



Town of Barnstable Planning Board

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Board Members

Paul Curley – Chair Stephen Helman – Vice Chair Felicia Penn – Clerk Patrick Princi Mark R. Ferro Raymond Lang David Munsell
John Norman – Town Council Liaison

Staff Support

Art Traczyk – Design/Regulatory Review Planner – art.traczyk@town.barnstable.ma.us
Karen Herrand – Principal Assistant – karen.herrand@town.barnstable.ma.us

Town of Barnstable Planning Board Minutes May 11, 2015

Paul Curley – Chairman	Present
Stephen Helman – Vice Chairman	Present
Felicia Penn – Clerk	Not Present
Raymond Lang	Present
David Munsell	Present
Patrick Princi	Present (arrived late)
Mark Ferro	Present

Also in attendance were JoAnne Miller Buntich, Director, Elizabeth Jenkins, Principal Planner and Karen Herrand, Principal Assistant, Growth Management Dept.

Call to Order: Introduction of Board Members

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: A plan entitled “Approval Not Required Plan Being a Subdivision of Lot #60 Land Court Plan #5725-23 prepared for Kathleen M. Gralton, Trustee of The Beatrice E. Gralton Realty Trust 125 Ice Valley Road Barnstable Ma, dated March 19, 2015” has been submitted for endorsement as an Approval Not Required Plan. The Assessor’s Map is 096-017. It is zoned RF Residential.

Shane Mallon of Baxter Nye Engineering, in attendance. He gives a brief explanation of the plan and the acreage being divided. Reference is made to the rendering of the ANR plan, dated May 11, 2015, Exhibit A. The structure and the pool will be razed/removed.

Ray Lang asks about the driveway that goes across lot 1 and into lot 2. Will there be a separate driveway for each after division? Any drainage? Fencing to be removed?

Shane Mallon answers yes, two separate driveways, no new drainage that he knows of, there is an easement on the property now, the fencing will be removed with the pool.

Chair Paul Curley asks for comment from Staff.

JoAnne Buntich replies that it meets all the requirements for endorsement for an ANR.

Motion made by Stephen Helman to endorse/approve this plan, seconded by David Munsell, so voted unanimously.

Special Permit No. 2015-002

**Jason T. Ethier, Trustee, 445 South St., Hyannis
Map/Par 308/195 (modification)**

Jason T. Ethier, Trustee, Tajmahal Realty Trust is seeking a Special Permit pursuant to Section 240-94(B) – Expansion of a Preexisting Nonconforming Use and modification of the conditions of Special Permit Nos. 1955-9 and 1956-6, as necessary. The Applicant seeks to construct a third building on the property. The building would contain a two-car garage and one-bedroom apartment on the first floor; a three-bedroom apartment on the second floor; and a game room with a roof deck on the third floor. The subject property is addressed 445 South Street, Hyannis, MA Assessor's Map 308, parcel 195. It is zoned SF Single Family Residential District.

JoAnne Buntich interjects that we are expecting Board Member Patrick Princi to be here (he is running late) and Board Member Felicia Penn will not be here tonight, whereby a super majority vote of five members is needed for a special permit.

Attorney John Kenney in attendance for the applicant. He gives a brief explanation of the modification they are seeking for this special permit application.

Jason Ethier, applicant and his father Ken Ethier in attendance.

Steve Cook from Cotuit Bay Design in attendance.

Attorney Kenney refers to his Memorandum, Exhibit B. There are now-five apartments in the main house, and the cottage apartment for a total of six units and nine bedrooms on the property. They would like to add two more apartments.

The current zoning would not allow the use for the apartment. This is a pre existing , nonconforming use and they are looking to expand this.

Exhibit B: Memorandum from Attorney John Kenney referred to:

DESCRIPTION OF PROPOSED PROJECT

The applicants are seeking a special permit to allow for the expansion of the nonconforming use of the property by constructing a third apartment to the rear of the site. The proposed building would contain a two car garage and a one-bedroom apartment on the first floor; a three-bedroom apartment on the second floor with access to an outside deck; and a third floor game room with access to a small in-set roof deck.

Site improvements will include a new sewer line running from South Street to the new building. The existing buildings will also be connected to the new line. The driveway will be paved with stone parking spaces provided. New storm water drains will be installed to keep the drainage contained to the site. Site lighting and evergreen shrubs and trees will be provided for screening neighbor's property.

The proposed structure meets the setback requirements and the height requirements of the SF District. The project has received Site Plan Review Approval and a Certificate of Appropriateness from the Hyannis Main Street Waterfront Historic District Commission.

Steve Cook reviews the plans. Reference to Site Plan of Land for South St, Exhibit C. He points out where the new building will go, driveway extended and additional parking spots, new drainage, lighting, new location for dumpster, hedges and fencing. New evergreens planted.

He makes reference to Architectural Design plan, Exhibit D. Roof deck, inset into the roof, hidden.

He refers to Exhibit E, Preliminary Drawing for Design Review. Layout of the apartment.

He refers to Exhibit F/elevations plan. Outside from street view from South Street. Cape Cod style design/bldg.

Steve Cook hands out photographs of the site to the Board Members, Exhibit G.

Motion entertained by Chair Paul Curley to open the Public Hearing, moved by Ray Lang, seconded by Stephen Helman.

Steve Cook explains the views in the photographs.

Attorney John Kenney refers to Memorandum, Exhibit B:

ARGUMENT

Section 240-24.1.2(E) of the Town of Barnstable Zoning Ordinance designates the Planning Board as the Special Permit granting authority in the SF –Single Family Zoning District.

Section 240-94B authorizes the (Planning Board) to grant a Special Permit to allow for the expansion of a preexisting nonconforming use provided certain criteria are met. Additionally, the criteria set forth in Section 240-125C and Section 240-24.1.2(E) must be met by the applicant before the Planning Board can grant the special permit requested.

Following is a discussion of the criteria set forth in Section 240-94B; 240-125C; and 240-24.1.2(E) and an explanation of how the proposed project satisfies the criteria.

Section 240-94B allows the Planning Board to grant a special permit to expand a nonconforming use provided the Board finds that the expansion will not be more detrimental to the neighborhood and that the following requirements are met:

[1] Any proposed expansion of the use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties.

[2] The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming.

The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming. There has been no change to the lot or use since the last Special Permit benefiting the lot was granted in 1956.

[3] The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming.

The current use and proposed new use are in the SF District.

[4] At the discretion of the Zoning Board of Appeals –interjected “now the Planning Board” improvements may be required in order to reduce the impact on the neighborhood and surrounding properties including but not limited to the following:

- (a) Greater conformance of signage to the requirements of Article VII;

Not Applicable

- [b] The addition of off-street parking and loading facilities;

The Zoning Ordinance requires the proposed use have 14 parking spaces. With the addition of two new spaces in the first floor garage of the new building, the property will have 15 spaces available.

- [c] Improved pedestrian safety, traffic circulation and reduction in the number and/or width of curb cuts;

Not Applicable

- [d] Increase of open space or vegetated buffers and screening along adjoining lots and roadways. The applicant shall demonstrate maximum possible compliance with §240-53, Landscape Requirements for Parking Lots, Subsection F, if applicable.

Evergreen shrubs and trees have been provided as shown on the Landscape Plan submitted with the application for this project to provide buffers and screening. Section 240-53F does not apply.

- (e) Accessory uses or structures to the principal nonconforming use may be required to be brought to substantial conformance with the present zoning.

The only existing accessory structure on the property is a shed located near two stone parking areas. The shed helps to serve as a buffer between the parking areas and the abutting property.

Section 240-125C requires the [Planning Board] find that the application for a special permit falls within a category of the Zoning Ordinance which specifically authorizes the Planning Board to grant a special permit. Further, the Board must find that the proposed project, based upon the evidence presented does not derogate from the spirit and intent of the zoning ordinance and that it is not substantially more detrimental to the public good or neighborhood affected.

As noted above, Section 240-94B specifically authorizes the Planning Board to grant a special permit to allow for the expansion and/or intensification of a preexisting nonconforming use. The project does not derogate from the spirit and intent of the zoning ordinance and it is not substantially more detrimental to the public good or the neighborhood affected since the proposed use of residential apartments is consistent with the uses allowed in the SF Single Family Residential District. The district allows for bed-and-breakfasts, renting of rooms, and family apartments as principal permitted uses. Each of these types of uses are consistent with the use of the premises for apartments. The proposed site improvements consisting of evergreen shrubs and trees along the perimeter of the lot; a paved driveway; and new drainage designed to retain the drainage on site all benefit the neighborhood affected.

Section 240-24.1.2(E) requires the Planning Board to make a finding that the issuance of a special permit is consistent with the Design and Infrastructure Plan and that the project meets one or more of the seven (7) criteria listed. The project is consistent with the Design and Infrastructure Plan in that it meets several of the stated goals of said plan. The project has been designated to be consistent with the historic character of the neighborhood and has received Historic Committee approval. It adds to a livable neighborhood for year round residents. And, the project, combined with the existing apartments on-site, creates housing opportunities for persons and households of all income levels.

Of the seven criteria listed in Section 240-24.1.2(E), subsection (g) is the most applicable subsection and the proposed project satisfies this subsection. Subsection (g) requires the proposed project "provides workforce housing where appropriate and provides an appropriate mix of affordability levels." The addition of two market rate rental units supports the goals of the 2014 Housing Needs Assessment which identified the need for market-rate rental units and rental units for low income residents as the Town's primary housing need. The addition of the two market-rate units to the six existing apartment units provides an appropriate mix of affordability levels. Rents for the six existing units range from \$950.00 per month to \$1,295 per month. Two of the existing units are leased through the Barnstable Housing Authority.

MODIFICATION OF PRIOR SPECIAL PERMITS

Special Permit Number 1955-9 contains two conditions which impact the premises. The first condition requires that the rear of the lot "is to be reserved for uses incidental to the main house." The proposed new building for the two new apartments is located in "the rear of the lot." The second condition in Special Permit Number 1955-9 provides that "No other dwelling be erected on the lot."

Subsequent to the issuance of Special Permit Number 1955-9 the Zoning Board of Appeals issued Special Permit Number 1956-6. This permit, without specifically stating so, appears to have modified condition number 2 in Special Permit Number 1955-9. This permit allowed the conversion of the garage (now referred to as the cottage) on the property to an additional apartment. However, this permit then sets forth two conditions similar to those contained in the earlier decision reserving the rear of the lot for uses incidental to the main house and prohibiting building enlargement on the property.

If the Planning Board requires these prior conditions be modified or released to allow the proposed project to proceed, the applicant requests such relief be granted. Massachusetts General Laws Chapter 40A, Section 14 specifically empowers this Board to modify conditions in prior decisions provided a full hearing is held to consider the modification.

In conclusion, the proposed project meets the conditions for granting of a special permit, this is an overall improvement to the neighborhood, this is a mixed district that allows several uses, this is not a strictly single family residence area.

David Munsell comments that this is something the Growth Incentive was meant to do. Look to Staff for legal advice regarding the original special permit from the '50's and the modification being requested.

Ray Lang asks about recommended parking spaces for this area? Confirms entrance from garage. Where is game room, is there a plan? Who will live in the new building, the owners? Would these be summer rentals? How do you get to the second floor? Affordable units?

Attorney John Kenney refers to the chart at the top of the site plan, Exhibit C, that lists how many parking spaces, 15 to be exact, the ordinance requires 14 so they are one over. Not summer rentals. The owners will be in the new building. These are year round rentals, two tenants are leased with the Barnstable Housing Authority.

Steve Cook refers to the floor plan, Exhibit D and points out the entrances and where the game room will be located and how to get to the second floor.

Chair Paul Curley states that this is really needed, especially the affordable housing. He is in favor of granting this special permit.

Patrick Princi comments that there are a lot of similar places in that area. Are there any abutters who have concerns?

Mark Ferro points out that we do have correspondence, a letter dated May 5, 2015, from Dave Anderson, DPW. Suggesting a new sewer line be put in, will this be done? Exhibit H.

Steve Cook answers, yes.

Chair Paul Curley asks for any public comment.

Attorney Charles Sabatt in attendance. He is representing a direct abutter at 32 Oak Neck St. He states that three areas to be addressed; legal, the merits, and suggested conditions if relief is granted.

Legal: In a single family district, it is restricted to single family use only. They are arguing that this can be obtained because of the existence of the two prior special permits makes this a pre existing, non

conforming use and in the alternative they are asking to modify these special permits that were issued by the ZBA. The Planning Board has no basis upon which to do either of these things. He argues that this is not a preexisting, nonconforming use. This is not a matter of right, but by permission being granted by the ZBA.

Two pieces of case law presented:

Appeals Court case law cited: Cesar A. Mendes v. Board of Appeals of Barnstable et al., No. 89-P-188. Argued Jan. 11, 1990. Decided April 17, 1990, see Exhibit I.

Rogers and Marney property. *531 – For purposes of deciding whether a use is nonconforming within the meaning of G.L. c. 40A, §6, the question is not merely whether the use is lawful but how and when it became lawful.

Appeals Court case law cited: Richard W. Patenaude v. Zoning Board of Appeals of Dracut, No. 12-P-215. Nov. 28, 2012, see Exhibit I (2).

This is a use that has been allowed with permission from the ZBA which did not exist as a matter of right. This is an increase in density for this area.

His client has a single family home and this structure will overhang her property, loss of privacy, game room for a third floor, deck that comes out, will there be noise, people out on deck at night. This may be disturbing.

Merit basis: Harbor district does allow multi family uses..the density is 7 units per acre, this is half an acre with 6 units on it, if this is granted there would be 8, which is more than twice that should be allowed. This goes way beyond what the ordinance specifies.

This district is single family residences, most if not all are in fact family residences.

His client has single family home, this structure will overhang her property, issues with deck that comes out, noise, game room? This may be disturbing to his client and other people in the area. This project is far field from ordinance.

Suggested conditions: The following restrictions, if relief is granted;
Reduce to a single story structure possibly and/or why not have second floor on one of the other units?
Make a requirement to have a stockade fence located at the rear property line to preserve privacy.
Make it owner occupied. There are a lot of absentee landlords in this area. Leases be at least six months in length. Workforce housing requirement.

Ray Lang directs to Attorney Sabatt regarding next steps/opinion for the process of this special permit modification?

Attorney Charles Sabatt replies possibly referring this to Town Council, who has authority under the ordinance.

JoAnne Buntich clarifies/asks about a previous special permit application that Attorney Sabatt had come before the Planning Board.

Attorney Sabatt answers that he sought a special permit within the scope of the ordinance. This particular request for a special permit is not within the ordinance.

Chair Paul Curley states that this will definitely be pursued to clarify the legalities of the Planning Board by the Town Attorney's office.

Stephen Helman comments/clarifies that if the Planning Board follows suggestions/recommendation stated by Attorney Sabatt, will we then be authorized?

Attorney Sabatt answers no. Back in 1955 and 1956 the ZBA had concerns back then about overcrowding and congestion, what has changed that makes it any different today?

Attorney John Kenney comments. He reads from the Mendes v. Board of Appeals case, Exhibit I.

"The statutory criteria for a variance set out in G.L. c. 40A, § 10, are demanding, and variances are difficult to obtain. *Gamachev. Acushnet*, 14 Mass.App.Ct. 215, 217 & n. 6, 438 N.E.2d 82 (1982). By comparison, the special permit power presupposes the allowance of certain uses, but only with the sanction of the local permit granting authority acting in accordance with the fairly flexible criterion of "harmony with the general purpose and intent of the ordinance or by-law. G.L.c. 40A, § 9, 1st par., as inserted by St.1975, c. 808, § 3. In view of the different approaches to the grant of a variance and a special permit, the former grudging and restricted, the latter anticipated and flexible, we do not think the Legislature intended in G.L. c. 40A, § 6 to authorize the expansion of uses having their genesis in a variance pursuant to the more generous standard applicable to a special permit."

Attorney Kenney states that this is an allowed use in a residence B district, provided they first come to the Board and obtain a special permit, as opposed to a variance which is not allowed.

Chair Paul Curley asks for any further public comment.

Kevin Naylor in attendance, his Mother is the owner of 439 South Street. In 1955, the owner converted this from a single family to multiple apartment units. The project was nearly done when it came before the ZBA and ZBA allowed it only because it was already done. He does not think this should be allowed, it is very dense here, and this is to big.

Attorney John Kenney states that when the Growth Incentive Zone was adopted the Planning Board became the permit granting authority. If Planning Board does not feel they have the right to modify, he'd like to hear that from Town Council. The size of the structure meets all setback requirements and height restrictions. Two families are living in there now. This would become problematic to restrict it to being owner occupied.

Attorney John Kenney asks to keep the Public Hearing open.

JoAnne Buntich clarifies that the Board could continue this.

Chair Paul Curley asks about having a draft decision made and contacting the legal department.

Patrick Princi clarifies that his term expires in June of 2015.

Elizabeth Jenkins clarifies that she would be looking for the direction of the Planning Board and Staff could contact the Legal Dept. for an opinion and/or feedback for draft findings and conditions or both.

Chair Paul Curley would like to do both, legal opinion and a decision if authority to do.

Motion entertained by Chair Paul Curley to continue, so moved by Ray Lang, seconded by Stephen Helman, so voted unanimously to continue to June 8th.

Scenic Road Application

**Town of Barnstable, DPW – c/o Roger
Parsons - Route 149 (Main St. to Rte 28)
Marstons Mills**

Application to remove trees along Cotuit Road (Route 149) in Marstons Mills Village Center in association with the streetscape and placemaking project managed by project team: Roger Parsons, Town Engineer DPW, Jo Anne Miller Buntich, GMD Director, McMahon & Associates, and Horsley & Witten. Application proposal includes a replanting plan developed with the Town's Tree Warden.

Roger Parsons, Town Engineer DPW, in attendance. He gives an explanation of the project. Safety improvement project in the Village of Marstons Mills. Center village area from Mill Pond to Lovell's Lane. Order of Conditions has been received from Conservation. This is the tree hearing part of the process. Have a comprehensive replanting landscaping program which improves the drainage for the roadway.

Hannah Carlson of Horsley Witten Group in attendance and Brian Kuchar, both Registered Landscape Architects. This is a roadway improvement project. Have reviewed the trees to be removed with the Tree Warden. There are 33 new trees to be planted and 32 that would be removed and an additional 3 to 5 more that would be incorporated into some of the storm water management practices along the route.

Motion entertained by Chair Paul Curley to open the Public Hearing, moved by Stephen Helman, so voted unanimously.

Hannah Carlson reviews the plans and the trees that will be removed, Exhibit K. A few trees where the boardwalk will go overlooking Mill Pond which will continue the pedestrian sidewalk connecting the Village Center. These are Norway Maple and Black Locust trees. Village Center, crabapple in center of intersection that will be removed. They will plant new trees in this intersection area.

Charles Genatossio, Town of Barnstable, Tree Warden in attendance. He has mixed feelings about the crabapple tree. He has not talked to anyone about what trees to replant. Some Japanese tree lilacs in the area that he would like to move. Possibly move the flowering crabapple tree. He thinks it's a good project, this is a very dangerous area/intersection with a lot of parking issues. He would like to incorporate the trees that are out there already. They do not have to all be cut down, some can be saved. He hasn't seen a plan with the actual tree species and/or location(s) presented for replanting.

Patrick Princi makes comment that many years ago there was a staple symbolic tree taken down and there was some local outrage. This area does need some public safety improvements.

Brian Kucher of Horsley Witten Group, Project Manager, states that they have spoken to Charlie Genatossio regarding trees to be saved and the crabapple. They have received the public/community input regarding the crabapple tree removal. They will work with Charlie regarding the process.

Hannah Carlson states that there is a list of species they have been looking at for the area. They will keep working with Charlie re right spot for right plant.

Reference is made to the plan, Exhibit K, landscape plans.

Stephen Helman asks for clarification of the total area. Reference is made to the application which states Route 149 from River Rd./Main St. South to Rte 28, Exhibit J.

Roger Parsons replies that it started at the intersection at the Cash Market and extended up to Lovell's, then a little later locals/public wanted to consider extending up to the Mill Pond. The application should state from Mill Pond to Lovell's and including a section on Main Street to where the school is.

Chair Paul Curley states that the application should be amended to state/clarify this accordingly.

Mark Ferro asks for clarification of public notice for the area?

Hannah Carlson replies that notices went up on the trees that needed to be removed for the entire area.

Chair Paul Curley asks if they have been working with the Civic Association?

Brian Kucher answers yes.

Mark Ferro asks if the parallel parking was not done would that mean less trees to be removed?

Roger Parsons replies yes, this is being done so as to slow traffic down. This project is being funded by Chapter 90 funds from the State.

Hannah Carlson continues with reference to the plans, Exhibit K and points out areas for tree removal. She makes reference to the images of trees, Exhibit L, Village Core Corridor.

They have tried to keep as many trees as possible, so a new stone wall would be added to reduce the amount of grading and protect trees. There will be a new sidewalk, new landscape beds with small trees as well as the parallel parking here at the core of the Village.

Ray Lang comments that he doesn't know much about this project. But he will try to meet with Tree Warden and walk through the area.

Patrick Princi comments that he is very pleased to hear the Tree Warden's concerns are the same as his.

Mark Ferro is concerned about the tree lilacs to be removed, he has a business here and he would like to see these trees saved. This project will change the Village, not sure there is a need for it. He likes the boardwalk addition to the area.

David Munsell interjects that the Planning Board's concern is the tree removal.

JoAnne Buntich clarifies that the only concern for the Planning Board is the removing of the trees and the number of trees to be removed and replaced.

Charlie Genatossio comments that he has some concerns/questions about the project, but the Village does need help. He will go out with Ray Lang anytime.

Kathy Aspden of 50 River Rd, owner of Salon in the Mills in attendance. She's very happy they will be getting a village with this project. She states that the car speed is an issue. We do need additional parking. Her only tree concern is the crabapple be removed and replaced.

Chair Paul Curley states that the plan has a strong backing from the Civic Association and the have worked with the Tree Warden.

Chair Paul Curley entertains a motion to move forward, Patrick Princi moves to approve this scenic road application with a condition that the crabapple be preserved and relocated at another area, along with any other trees that were part of the mitigation process with the removal of the tree at the intersection where the Fire Station is..

JoAnne Buntich interjects/suggests language used by the Planning Board previously;

The final number of trees and shrubs including the type, size and location is to be determined by the Tree Warden.

Chair Paul Curley entertains a motion to move forward, Patrick Princi moves to approve this scenic road application with a condition that the crabapple tree be preserved and relocated at another area, and the final number of trees and shrubs including the type, size and location are to be determined by the Tree Warden, seconded by David Munsell.

Opposed are Ray Lang, Mark Ferro and Stephen Helman.

Motion made by Patrick Princi to reconsider this vote, based on the fact that this has been long overdue, all other villages have gotten attention and Marstons Mills has been left out. This is a great plan that has been presented. The residents deserve better, this project shouldn't be delayed. Hoping/asking for reconsideration;

Public comment:

Alex Duhamel, business owner on Route 149, in attendance. He would like to see this project move forward and not delayed any further. Staff has informed them of everything that is proposed. He has been thinking of moving his business because this road is bad, but would like to stay, mainly because of this plan/project going forward. The on street parking is critical. This was the number one concern brought up at previous meetings.

Kathy Aspden makes a plea to the Board that the Tree Warden should be trusted with his opinion for this. If he is ok with it, then we should be ok with it.

Roger Parsons states that he is available any time at all to walk people through the area and give them a view of the project.

Chair Paul Curley asks if there are any additional conditions any Board members would like to suggest in order to re do the vote? Get an approval vote?

Ray Lang is prepared to change his vote.

David Munsell comments that this needs to move forward. He agrees with Patrick Princi. He has looked at the site. This plan is very professionally done.

The vote to reconsider is done:

Motion by Patrick Princi to reconsider the vote, seconded by David Munsell, so voted unanimously to reconsider the vote.

Motion made by Patrick Princi to approve this scenic road application and the final number of trees and shrubs for removal/replacement, including the type, size and location are to be determined by the Tree Warden, seconded by David Munsell.

Mark Ferro and Stephen Helman abstain.

Chair Paul Curley, Ray Lang, Patrick Princi and David Munsell vote yes. The motion/vote passes by four to two.

Continued Discussion:

**Whistleberry Subdivision No. 454
Developer Schedule/Time-frame for
Completion**

Discussion of Developer correspondence, time tables, and possible vote on next steps

Attorney Michael Schulz in attendance for the Developer. He gives a brief history of the previous discussion and the schedule which has changed due to weather and the significant snow we have had which has delayed the Developer's timeline. Reference is made to correspondence dated April 30, 2015, see Exhibit M.

Attorney Schulz hands out to the Board correspondence dated May 11, 2015, from Atlantic Design Engineers, Inc., see Exhibit N.

Richard J. Tabaczynski, P.E. of Atlantic Design in attendance. He reviews the schedule. Exhibit N. June 12, 2015, submit to Town for review/approval.

Chair Paul Curley confirms/asks when would they anticipate starting construction?

Richard Tabaczynski replies fairly soon after they hear back from the Town.

Chair Paul Curley asks how long will the work take? A completion date?

Richard Tabaczynski answers that it will depend on the design and what they come up with. They won't know until the design work done.

Chair Paul Curley replies that they need to get the work done this year. Need to find a way to complete it this year.

Attorney Schulz interjects that this is the survey work, they need to go by the 2002 Development Agreement. One issue is that an abutter stated that they would not sign for an easement. There are multiple factors to consider. He has asked his client for an isolated time frame, in which a month to two months of construction time be estimated.

Chair Paul Curley suggests, June 22nd, for an update?

Attorney Schulz states yes, that is doable.

Chair Paul Curley wants to see a strong schedule to complete the work, if any legal problem with abutters, then stop that part but move on with the rest of the work.

Attorney Schulz confirms June 22nd update.

David Munsell asks for clarification that Atlantic Design will be in charge of this project? We need this to be done.

Richard Tabaczynski answers that they will do the design and permitting but they will not be hiring the pavement contractor or who will be doing the construction/work.

Ray Lang asks for clarification regarding starting the project with final approvals for all.

Attorney Schulz replies that any appeal, i.e., abutters not allowing an easement etc., would make a need for an extension.

Attorney Brian Wall in attendance, representing the Whistleberry Homeowners Association. He refers to the April 30, 2015, letter, Exhibit M. He is asking for clarification on the timeline now that this extension is requested, eight weeks. This schedule defers all work until after regulatory approvals are obtained.

The original list that was decided on back in October has approximately 20 items, as far as they can tell only 2 of the 20 items require regulatory approvals. Why is all of the work being deferred for only 2 items? Drainage issues. Primary concerns are:

The schedule defers all work, why can't some things be done that do not need permits?

The coupling, with the deferment of the work, means that there is a substantial risk, in their view, that no work will be done this year.

Chair Paul Curley states that the Board wants to see the work completed this year. All parties need to work together instead of working against each other to get the work done.

Attorney Brian Wall states that the supplemental information doesn't change, why hold hostage the entire list, when other items can be done.

Chair Paul Curley clarifies that a schedule will be made and given on July 22nd.

Stephen Helman comments, addresses both parties. He suggests a compromise needs to happen with both parties.

Attorney Wall clarifies that he is not opposed to give the extension for the 2 items, but have them start the work on the other 18.

JoAnne Buntich interjects that the submission date for a June 22 Agenda should have information submitted to the Board in sufficient time to be reviewed, around June 15th?

Attorney Shulz confirms that he will have information to the Board by June 15th, 2015.

Approval of Minutes: Approval of April 27, 2015, Board Meeting Minutes

Motion made by Patrick Princi to approve the minutes of April 27, 2015, as presented, seconded by Stephen Helman, David Munsell abstains as he was not present.

The minutes are approved.

Future Meetings: Regularly Scheduled Meetings: June 8 and June 22, 2015 @ 7:00 PM.

Motion made by Stephen Helman to adjourn, seconded by Ray Lang, so voted unanimously.

The meeting adjourned at 10:00 p.m.

Respectfully Submitted *Karen A. Herrand*
by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on *July 13, 2015*

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** – Plan of Land for 125 Ice Valley Rd., Osterville, dated March 19, 2015, ANR – Map/Par 096-017 – Gralton
- Exhibit B** - Memorandum dated May 11, 2015, from John Kenney, Esq. – Special Permit No. 2015-02, 445 South St., Hyannis – Ethier - Map/Par 308/195
- Exhibit C** – Site Plan of Land – dated 9/3/2014, Special Permit No. 2015-02, 445 South St., Hyannis – Ethier – Map/Par 308/195
- Exhibit D** - Preliminary Drawing For Design Review, A3, dated 8/29/14, Special Permit No. 2015-02, 445 South St., Hyannis – Ethier – Map/Par 308/195
- Exhibit E** – Preliminary Drawing For Design Review, A1, dated 8/29/14, Special Permit No. 2015-02, 445 South St., Hyannis – Ethier – Map/Par 308/195
- Exhibit F** - Preliminary Drawing For Design Review, A2, dated 8/29/14, Special Permit No. 2015-02, 445 South St., Hyannis – Ethier – Map/Par 308/195
- Exhibit G** – Photographs handed out at meeting – Special Permit No. 2015-02, 445 South St., Hyannis – Ethier – Map/Par 308/195
- Exhibit H** – Email dated May 5, 2015, from Dave Anderson – Special Permit No. 2015-02, 445 South St., Hyannis Ethier – Map/Par 308/195
- Exhibit I** - Case Law cited: Mendes v. Board of Appeals of Barnstable, 28 Mass.App. CT.527 (1990) - Special Permit No. 2015-02, 445 South St., Hyannis Ethier – Map/Par 308/195
- Exhibit I (2)** – Case Law cited: Appeals Court case law cited: Richard W. Patenaude v. Zoning Board of Appeals of Dracut, No. 12-P-215. Nov. 28, 2012 - Special Permit No. 2015-02, 445 South St., Hyannis Ethier – Map/Par 308/195
- Exhibit J** – Scenic Road Application re: Route 149 (Main St., to Rt. 28) DPW, Town of Barnstable Marstons Mills Village Project

Exhibit K - Landscape Plans Sheets 1 – 6, Horsley Witten - Scenic Road Application re: Route 149 (Main St., to Rt. 28) DPW, Town of Barnstable Marstons Mills Village Project

Exhibit L - Photographs of site/areas/trees to be removed - Horsley Witten - Scenic Road Application re: Route 149 (Main St., to Rt. 28) DPW, Town of Barnstable Marstons Mills Village Project

Exhibit M – Correspondence dated April 30, 2015, from Attorney Michael Schulz re: Sub. No 454, Whistleberry work schedule

Exhibit N – Correspondence dated May 11, 2015, from Atlantic Design Engineers, Inc., Richard J. Tabaczynski re: Sub. No 454, Whistleberry work schedule

APPROVED