

**MINUTES
TOWN OF BARNSTABLE
PLANNING BOARD
MAY 24, 2010**

A regularly scheduled and duly posted meeting of the Barnstable Planning Board was held on May 24, 2010 at 7:00 p.m. at the New Town Hall, second floor Hearing Room, 367 Main Street, Hyannis, MA.

The meeting was called to order at 7:00 p.m. by Chairman, Felicia Penn, with the following Members/Staff present:

PLANNING BOARD MEMBERS

Felicia Penn, Chairman
Raymond Lang, Vice Chairman
Mathew Teague, Clerk
David Munsell
Marlene Weir
Patrick Princi
Paul Curley

STAFF

JoAnne Buntich, Director, Growth Management Dept.
Steven Seymour, Growth Management Engineer
Jackie Etsten, Principal Planner
Elizabeth Jenkins, Principal Planner
Ruth Weil, Town Attorney
Ellen Swiniarski, Regulatory Review Coordinator

SECURITY AND LOT RELEASE REQUESTS

Salt Meadow Hills - Subdivision #65

Mr. William Greer has requested Lots 1 & 3 of Subdivision #65 to be released from covenant.

- There was discussion between the Board, staff and Mr. Greer regarding reducing the security to \$1,500.00 instead of \$2,000.00 as recommended by Steven Seymour. Mr. Seymour stated that the security is 10% of the Town's \$20,000.00 estimate. Actual construction cost is not the figure considered when setting security.

Motion was duly made by Raymond Lang and seconded by David Munsell that Lots 1 & 3 of Salt Meadow Hills be released provided that an acceptable easement is recorded for the turnaround tee and \$2,000.00 to be deposited with the Town Treasurer and held in escrow for a period of one year. So voted unanimously.

Devon Crossing - Subdivision #746 - Modification of Condition #8

Attorney Jennifer Parkas Ellis represented a Scott & Jennifer Swaylik requesting the Board to modify Subdivision #748 decision by removing the requirement that Lot 1A be held in common ownership with Lot 1 so that it may be conveyed to her client. Also present were Robert and Kimberly Wyman, current owners of Lot 1 & 1A.

Jackie Etsten provided background for the request:

- 12 lot grid subdivision with a small lot left over (1A)
- Condition of Sub # 746 approval required Lot 1A to be conveyed with Lot 1 to ensure that the property is maintained.
- Major drainage easement which is part of the Devon Lane infrastructure is contained within Lot 1A and would normally be maintained by the homeowners of the subdivision.
- Lot 1A is to be conveyed to an abutting property which is not a part of the subdivision.

Steve Seymour addressed the Board:

- It appears that the developer, Mr. Priestly, retained the fee in the road instead of deeding it into the Homeowner's Association.
- Applicant's attorney and Town Attorney could work together to ensure that language is contained in the deed that protects the rights of the homeowners in Devon Crossing to maintain the drainage on Lot 1A.
- The Homeowner's Association was not one that was required by the Town as this was not an open space subdivision.

Attorney Ellis stated that they would be willing to put whatever language necessary in the deed to ensure the continued rights of Devon Crossing homeowners to maintain the drainage.

Motion was duly made by Patrick Princi and seconded by Paul Curley that the Planning Board grant the modification of Subdivision #748 to permit Lot 1A to be deeded to the abutting property owner located at 970 Putnam Avenue, Cotuit, MA, Map 057, Parcel 001-001 subject to the drainage easement shown on Lot 1A and referred to in the deed recorded in the Registry of Deeds Book 10727, Page 130, instrument #23550. So voted unanimously.

PUBLIC HEARING

Zoning Amendment - T.C. No. 2010-122 - MMVD - Marstons Mills Village Zoning District

Section 1 proposes to amend the Zoning Ordinance, Article III District Regulations, by adding a new Section 240-24.2 to be entitled "Marstons Mills Village Zoning District". The section proposes new regulations for the principal, accessory and conditional uses permitted in the district, and provide dimensional and bulk regulations governing development within the village business area in Marstons Mills. The section includes provisions that allow for dimensional relief by special permit, limits the change of a nonconforming use to another nonconforming use, regulates corporate branding, provides design guidelines for development and alterations within the district, provides additional site development standards and provides select definitions to be applicable within the district.

Section 2 proposes to amend the Zoning Map to rezone a part of the existing Village Business A Zoning District and a part of the Residence F Zoning District along Route 149 to MMVD - Marstons Mills Village Zoning District. The remaining part of the Village Business A Zoning District is to be rezoned to Residence F Zoning District. The rezoning is shown on a map entitled "Marstons Mills Village District", dated April 14, 2010 as drawn by the Town of Barnstable GIS Unit.

Section 3 amends Section 240-5 by adding the MMVD - Marstons Mills Village Zoning District to the list of Commercial Districts.

Section 4 amends Section 240-67 of the sign code that applies to village zoning districts to include the MMVD - Marstons Mills Village Zoning District.

Section 5 amends Section 240-125.B(1)(e) that governs the grant of use variances to eliminate the granting of use variances within 300 feet from the Marstons Mills Village Zoning District.

JoAnne Buntich provided background and introduction for the Public Hearing:

- Amendment was brought forward by the village of Marstons Mills after many meetings and discussions so that the boundary/zoning of the district could more accurately reflect how the property is actually being used.

Motion was duly made by David Munsell and seconded by Paul Curley to open the Public Hearing. So voted unanimously.

Public Comment was invited and the following addressed the Board:

- Craig Larson, President of Marstons Mills Village Association stated that the Association has worked years with the Town. The Association has reached out to the village members for their input.
- Ray Lang commented regarding the Downtown rezoning and its purpose. Mr. Larson did not agree that the purpose was a good idea.
- Mr. Baker stated that a good job has been done by the group. It is not perfect, but can be figured out later.
- Seth Duprey stated that this amendment clarifies how the business zone should look and be used.
- Janice Barton, Town Council member and Marstons Mills Village Association expressed gratitude for assistance.
- Jim Consella, Barnstable Enterprise, clarified how the corporate branding would effect a business.

Motion was duly made by Paul Curley and seconded by Raymond Lang to close the Public Hearing. So voted unanimously.

Motion was duly made by Paul Curley and seconded by David Munsell to recommend T.C. # 2010-122 MMVD - Marstons Mills Village Zoning District as written to the Town Council for further action. So voted unanimously.

PUBLIC HEARING

Zoning Amendment - T.C. No. 2010-123 - Amendments to Article VII - Sign Regulations

Section 1 proposes to amend the Zoning Ordinance, Article VII, the Sign Regulations, Section 240-60 Definitions, by adding new signs and definition for a Business Hardship Location Sign, a Business Trade Figure or Symbol, an Open/Closed Sign and a Trade Flag.

Section 2 proposes to amend Section 240-61, Prohibited Signs: provision “A”, to exclude Trade Flags from being prohibited in the HVB – Hyannis Village Business Zoning District; provision “B” to include Light Emitting Diodes (LED) signs, simulated neon signs as being prohibited, and provision “H” to exclude Business Hardship Location Signs from being prohibited in the HVB – Hyannis Village Business Zoning District.

Section 3 amends Section 240-71, Signs HVB District, by adding a new provision “E” that provides for the addition of one of the following types of signs in the HVB District: a Trade Flag to be displayed subject to certain standards, an Open/Closed Sign to be displayed subject to certain standards, or a Business Trade Figure or Symbol to be used in conjunction with a business subject to certain criteria. The proposed provision “E” also allows for a Business Hardship Location Sign in the HVD District by special permit from the Planning Board, subject to certain performance standards and criteria.

Motion was duly made by Paul Curley and seconded by David Munsell to open the Public Hearing. So voted unanimously.

Felicia Penn acknowledged a letter from owner of Sea Street Market in support of changes to the sign amendment and also provided suggestions.

She acknowledged a letter of support of the sign amendment from Sean Wallihan, Keenan O’Reily’s Pub and Patio.

Felicia Penn advised the public that this draft amendment represents the concerns presented by all, although not perfect.

Public Comment was invited and the following came forward and spoke:

Amanda Converse, Development Director for Main Street BID as well as HVB district business owner: provided handout of draft amendment with commentary. Requests that the setback for hardship location signs be lowered. Also commented regarding additional language regarding site distances for the hardship location sign definition; prohibited signs - historic neon to be considered not prohibited; open/closed signs clarification; how were dimensions of business trade figure determined and would longstanding figures not meeting this be allowed to continue.

Attorney David Lawler - As business owner, and Board Member of the BID. Supports the hardship provision in order for business owner to seek relief to be granted at the discretion of the Planning Board in the case of substantial obstructions. Would like to see the setback of 10 ft deleted and replaced with substantial obstruction language.

JoAnne Buntich indicated on a map of the area that the Hyannis Main Street Historic District and the Hyannis Village Business District do not follow the same boundaries as they overlap, but are not all inclusive.

Jane Walsh of Red Fish Blue Fish - Grateful for such a quick response. Agree with Amanda Converse and David Lawler regarding changing the way the hardship provision is written to include substantial obstruction language. Handed out photos to the Planning Board indicating obstruction of her existing sign on Main Street. Supports ordinance changes that would allow a-frames without 10 foot setback, substantial obstruction

language. Expressed concern that changes will not be made in time to help this summer.

George Jessop, Chairman of Hyannis Main Street Historic District - Supports Business Trade Symbol which is signage in the form of a symbol without having it count as part of sign allowance. For businesses on the second story, projected signs are historically appropriate reserved for those businesses on the second floor that have only the width of a doorway for frontage. Signage is for pedestrian business and should be in proportion to the building. All types of signs that have been approved by historic are found on Main Street. Most of the signage being discussed tonight are also within the historic guidelines.

Mike Lyons from Ben and Jerrys supports the proposed amendment. He stated that he has had a neon sign for 23 years, however sight lines have changes and trees cover his signage. Stated that an A-frame would work for his business especially at night.

Kate Welserpico spoke in favor the proposed sign amendment and consideration to business that have obstructions to their shops if done tastefully. Customers like herself would also like better visibility of signs as well as the business owners.

Mia Walsh - Although trees are beautiful and the sails are nice, they impede visibility of some of the signs. Suggests that open flags especially on side streets would be nice.

Sean Wallihan of Keenan O'Reiley stated that a store front shows the personality of the business. Setback 15 to 18 ft. due to patio has 1960s neon open sign stated that this sign is crucial for him. Stated that the lack of an A-frame sign made sales drop 36%.

Betsey Young - SoHo on Main Street - Expressed gratitude for response. Also supports sight line language instead of 10 foot setback as proposed.

Debra Converse, Hyannis Area Chamber of Commerce also expressed gratitude for response. Questioned the process and the length of time it will take to be in effect and length of time it would take to be in effect.

The process was described by Felicia Penn and JoAnne Buntich.

Lebena Olsen of the Common Ground Café also supports amendment without the 10 foot setback requirement. The use of an A-frame substantially enhances business.

Katie's Ice Cream owner stated that without the neon ice cream cone sign lit, people think that she is closed. Supports the zoning amendment for signage.

Elizabeth Wurthbain, Hyannis Main Street BID Interim Director stated that she is in favor of the amendment for signage. A-frames can be attractive, want to make Main Street better, not worse, however February is not the same as July. Some neon is attractive, would like to see smart growth and richness. Owner of Dragon Lite stated that he relies on his neon open sign.

Sea Side Selections owner spoke in support of the sign amendment.

The Planning Board discussed revisions to the draft amendment provided:

- It is possible that some obstructed signage is already covered by a section in existing ordinance for prohibited signs.
- Definition of hardship location sign needs to be fixed, all on the Planning Board agreed.
- Neon signage should be on individual basis through historic as only true neon can be allowed.
- Discussion regarding changing 10 foot setback to sight distance hardship
- It was agreed that action needs to be quick to help business owners succeed this year.
- Possibility of a new sign blocking another was discussed.
- Planning Board and Historic must coordinate
- Discussion regarding dimensions and usage of A-Frames
- Possible use of the availability of temporary signage was discussed
- Discussion regarding 3 dimensional trade symbol

Ruth Weil, Town Attorney, stated that there is not such thing as a moratorium to zoning to allow businesses to continue prohibited sign usage prior to amendment taking effect.

Motion was duly made by Raymond Lang and seconded by Paul Curley to close the Public Hearing. So voted unanimously.

Motion was duly made Patrick Princi and seconded by Paul Curley that the Planning Board recommend T.C. No. 123 - Amendments to Article VII - Sign Regulations with changes as specified, to the Town Council for further action as quickly as possible in the interest of the business community. Voting in the affirmative: Raymond Lang, David Munsell, Patrick Princi, Felicia Penn, Paul Curley, Marlene Weir. Matt Teague voted in the negative.

Motion was duly made by Marlene Weir and seconded by Raymond Lang to transmit the Local Comprehensive Plan to the Cape Cod Commission for their consistency review. So voted unanimously.

Motion to adjourn was duly made and seconded. Adjourned.

Respectfully submitted,

Ellen Swiniarski
Regulatory Review Coordinator