town Councilor did not mention this to him and there was no mention in Civic Association notes about this proposed zoning change/amendment. States that they had previously submitted project/process was for a revenue source, people having trouble paying bills. Town Council did not pass it through. So now we are requesting to have more time in order to review this. This proposal would restrict the use, and this will make it so it can never happen. This would not give us a choice. DEP says that they can do within the zone, zone 1, they had no problem.

Also, other water districts don't know about it. He would like to talk to other Commissioners about this.

Chair Mary Barry affirms that when it came back in the past the Planning Board did support it and they did recommend it to Town Council.

David Munsell also states that it did come to them previously.

Elizabeth Jenkins explains what happened, we had reached out to the 5 water districts and got their input about solar array installation, different feedback from everyone. A proposal to rezone does not require notice to abutters.

David Munsell confirms this and no opposition at that time. Trees were cut down and then a lot of people were concerned at that point.

Elizabeth Jenkins clarifies that this legislation (proposed amendment) would prohibit associated land clearing. This overlay is applicable to large scale installations – primary land uses, accessory uses would not be regulated with this.

Mark Robinson, resident of Cotuit. The original process Town did was for large scale land, any other would be spot zoning. Town of Barnstable has been opposed to spot zoning, what's to stop all from doing this type of spot zoning. This amendment should be vetted properly. Forest areas purify water, clear cutting for anything is the worst thing that can be done. He is in favor of this amendment.

Lee Connelly- Wild from Cotuit in attendance. She is in support of this amendment.

Janet Milkman, Executive Director of the Barnstable Land Trust. They were here previously with the Cotuit project. They were in opposition to this project. She is in support of this proposed amendment.

She mentions comments that a Barnstable Land Trust Board Member made:

Forests on the Cape aren't as extensive as we remember, but it is important for maintaining natural forests which are a filter, and they help with pollution, also a future for clean water. Removing large tracts of forests for this doesn't make sense. We are burdened with enormous expenses to keep water clean.

Kristin Valiga of Cotuit in attendance. She is in support of this amendment.

Norm Wild of Cotuit in attendance. He is in support of this amendment.

Patty Kenny of Cotuit in attendance. She is in support of this amendment.

Ken Ridley of Cotuit in attendance. He is in support of this amendment.

Stephen Helman reads into record letter received from Jessica Rapp Grassetti, dated August 14, 2017: Exhibit C.

*Dear Madam Chair and members of the Planning Board,*

*As I am unable to attend tonight's meeting, please accept this letter to be included into public record for item 2018-014.*

*The Ground Mounted Solar Photovoltaic Overlay District was adopted in 2010 to promote the creation of new large-scale ground-mounted solar installations. Areas included in the Overlay District were chosen to minimize impacts on scenic and natural resources; site selection was limited to areas that had been previously disturbed such as the capped landfill and the Municipal airport.*



*Given the recent proposal by Borrego Solar, on authority of the Cotuit Water District, to clear cut over 30 acres of forested bio habitat land that was to include acreage within a Zone 1 well head, I felt it necessary to offer an amendment to the GMSPOD zoning so as to prevent the type of development in the future. For the record, Town Council's hearing on item 2017-051 received public input from over a hundred residents of not only Cotuit but also the entire Town and the Town council withdrew the item. As presented, 2018-014 would adopt additional standards to minimize the impacts of new ground-mounted solar installations on natural resources and establish stronger protections for the public drinking water supply. The amendment would limit clear cutting or installation of solar projects within 800 feet of a DEP Zone I, tripling the radius of protection for any public drinking water well. The amendment would also prohibit land clearance of greater than two acres to reduce potential impacts to land with habitat and scenic value.*

*As sponsor of the proposed amendment to the GMSPOD I am requesting your full support of these critical amendments necessary to assure the protection of our water supply and water quality.*

*Thank you for your thoughtful consideration.*

*Jessica Rapp Grassetti*

Steven Costello comments that when the Planning Board met previously about the Cotuit project, there wasn't a lot of outcry, until some land clearance had happened. Two things stick in his mind regarding ownership of the land, the water districts are their own entities and ultimately the citizens of Cotuit and the payment of the water bills, that's the impact, he understands that. Can other districts do land swap possibly or take credits elsewhere. Any project going forward would have public input regardless.

David Munsell comments that Planning Board did not have any objections with the Cotuit proposal. It made sense at that time. He states that he would support this amendment now.

Paul Curley states that he would support this amendment.

Fred LaSelva states that he would support this amendment.

Chair Mary Barry comments that other water districts were in favor of this previously when the Cotuit project came before the Planning Board. It seemed that the water districts would want what's best.

Lee Connolly-Wild comments (second comment) that she did not have any notification re the information about the Planning Board's meeting previously for the Cotuit project. This is a water quality issue.

Don Campbell comments that he doesn't disagree with any of the comments tonight, he is simply stating that there is already a mechanism in place and a right to say no, this proposed amendment would make it so that it can never happen in the future. We don't know what will happen in the future. This effects every water district in this town.

Chair Mary Barry clarifies/confirms that the Cotuit project has been withdrawn.

Fred LaSelva comments that he sees this amendment will protect citizens for and in the future to have safe water. This allows a stop gap/rule that everyone will have to follow.

**Paul Curley moves to close the Public Hearing, seconded by Mary Barry, so voted unanimously.**

**Fred LaSelva makes a motion to recommend this proposed zoning amendment to Town Council, seconded by Paul Curley. Steven Costello is opposed. Five in favor and one opposed.**



### **Special Permits:**

#### **Special Permit Application No. 2017-003 – Modification to Zoning Board of Appeals (ZBA) Appeal/Decision No. 2005-48 and 2001-107, of ZBA Special Permit No. 1994-56**

259 North Street LLC/Stuart Bornstein seek to modify ZBA Decision No. 2005-48, to remove the commercial use restriction, and allow for residential apartments, 14 units. The subject property is addressed 259 North Street, Hyannis, MA and is shown on Assessor's Map 308 Parcel 073.02. Property is located in the HVB District – Hyannis Village Business District. *Continued from June 26, 2017*

Stuart Bornstein in attendance. He gives a recap of the project. This is a conversion of an empty office Bldg. to fourteen condominiums. The overnight parking issue had to be dealt with and the matter was continued. This has been resolved and overnight parking is allowed. Also added one affordable two bedroom unit, thirteen market rate and one affordable.

#### **Chair Mary Barry opens the Public Hearing.**

Fred LaSelva asks if the parking issue has been resolved?

Elizabeth Jenkins explains, refers to Staff Report, Exhibit D. There is a non exclusive easement for Town property. There are enough parking spaces on site to satisfy the project. Recommendation is that it is subject to some discussion regarding recommendation of a condition that outlines enough parking spaces per building permit process.

David Munsell is in favor.

Stephen Helman clarifies.

Paul Curley is in favor.

#### **Chair Mary Barry entertains a motion to close the Public Hearing, moved by Stephen Helman, seconded by Paul Curley.**

Steven Costello reads into record: Proposed Special Permit Revised Findings and Conditions, see Exhibit D.

1. Stuart Bornstein, 259 North Street, LP is seeking to modify Special Permit No. 1994-56, as modified, to allow for conversion of the northern office building to 14 residential condominium units.
2. Special Permit Nos. 1994-56, 2001-107 and 1995-56 carry conditions limiting the use of the property for non-office and residential uses, which the Applicant seeks to have lifted.
3. The subject property is addressed 259 North Street, Hyannis, MA and is shown on Assessor's Map 308 as Parcel 073-002. It is in the HVB - Hyannis Village Business District, which permits mixed use development as-of-right.
4. The parking requirement for the proposed residential land use is 15 spaces, pursuant to Section 240-24.1.3(D)(2).
5. The revised plan has been reviewed and approved by the Site Plan Review Committee under an approval dated May 24, 2017. The conditions of that decision shall be incorporated by reference as conditions of this Special Permit.
6. The residential conversion is subject to Chapter 9, Article I, Inclusionary Affordable Housing Requirements, which requires one of the fourteen units to be deed restricted affordable.
7. After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or neighborhood affected.



8. The proposal meets Sec.240-24.1.2(E)(1)(a) by providing for mixed use development in an appropriate location in downtown Hyannis and (g) by providing workforce housing units and the required and appropriate mix of affordability levels.

**Chair Mary Barry entertains a motion, moved by Paul Curley to approve the Findings as presented, seconded by Stephen Helman, so voted unanimously.**

Elizabeth Jenkins states that this would be subject to the inclusionary housing requirements, the obligation would be to provide one unit to deed restriction. These conditions were written somewhat flexible, *condition number e* was written if the development were to be rental, however the applicant will be making this a for sale project. Monitoring shall be required as per the tenure. Applicant can choose whether rental or ownership.

#### **Draft Conditions**

Should the Board find to grant the special permit, it may wish to consider the following conditions:

1. This Special Permit shall modify Zoning Board of Appeals Special Permit Nos. 1994-56, 2001-107 and 1995-56 to allow for the conversion of the northern-most office building into 14 residential dwelling units.
2. All other conditions of the previous Special Permits shall remain in full force and effect.
3. There shall be no division of the lot.
4. The use of this property shall remain in conformance with the definition of Mixed-Use Development in §240.24.1.12.
5. The conditions of the May 12, 2017 Site Plan Review approval shall be incorporated as conditions of this Special Permit.
6. Trash containers shall be screened in accordance with Section 240-24.1.10.
7. The residential conversion shall be in compliance with Chapter 9, Article I, Inclusionary Affordable Housing Requirement.
  - a. One Affordable Housing Unit shall be made available for a Qualified Affordable Housing Unit Purchaser or Tenant as defined by Section 9-2.
  - b. The Affordable Housing Unit shall be a two-bedroom unit.
  - c. The Applicant shall record a deed restriction, in a form and content approved by the Town Attorney, assuring the affordable unit will remain dedicated as such in perpetuity and that it is protected in the event of a foreclosure from loss of the affordable status.
  - d. The Applicant shall prepare a Regulatory Agreement and Monitoring Services Agreement in a form and content as approved by the Town Attorney. Said Agreements shall be recorded at the Barnstable County Registry of Deeds prior to the issuance of any building permits.
  - e. The Applicant shall retain a monitoring agent based on the unit tenure for this development. ~~The monitoring agent shall provide an annual report to the Planning Board demonstrating the development is in compliance with the affordable housing restrictions of this decision.~~ Any and all costs associated with monitoring for consistency with the Regulatory Agreement shall be borne by the Applicant.
  - f. The Affordable housing unit shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with the other units.
8. Prior to the issuance of any building permits, the Applicant shall show proof of the availability of 15 overnight parking spaces on the property and/or in the adjoining Town-owned lot.
9. If the resulting residential units will be offered for-sale, the Developer shall establish a condominium association. The form and content of condominium association documents, including the condominium master deed and association bylaws, shall be approved by the Town of Barnstable

Legal Department for the purposes of ensuring compliance with the terms and conditions of this agreement, prior to the sale of any condominium units.

10. This permit shall be recorded at the Barnstable County Registry of Deeds and copies submitted to the Planning Board and Building Division prior to commencement of the use.

**Motion entertained by Chair Mary Barry, moved by Paul Curley to approve this Special Permit with the Conditions and Findings as presented, seconded by David Munsell, so voted unanimously.**

**Approval of Minutes:** June 12, 2017 and August 26, 2016, September 26, 2016 and October 24, 2016

**Chair Mary Barry entertains a motion to approve the minutes for June 12, 2017, August 26, 2016, September 26, 2016, and October 24, 2016, as presented, moved by Paul Curley, seconded by Stephen Helman, so voted unanimously to approve all.**

**Motion made by Stephen Helman to adjourn, moved by Paul Curley, so voted unanimously to adjourn.**

The meeting adjourned at 8:19 p.m.

**Correspondence:**

Chapter 91 Waterways License/Permit – Dept. of Environmental Protection - Issuance of License No. 14451 – 803 South Main Street, Centerville – Centerville River – 540 Main LLC

Chapter 91 Waterways License/Permit – 25 Heath Row, Mystic Lake, Marstons Mills – Atkinson.  
Construct and maintain a fixed seasonal aluminum pier

**Matters Not Reasonably Anticipated by the Chair:**

**Future Meetings:** Regularly Scheduled Meetings: August 28 and September 11, 2017 @ 7:00 PM.

Respectfully Submitted \_\_\_\_\_

By Karen Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on \_\_\_\_\_

Further detail may be obtained by viewing the video via Channel 18 on demand at <http://www.town.barnstable.ma.us>

**List of Exhibit Documents**

**Exhibit A** – Plans highlighted/outlined – ANR Gardiner Lane and Main Street and East Bay Rd., Osterville – Samijan and Shah – Map/Par – 141-001, 104-002, 104-003, 104-004, 104-105, 105-001, 123-002

**Exhibit B** - Zoning Amendment TC Item No. 2018-014 – GMSPD Land Clearance

**Exhibit C** - Zoning Amendment TC Item No. 2018-014 – GMSPD Land Clearance – Lt from Jessica Rapp Grassetti, dated August 14, 2017

**Exhibit D** - Revised/Updated Staff Report – SP No. 2017-03- 259 North St., Hyannis – Map/Par 308/073/002