



Town Council Meeting
November 2, 2017



A quorum being duly present, Council President Eric Steinhilber called the November 2, 2017, Town Council meeting to order at 7:00 p.m. in the Hearing Room of Town Hall, 367 Main St., Hyannis, MA.

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

PRESENT: Frederick Chirigotis, James Crocker, Jr., William Crocker, Jr., Jennifer Cullum, Sara Cushing, Debra Dagwan, John Flores, Jessica Rapp Grasseti, Paul Hebert, John Norman, Eric Steinhilber, James Tinsley, Jr., Philip Wallace.

The Pledge of Allegiance was led by President Steinhilber, followed by a moment of silence.

PUBLIC COMMENT:

Steve Endres suggested the Town should pay for all the fees associated with Indian Trail. He discussed how the road was considered a public way.

Burt Bergstrom called for the Town to accept Indian Trail as a public way as the neighborhood had previously paid to ensure the public way. He echoed the previous speaker in asking the Town to pay for all fees.

Nancy Clark, Vice Chair of the Barnstable Historical Commission felt that saving the building was a big success.

Meaghan Moore responded to comments from Ron Beatty and hoped the Council was listening.

Laura Shufelt felt there were missed opportunities for affordable housing. She questioned the Request for Proposal process regarding the Marstons Mills Elementary School. She commented on the need for an appointed housing task force with measurable goals.

Paige Reilly asked all elected officials to remain positive and maintain policies on codes of conduct. She questioned why there were school age bullying policies but no elected official bullying policies.

Dennis Wilcox felt the Captain's Row buildings were not degraded beyond repair and hoped Council would leave these legacy buildings.

Dominic Allesandro, an abutter on Pleasant Street, felt the Pleasant Street building can

be restored. He was in favor of the community neighborhood element but stressed the idea of keeping a few of the original buildings.

Marina Atsalis suggested the Town buy the property to save the Sea Captain's Row. She added the Town needed to step up to get the owners to take care of their properties. She handed a prepared letter to the clerk. (Exhibit A)

Taryn Thoman has serious questions on the regulatory agreement and hoped Council would form a subcommittee to review the document.

Tim Ferrara was concerned with parking and traffic with the Sea Captain's Row project. He questioned the amount of parking and what was the need for it.

Close public comment:

COUNCIL RESPONSE TO PUBLIC COMMENT:

The Town is researching whether Indian Trail is public and or private way. The Town is also actively working on the Marstons Mills School project which has been out to bid four times. Council thanked all who spoke at the meeting.

TOWN MANAGER COMMUNICATIONS: (Exhibit B)

- Budget Action Plan
- Massachusetts Department of Fish and Wildlife
- Hyannis Marina
- Vineyard Wind
- Cape Cod Healthcare
- Cape Cod Regional Transit Authority
- Draft Customer Service Policy
- Improve Building Department Experience
- Charter Changes:
 - Ruth Weil explained the public process which started in 2015 with a subcommittee review of the charter. She detailed the timeline noting dates of the first and second public meetings. She added the charter changes were on the November 7, 2017 election ballot. She read the question as it would appear on the ballot.

Councilor questions and comments:

Was there discussion of a separate vote for the Town Tax Collector? (Ruth Weil explained it was discussed but ultimately left on all aspects of charter changes) The increase in golf fees was not received favorably by golfers or committee members. (Mark Ells clarified the Golf Committee was supportive of the 2 percent increase every year.) Increase in healthcare by 10 percent is bad for the economy and bad for our people – please get a grip on the cost of insurance. (Mark Ells said there will be continued discussion regarding the cost of healthcare)

ACT ON MINUTES: Upon a motion duly made and seconded it was voted to approve the minutes of the October 19, 2017 meeting.

VOTE: PASSES 11 YES, 1 ABSTENTION (CUSHING)

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

- **Report of the Regulatory Review Subcommittee/Shoestring Property LLC, Councilor Jennifer Cullum, Chair**

Councilor Jennifer Cullum, Chair spoke about the development of a regulatory agreement, identifying issues and recommendations. She noted the recommendation is for the item to go back to the Planning Board. She noted the need for the Planning Board to produce a document which is less as a stumbling block and more of a pathway. Councilor Fred Chirigotis added the applicant was not willing to work with the subcommittee.

Upon a motion duly made and seconded it was:

To accept the Report of the Regulatory Review Subcommittee/Shoestring Property LLC.

VOTE: PASSES UNANIMOUS

Upon a motion duly made and seconded it was:

To send back to the Planning Board and place it on the agenda as soon as possible.

VOTE: PASSES UNANIMOUS

The Committee is dissolved as we have accepted their recommendation

- **Presentation by Lorri Finton, Executive Director, Barnstable Housing Authority**

Lorri Finton, Executive Director, Barnstable Housing Authority discussed ongoing business and projects within Barnstable. She spoke about homes, rental units and vouchers from the State. She added there were 1225 families waiting for housing in Barnstable.

Councilor comments and questions:

What type of monitoring is ongoing in each complex? Wondering what the problems are as we have had residents come before the Council to detail issues. What is the process to report an issue or concern? (Anyone can file a complaint by phone, email or fax. There is follow up with home visit, or an outside agency inquiry or by the police.) We are concerned with self-documenting -what does the State do to review programs and policies? (We are audited by different agencies 8 to 10 times a year)

<p>2018-027 AMENDING CHAPTER 240-16.1 OF THE ZONING ORDINANCE MULTIFAMILY AFFORDABLE HOUSING (MAH) RESIDENTIAL DISTRICT INTRO: 09/07/17, 11/02/17</p>
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Elizabeth Jenkins, Planning and Development Director, gave the rationale. She noted the Planning Board voted in favor of this item.

Open public hearing, seeing no one close public hearing.

Councilor Paul Hebert left the dais at approximately 9:13 p. m.

Upon a motion duly made and seconded it was:
ORDERED:

Section 1.

That Section 240-16.1D of the Zoning Ordinance (Bulk regulations) is hereby amended by striking out footnote “1” and renumbering footnote “2” as footnote “1”.

So as revised Section 240-16.1D shall read as follows:

D.

Bulk regulations

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Setbacks (feet)			Yard Rear	Maximum Building Height ¹ (feet)
				Front	Side	Rear		
MAH	87,120	200	—	60	30	30	30	

NOTES:

¹Height shall be measured from the grade plane to the plate.

Section 2.

That Section 240-16.1E of the Zoning Ordinance (Density requirements) is hereby amended by striking out the existing Section 240-16.1E and substituting in place thereof the following

“E.

Density requirements- The total number of residential units allowable within a Multifamily Affordable Housing Development (MAHD) shall not exceed 16 per acre of upland. “

Section 3.

That Section 240.16.1F of the Zoning Ordinance is hereby amended as follows:

By striking out the parenthetical phrase at the end of the second sentence of Section 240.16.1F(6) “(with the exception that development under this section providing off-site inclusionary housing in conjunction with a senior continuing care retirement community shall not be required to provide services offered within the senior continuing care facility).”

By striking out the second sentence in Section 240.16.1F (8) which reads: “When the multifamily affordable housing development is proposed to satisfy the inclusionary requirements for a senior continuing care retirement community, phasing shall be as determined by the SPGA”

By striking out the word “Affordable” before “Housing Inventory” in Section 240.16.1F (10) and substituting in its place the phrase “DHCD Subsidized”.

By striking out Section 240.16.1F (7) and Section 240.16.1F (11) and renumbering the remaining paragraphs.

So as revised Section 240-16.1F shall read as follows:

F.

Affordable units- At least 25% of the dwelling units shall be affordable units, subject to the following conditions:

(1)

All affordable units shall remain affordable, as defined herein, in perpetuity. A use restriction shall assure this condition. The use restriction shall be structured to survive any and all foreclosures.

(2)

The continuing enforcement of the use restriction through subsequent resale of the affordable units shall be the subject of a monitoring agreement.

(3)

The use restriction and the monitoring agreement shall be drafted in compliance with the Local Initiative Program (LIP), and guidelines promulgated thereunder. The use restriction and the monitoring agreement shall be subject to review and approval by the Planning Board and approved as to form by the Town Attorney's office prior to the issuance of any building permits for any dwelling unit.

(4)

The affordable unit shall conform to all Department of Housing and Community Development (DHCD) standards that must be met to qualify these units for inclusion in the DHCD Subsidized Housing Inventory (SHI).

(5)

A right of first refusal upon the transfer of such affordable units shall be granted to the Town or its designee for a period of not less than 120 days after notice thereof.

(6)

Affordable units shall not be segregated within the MAHD. The affordable units shall satisfy the design and construction standards and guidelines of the Local Initiative Program with regard to distinguishability from market rate units. It is the intent of this section that the affordable units shall be eligible for inclusion in the DHCD Subsidized Housing Inventory as LIP units.

(7)

Affordable units shall obtain occupancy permits issued at the rate of one affordable unit for every four market rate units.

(8)

In computing the number of required affordable units, any fraction of a unit shall be rounded up, and the result of this computation shall be the number of affordable units required to be built within the MAHD. Affordable units shall only be located within any development permitted under this provision. This standard is not subject to variance.

(9)

No occupancy permit shall be granted unless the affordable dwelling units have been approved by the DHCD as eligible for the DHCD Subsidized Housing Inventory under the Local Initiative Program (LIP) Guidelines."

Section 4.

By striking out in Section 240.16.11 (Definitions), the definition of NURSING OR CONVALESCENT HOME in its entirety

VOTE: PASSES UNANIMOUS

Councilor Paul Hebert returned to the dais at approximately 9:15 p.m.

2018-033 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$30,000 FROM THE GENERAL FUND RESERVES FOR THE EVALUATION, DESIGN AND PERMITTING OF A TOWN PIER IN THE BARNSTABLE HARBOR AREA
INTRO: 10/19/17, 11/02/17

Mark Ells, Town Manager, gave the rationale. He explained commercial uses, residential uses and other activities can create challenges in these cases we will utilize internal staff but we may augment other sources as well.

Open public hearing seeing no one close public hearing.

Upon a motion duly made and seconded it was:

ORDERED: That the Town Council hereby appropriates and transfers the sum of **\$30,000** from the General Fund Reserves, for the purpose of evaluating, designing and permitting a municipal pier located in the Barnstable Harbor area; including the payment of costs incidental or related thereto.

VOTE: 12 YES 1 NO (NORMAN OPPOSED) - PASSES

2018-034 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO:
10/19/17, 11/02/17

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Airport Commission;** Joseph Berlandi, Cummaquid, as a regular member to a term expiring 06/30/2018; **Disability Commission;** Sarah Nicholson, Hyannis, as a regular member to a term expiring 06/30/2018.

VOTE: PASSES UNANIMOUS

2018-035 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO:
10/19/17, 11/02/17

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council reappoints the following individuals to a multiple-member Board/Committee/Commission: **Zoning Board of Appeals:** Alex Rodolakis, as a regular member to a term expiring 06/30/20

VOTE: PASSES UNANIMOUS

2018-037 ACCEPTANCE OF A GRANT IN THE AMOUNT OF \$59,014 FROM THE COASTAL POLLUTANT REMEDIATION GRANT PROGRAM TO DESIGN STORMWATER BEST MANAGEMENT PRACTICE (BMP) FOR THE THREE BAYS AREA. INTRO: 11/02/17

Dan Santos, Public Works Director, gave the rationale. He noted the grant funding was granted to the Town due to Best management practices for the 3 Bays Areas. He added it was reimbursable with the need for matching funds which were in-kind services.

Upon a motion duly made and seconded it was

RESOLVED: That the Town of Barnstable hereby accepts a grant of **\$59,014** from the Massachusetts Office of Coastal Zone Management to support the continuation of the stormwater remediation Best Management Practice (BMP) programming in the Three Bays Area and does hereby authorize the Town Manager to contract for and expend said funds for that purpose and the Town Manager is further authorized to accept any gifts in relation thereto.

VOTE: PASSES UNANIMOUS

2018-038 FISCAL YEAR 2018 AIRPORT ENTERPRISE FUND OPERATING BUDGET REDUCTION AND TRANSFER FROM RESERVES INTRO: 11/02/17

ORDERED: That the Fiscal Year 2018 Airport Enterprise Fund Operating Budget of **\$6,508,537** appropriated under Town Council order **2017-112** be reduced by **\$40,000** to **\$6,468,537**, and to meet such appropriation that the amount raised from current year revenues by the Airport Enterprise Fund as approved under Town Council order **2017-112** for **\$6,141,354** be reduced by **\$208,905** to **\$5,932,449**, and that the amount transferred from the Airport Enterprise Fund reserves as approved under Town Council order **2017-112** for **\$367,183** be increased by **\$168,905** to **\$536,088**.

VOTE: REFERRED TO PUBLIC HEARING ON NOVEMBER 16, 2017 – PASSES UNANIMOUS

2018-039 ORDER PURSUANT TO TEMPORARY REPAIRS TO PRIVATE ROADS PROGRAM REGARDING WAQUOIT ROAD IN COTUIT, MA INTRO: 11/02/17

ORDERED: That for the purpose of making temporary repairs to Waquoit Road in Cotuit, Massachusetts, a private road within the Town of Barnstable, including costs incidental or related thereto, the Town Manager is authorized to contract for and expend a portion of the appropriation and loan in the amount of **\$125,500** made available for Pine Ridge Road, Cotuit under agenda item number **2017-149** and to assess betterments and accept any grants and/or gifts in relation thereto.

VOTE: REFERRED TO PUBLIC HEARING ON NOVEMBER 16, 2017 – PASSES UNANIMOUS

2018-040 AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND CAPEBUILT PLEASANT STREET, LLC INTRO: 11/02/17

Elizabeth Jenkins, Planning and Development Director, gave the rationale. Attorney David Lawler discussed a regulatory agreement as a tool for development. He noted the buildings were in disrepair with weak falling floors. He added the McEvoy Family was great to work with during this process. Rob Brennan, Douglas Caulfield, Matt Eddy and Maryanne Agressti spoke about their past projects and commitment to the Pleasant Street project.

Open public hearing

Laura Shufelt opposed the project as it had only 10 percent affordable with just 2 studio units available.

Ed Maroney supported revitalizing Sea Captain's Row but felt Town leaders gave up on the road long ago. He urged Council to address flaws in the development.

Deb Callaghan felt the buildings were amazing and the future buildings will be great.

Marianne Fifield, member of the Historical Commission, suggested the need for a required professional historic review.

Paula Shnepp felt the regulatory agreement would likely bring both sides of the project together. She questioned the market rate affordability of the rentals.

Elizabeth Wurfbain was supportive of project and emphasized the need for market rate housing in downtown Hyannis.

Upon a motion duly made and seconded it was
Close public hearing

VOTE: 12 YES 1 NO (RAPP GRASSETTI) - PASSES

Upon a motion duly made and seconded it was
To reconsider the motion to close agenda item 2018 - 40

VOTE: 7 YES 6 NO (W.CROCKER, J. CROCKER, DEGWAN, NORMAN, STEINHILBER AND WALLACE) - PASSES

Upon a motion duly made and seconded it was
Close public hearing

VOTE: 5 YES 8 NO (CHIRIGOTIS, CULLUM, CUSHING, DEGWAN, FLORES, HEBERT, RAPP GRASSETTI, AND TINSLEY) - FAILED

Upon a motion duly made and seconded it was
Continue the public hearing on agenda item 2018 – 40 to the November 16, 2017 Town Council Meeting

VOTE: 12 YES 1 NO (NORMAN) - PASSES

REGULATORY AGREEMENT
CAPEBUILT PLEASANT STREET, LLC
24, 28, 43, 44, 53, 56, 64 AND 66 PLEASANT STREET AND 86 SOUTH STREET,
HYANNIS

This regulatory agreement (“Agreement”) is entered by and between the developer, CapeBuilt Pleasant Street, LLC, (“Developer”) and the Town of Barnstable (“Town”), a municipal corporation, on this ___ day of _____, 2017 pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code;

WITNESS:

WHEREAS, this Agreement shall establish the permitted uses, densities, and traffic within the Development (as hereinafter defined), for the duration of the agreement, and any other terms or conditions mutually agreed upon between Developer and the Town;

WHEREAS, this Agreement shall vest land use development rights in the property for the duration of the agreement, and such rights shall not be subject to subsequent changes in local development ordinances, with the exception of changes necessary to protect the public health, safety or welfare;

WHEREAS, the Town is authorized to enter into this Agreement pursuant to Chapters 168 and 240 of the Barnstable Code;

WHEREAS, Developer is the prospective owner of the properties at 24, 28, 43, 44, 53, 56, 64 and 66 Pleasant Street and 86 South Street, Hyannis, Massachusetts and shown on Assessor’s Map 327 as Parcels 131, 245, 122, 133, 121, 143, 268, 135 and 137, consisting of 103,688± square feet (2.38± acres). Collectively, the nine parcels are referred to herein as “the Property”;

WHEREAS, Developer is willing to commit itself to the development of the project substantially in accordance with this Agreement and desires to have a reasonable amount of flexibility to carry out the Development and therefore considers this Agreement to be in its best interests;

WHEREAS, the Town and Developer desire to set forth in this Agreement their respective understandings and agreements with regard to development of the Property;

WHEREAS, the Development will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA) or the Cape Cod Commission Act;

WHEREAS, Developer has made application to the Planning Board pursuant to Chapter 168 of the Barnstable Code;

WHEREAS, the Development is located in the Hyannis Growth Incentive Zone (GIZ) as approved by the Cape Cod Commission by decision dated April 6, 2006, as authorized by Barnstable County Ordinance 2005-13, Chapter G, Growth Incentive Zone Regulations of the Cape Cod Commission Regulations of General Application as extended by an Agreement to Extend Town of Barnstable Downtown Hyannis Growth Incentive Zone to October 6, 2017 between the Cape Cod Commission and the Town of Barnstable executed on December 14, 2015 and as further extended by a second Agreement to

Extend to April 4, 2018 between the Cape Cod Commission and the Town of Barnstable executed on October 6, 2017;

WHEREAS, the Development is not subject to review by the Cape Cod Commission as a Development of Regional Impact due to its location in the GIZ and due to the adoption of Barnstable County Ordinance 2006-06 establishing a cumulative development threshold within the GIZ as extended by an Agreement to Extend Town of Barnstable Downtown Hyannis Growth Incentive Zone to October 6, 2017 between the Cape Cod Commission and the Town of Barnstable executed on December 14, 2015 and as further extended by a second Agreement to Extend to April 4, 2018 between the Cape Cod Commission and the Town of Barnstable executed on October 6, 2017, under which this development may proceed and Developer has submitted a Jurisdictional Determination to the Town of Barnstable Building Department to confirm the same;

WHEREAS, prior to applying for approval of this Agreement, the Development was reviewed by the Town of Barnstable Site Plan Review Committee on July 20, 2017 (SPR 045-17). The Site Plan Review Committee voted to find the development proposal approvable subject to the grant of a Regulatory Agreement and other conditions;

WHEREAS, the Development was considered by the Planning Board at a public hearing on September 11, 2017, continued to September 25, 2017, and further continued to October 23, 2017, at which time the Board affirmatively voted recommend execution of the Regulatory Agreement.

WHEREAS, the Property is currently developed with six single-family dwelling units, one vacant residential-style commercial building and one accessory garage totaling 14,684 square feet. None of the buildings are currently inhabited. The primary use of the Property prior to the Developer's purchase was for seasonal commercial parking serving ferry customers. At the date of this agreement, the property at 53 Pleasant Street had a commercial parking lot license for 67 spaces;

WHEREAS, Developer proposes to redevelop the Property with eight (8) new multi-family residential structures that will contain a total of fifty-eight (58) units, and to renovate one existing structure that will contain two units, for a total of nine buildings covering 22,252 square feet on the Property, and sixty (60) total units with a combined total floor area of 86,218 square feet. The Developer proposes to construct seven (7) three-story multi-family housing buildings, one three-story building with two townhouses, and one building to be renovated into a community gathering space with two studio apartments above and an outdoor patio area. Six existing dilapidated dwellings and one accessory garage will be demolished. Paved parking areas with new stormwater management systems, lighting and landscaping will be installed;

WHEREAS, Developer proposes to develop forty-six (46) units as rental apartments in buildings labeled "Building PP", "Building C", "Building D", "Building E", "Building F" and "Building G" on the Site Construction Plans referenced below;

WHEREAS, Developer proposes to develop fourteen (14) units as either rental apartments or condominium units in buildings labeled "Building A", "Building B" and "Building H" on the Site Construction Plans referenced below;

WHEREAS, the Developer is required to provide 90 parking spaces by the Town of Barnstable Zoning Ordinance and the Developer is proposing 88 total parking spaces, which includes 70 standard spaces, 7 compact spaces and 11 on-street spaces.

WHEREAS, the Developer originally proposed to construct the waterline main through the project property itself and not within the Pleasant St. road layout (the "Original Infrastructure Proposal")

WHEREAS, after consultation by the Developer with the Department of Public Works (DPW), Barnstable Water Department and Town Manager, it was mutually agreed to be of benefit to both the Town and the Developer to conserve resources and coordinate Developer's infrastructure with the Town's infrastructure plans for Pleasant Street, Developer now proposes to contribute \$168,087. This is comprised of \$85,600 in construction costs plus \$82,487 in Hyannis Water System Development Service Fees representing the reasonably estimated cost that would have been otherwise borne by Developer in constructing the Original Infrastructure Proposal. It is understood:

- a. upon payment of the \$168,087 there will be no other Hyannis Water System Development Service Fees due or required for completion of this project;
- b. The Town of Barnstable DPW will be responsible for designing and constructing the waterline improvements within Pleasant St.
- c. Timing of the new waterline construction will be dependent on Barnstable DPW (Spring of 2018 contemplated by DPW). If the new waterline is not constructed when the Developer is ready to tie in new water service for the Project, the Developer will be allowed to tie into the existing water main in Pleasant St. Then at such time when Barnstable DPW is ready to construct the new water main in Pleasant Street, DPW will install the new main and tie the new main into the services previously extended for the Project by the Developer.

WHEREAS, the Developer proposes to reconstruct Pleasant Street to include eleven (11) parking spaces wholly or partially within the public right-of-way proposed for exclusive use by the development. The Developer is requesting a revocable license from the Town Manager for use of the parking spaces. Licenses for use of the public right-of-way are granted by the Town Manager pursuant to Part IV of the Town Charter, subject to terms and conditions.

WHEREAS, the Developer will replace the existing sidewalks along each side of Pleasant Street with sidewalks which comply with the Americans With Disabilities Act and Town of Barnstable requirements for public sidewalks;

WHEREAS, the Developer will grant to the Town of Barnstable an easement to allow the public to use the sidewalks to be constructed along Pleasant Street;

WHEREAS, the Developer is required by Chapter 9, Article I to provide six (6) affordable rental units to individuals or households with a total annual income that does not exceed 65 percent of the median income for the Town of Barnstable, as determined annually by the United States Department of Housing and Urban Development. In furtherance of the goals of enhancing the cultural character of the Downtown Hyannis Main Street and preserving the historic narrative of Pleasant Street as Sea Captains Row (the "Cultural

Objectives”), Developer proposes to provide two on-site studio apartment rental units, and associated workshop space, in the former Patriot Press Building (labeled as “Building PP” on the Site Construction Plans referenced below) that will be deed restricted for occupants earning no more than 50% of Area Median Income (the “Cultural Units”). The Cultural Units will be designated for residence by artists, consistent with open and fair marketing requirements. The Developer shall consult with the Town’s Planning and Development Department in developing criteria for the selection of artists to occupy the live-work space (the “Criteria”). Tenancy in each of the Cultural Units shall be for fixed periods of two (2) consecutive years in furtherance of the Cultural Objectives. If at the termination of any tenancy the Developer is without an applicant for a Cultural Unit meeting the corresponding Criteria, the Developer shall enter into an agreement for two year tenancy with any prospective resident earning no more than 50% of Area Median Income;

WHEREAS, The Redevelopment provides, without limitation, the following site design, traffic safety, and community benefits:

- a. Revitalization of long standing vacant property; revitalization is anticipated to eliminate or substantially reduce issues associated with blighted property including but not limited to homeless occupation and illicit activity.
- b. Redevelopments will significantly improve aesthetics along Pleasant Street.
- c. The Project will provide market rate housing, the need for which was identified in the 2014 Housing Production Plan, in an area of Hyannis in need of redevelopment.
- d. Elimination of ferry parking which has caused traffic and aesthetic problems for many years.
- e. Substantially improved traffic flow pattern allowing smoother ingress and egress on the property.
- f. Exterior site lighting improvements, including use of LED lights and motion detector lights.
- g. Construction of sidewalks.
- h. Improved stormwater management on-site with low impact design features.
- i. Addition of two affordable housing units at a reduced rate of 50% of Area Median Income, said units dedicated to live-work space for artists in furtherance of the Town’s Cultural Objectives.

WHEREAS, the Developer would require relief from the requirement for Hyannis Main Street Waterfront Historic District Commission Certificate of Demolition for the six existing structures on the property and Certificate of Appropriateness for all new exterior improvements;

WHEREAS, Developer would require zoning relief to allow for multi-family residential development totaling more than seven units per acre as well as relief from setbacks, maximum building height – number of stories, maximum lot coverage, landscape setbacks, off-street parking requirements, all as further defined in paragraphs numbers 2 and 24 below;

WHEREAS, Developer has undergone at least two public hearings on the Agreement application and received a majority vote from the Planning Board approving the application on October 23, 2017;

WHEREAS, Developer has undergone a public hearing on the Agreement application before the Town Council and received a 2/3rds vote approving the application on _____;

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to the other, Developer and the Town do enter into this Agreement, and hereby agree and covenant as follows;

1. The Developer shall redevelop the property as follows:
 - a. The Developer shall redevelop the Property with eight (8) new multi-family residential structures that will contain a total of fifty-eight (58) units, and to renovate one existing structure that will contain two units, for a total of nine buildings covering 22,252 square feet on the Property, and sixty (60) total units with a combined total floor area of 86,218 square feet.. The Developer will construct seven three-story multi-family housing buildings and one three-story building with two townhouses. The development will provide 2 studio units; 26 one-bedroom units; 26 two-bedroom units; and 6 three-bedroom units.
 - b. Forty-six (46) units shall be developed as rental apartments in buildings labeled "Building PP", "Building C", "Building D", "Building E", "Building F" and "Building G" on the Site Construction Plans referenced below.
 - c. Fourteen (14) units shall be developed as either rental apartments or condominium units in buildings labeled "Building A", "Building B" and "Building H" on the Site Construction Plans referenced below.
 - d. The "Patriot Press" building at 24 Pleasant Street shall be retained and renovated into a community gathering space with two studio apartments above and associated workshop space. The rear addition to the building, post-dating its original construction, will be removed.
 - e. Outdoor patio areas providing resident amenities shall be provided.
 - f. Six existing dilapidated structures and one accessory garage will be demolished.
 - g. Paved parking areas with new stormwater management systems, lighting and landscaping shall be installed;

2. The Developer agrees to construct the project in accordance with the plans and specifications submitted to and approved by the Town (hereinafter Redevelopment Plans), listed as follows and made a part of this Regulatory Agreement by reference:
 - a. Site Construction Plans: Sea Captains Row, Pleasant Street, Hyannis, Massachusetts, dated June 23, 2017, drawn and stamped by Baxter Nye Engineering and Surveying, sheets C0.0 to C5.1, ten sheets.
 - b. Landscape Plan: Sea Captains Row, Pleasant Street, Hyannis, Massachusetts, dated October 19, 2017, drawn and stamped by DeMelo Brothers, Inc. sheet L1.0
 - c. Architectural Renderings and Floor Plans: Sea Captains Row Schematic Design, Hyannis, MA dated June 26, 2017, drawn and stamped by Union Studio Architects, 26 sheets;

3. Developer shall contribute \$168,087 in connection with the waterline main infrastructure construction to serve the project; specifically, \$85,600 in construction costs plus \$82,487 in Hyannis Water System Development Service Fees.
4. The development rights granted hereunder shall be exercised and development permits may be obtained hereunder for a period of 10 years from the effective date of the Agreement, provided, however, that prior to the expiration of said 10 year period Developer may request a twelve month extension to obtain development permits, which shall include all necessary building permits. Upon receipt of necessary development permits, construction shall proceed continuously and expeditiously, but Developer to use reasonable efforts to complete construction within 4 years from receipt of necessary development permits. The development rights granted under this agreement shall not transfer to another owner without the prior written permission of the Town Manager under Section 168-5 of the Barnstable Town Code.
5. The Developer shall grant the Town an easement to allow the public to use the sidewalks along Pleasant Street where located on the Property. The Developer and all successors shall maintain the sidewalks.
6. Cultural Units:
 - a. Developer shall provide two on-site studio apartment rental units, and associated workshop space, in the former Patriot Press Building (labeled as "Building PP" on the Site Construction Plans referenced below)
 - b. Consistent with open and fair marketing requirements The Cultural Units shall be designated for residence by artists, with an income of not more than 50% of area median income, subject to the requirements in paragraph 6(d) below. The Developer shall consult with the Town's Planning and Development Department in developing criteria for the selection of artists to occupy the live-work space (the "Criteria"). Tenancy in each of the Cultural Units shall be for fixed periods of two (2) consecutive years in furtherance of the Cultural Objectives.
 - c. If at the termination of any tenancy the Developer is without an applicant for a Cultural Unit meeting the corresponding Criteria, the Developer shall enter into an agreement for two year tenancy with any prospective resident earning no more than 50% of Area Median Income.
 - d. As per Chapter 9, Article I, Section 9-6 of the Barnstable Inclusionary Housing Ordinance, the two (2) aforementioned housing units located in the proposed new development shall be dedicated as affordable housing units in perpetuity and in compliance with the Ordinance.
 - i. The two units shall only be rented to qualified households with an income of not more than 50% of area median income (as determined by HUD) and priced so as to be affordable and not exceed a monthly housing cost of 30% of 50% of the area median income, including rent and utilities and associated artist workspace.
 - ii. In order to protect the perpetuity of the affordable units, a Local Initiative Program Regulatory Agreement shall be reviewed and approved by the Town Attorney's office and recorded prior to the issuance of building permits.

- iii. Design of the two affordable units shall be appropriate for artist “live-work” space, including designated workshop space on the first floor of the building.
 - iv. The owner shall enter into a Monitoring Services Agreement to annually verify compliance with terms of this permit, as approved by the Town Attorney’s Office. The owner shall bear cost of annual marketing.
 - v. The owner shall prepare an Affirmative Fair Housing Marketing and Tenant Selection plan which shall be approved by the Town.
7. Lighting for the Development shall be contained on-site, shall be down cast, shall not contribute to light pollution of the area, and shall be constructed consistent with the lighting plan identified in paragraph 1, above.
8. The site shall be landscaped consistent with the landscaping plan identified in paragraph 2, above. All landscaping within the development shall be low water use and shall minimize the use of fertilizers and pesticides.
9. The developer shall provide bike racks and or bike storage on the Property.
10. The Developer, where reasonably feasible shall make available features or materials of interest to the Hyannis Historic Society or Cape Cod Maritime Museum available to the same for salvage upon prior written request. Provided, however, that salvage of features or materials shall not materially delay Developer’s construction schedule, and further provided that Developer may require a waiver and release of liability by any persons or entity entering upon the Property for such purposes and/or removing or accepting features or materials from the Property.
11. Rental restrictions. Developer’s minimum lease term of rental units shall be twelve (12) months. Sublease of rental units, if permitted by the Developer, shall be for a minimum term of ninety (90) days. The lease documents and/or condominium Master Deed and Homeowners Association documents shall be reviewed by the Town Attorney for consistency with the conditions of this Agreement prior to issuance of the first Certificate of Occupancy in each phase, as applicable.
12. Letter of Credit. Prior to the issuance of any foundation building permit, Developer will provide a Letter of Credit or cash in an amount to be approved by the Planning Board or its designee, said Letter of Credit or cash to be expended on the replacement of landscape materials if such replacement becomes necessary. Any unexpended portion of said Letter of Credit or cash shall be released by the Planning Board to Developer or his successor(s) after three years from the date of the initial landscape plantings, such date to be determined by the Building Commissioner, upon the request of Developer. The terms of the Letter of Credit are subject to review and approval by the Town of Barnstable Town Attorney;
13. Letter of Credit. To ensure completion of work within public ways and roadway restoration, Developer will provide a Letter of Credit or cash in an amount to be approved by the Planning Board or its designee, with advice from the Town Engineer, said Letter of Credit or cash to be expended on completion of work within the public ways and roadway restoration if completion of such work becomes necessary. Any unexpended portion of said Letter of Credit or cash shall be

released by the Planning Board to Developer or his successor(s) after thirty (30) days from the date of the final acceptance of all work within the public ways, such date to be determined by the Town Engineer, upon the request of Developer. The terms of the Letter of Credit are subject to review and approval by the Town of Barnstable Town Attorney.

14. All plumbing fixtures in the new units shall be low water use fixtures and other water conservation measures are encouraged in the design and development of the project;
15. Developer is responsible for obtaining all applicable permits and licenses, including but not limited to the following: foundation permit, building permit, street excavation permit (necessary for work in all public spaces), sewer permits and water permits. Only Town of Barnstable approved contractors are allowed to work on Town owned property. Contractors are required to have the insurance stipulated in the Street Excavation Rules and Regulations (SERR) and all work on town property must comply with all provisions of SERR. All work within the public way and public utility services shall be to Town Standards. All plans shall be reviewed and approved by the Department of Public Works prior to initiating any work within the public way.
16. Developer will make best efforts to complete construction work in accordance with a construction schedule and sequencing plan submitted and approved in writing by the Town of Barnstable Building Commissioner and Hyannis Fire Department prior to the issuance of any foundation or building permits. Developer reserves the right to construct the project in two (2) phases. Developer shall have four (4) years from the date of commencement of work on Phase 1 of the project to complete Phase 2. To the extent construction impacts public property or public rites of passage, changes in the schedule, if needed as work progresses, are subject to the written approval of the Town. The construction schedule shall, to the maximum extent feasible, avoid interference with traffic on Pleasant Street. The developer shall notify in writing and receive the written approval from the Town of Barnstable Planning & Development Department and the Department of Public Works at least 48 hours in advance of working on Town property. The Developer will be responsible for all construction signage, directional signs, and police officers necessary for the performance of the work as determined by Town;
17. Exterior construction impacts shall be minimized and construction shall be limited to the hours of 7:00 a.m. to 6:00 p.m. weekdays, and 8:30 a.m. to 2:00 p.m. Saturdays and Sundays. The Building Commissioner shall establish protocols to minimize the location of staging, noise, dust, and vibration. Failure to comply with these protocols following written notice from the Building Commissioner shall be grounds for the issuance of a stop work order until agreement as to compliance with the protocols is achieved.
18. During all stages in the demolition, rehabilitation and new construction, all vehicles, equipment and materials associated with the development shall be required to be located off the right of ways of Pleasant Street and South Street except as may be required to install utilities, and work authorized by this Agreement and as approved by Public Works and then only on a temporary basis.

19. To the extent that the referenced plans do not depict all of the findings and conditions as set forth in this Agreement, revised plans and/or notations shall be provided. In addition to permits, plans and approvals listed above, any and all permits and licenses required shall be obtained;
20. The total number of parking spaces proposed for the Development is 77 on the Developer's property. The Developer is also seeking a revocable license from the Town Manager for an additional eleven (11) spaces wholly or partially located on Pleasant Street for a total of 88 spaces serving the development.
21. Changes to the approved Redevelopment Plans referenced in Condition No. 1 shall require an amendment to this agreement under either §168-5 or §168-10 of the Barnstable Code, as determined by the Town.
22. Construction and demolition debris shall be removed from the Property and shall be reused or recycled to the maximum extent possible.
23. The construction of the multi-family apartment development will result in the following benefits to the Town:
 - a. Revitalization of long standing vacant property; revitalization is anticipated to eliminate or substantially reduce issues associated with blighted property including but not limited to illicit activity.
 - b. Redevelopment will significantly improve aesthetics along Pleasant Street.
 - c. The Project will provide market rate housing, the need for which was identified in the 2014 Housing Production Plan, in an area of Hyannis in need of redevelopment.
 - d. Elimination of ferry parking which has caused traffic and aesthetic problems for many years.
 - e. Substantially improved traffic flow pattern allowing smoother ingress and egress on the property.
 - f. Exterior site lighting improvements, including use of LED lights and motion detector lights.
 - g. Construction of a sidewalk.
 - h. Improved storm-water drainage management on-site with low impact design measures.
 - i. addition of two affordable housing units at a reduced rate of 50% of said units dedicated to live-work space for artist in furtherance of the Town's Cultural Objectives.
24. The Town hereby grants waivers from the following Zoning Ordinance sections:

Section 240-24.1.3 HVB Hyannis Village Business District: mixed use density relief, setback relief, parking relief, landscape setbacks, maximum floor area to allow preexisting nonconforming conditions and the redevelopment of the "Patriot Press" building as provided herein.

Section 240-24.1.7 HD Harbor District – (B)(2) Special Permits, density of greater than 7 units/acre with a Special Permit; (C) Dimensional, bulk and other requirements, front yard building and landscape setbacks; maximum building height number of stories; maximum lot coverage;

Section 240-1.11 Site Development Standards (A)(4) – Off-Street parking requirements for 77 on the Developer’s property. The Developer is also seeking a revocable license from the Town Manager for an additional eleven (11) spaces wholly or partially located on Pleasant Street for a total of 88 spaces serving the development. 90 spaces are required by Code.

25. The Town hereby grants waivers from the following Town Code sections:

Chapter 9, Article I Inclusionary Affordable Housing Requirements – Section 9-4-D requiring at least 10% of the residential units constructed shall be dedicated by deed restriction to affordable housing units is waived.

Chapter 112, Article III – Hyannis Main Street Waterfront Historic District Commission requirement for a Certificate of Appropriateness is waived for the demolition of the existing structures and construction of the buildings and all associated site work as shown on the approved development plans. This shall also include any relief necessary from compliance with the procedures or requirements of Chapter 112, Article I – Preservation of Historic Structures.

Chapter 353, Article I (Storage of Garbage and Refuse), Section 4 - Minimum setback to abutting property line. (No person shall store any rubbish or garbage less than 10 feet away from an abutter's property line. Where compliance with this provision is not possible due to existing physical constraints of the property, the refuse container(s) shall be set back away from the property line to the maximum separation distance feasible.) This requirement shall be waived.

26. Upon completion of all work, Developer shall cause a registered engineer or land surveyor to submit as-built plans accompanied by a letter of certification, made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the approved site plan. This document shall be submitted prior to the issuance of the final certificate of occupancy;
27. The development allowed in this permit shall be considered full build-out of the property. The structures authorized shall not be expanded nor other buildings and structures added without compliance with §168-10 of the Barnstable Code.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

Dated this _____ day of _____, 2017.

Town of Barnstable
By:

Developer, CapeBuilt Pleasant Street, LLC
By:

Upon a motion duly made and seconded to go into executive session and not to reconvene as follows: The Town Council may vote to go into Executive Session under G.L. c. 30A §21(a) (3), to discuss strategy with respect to the lawsuit pending in the United States District Court for the District of Columbia captioned Town of Barnstable, Massachusetts, Plaintiff v. Ryan Zinke, et al, Defendants, if the Chair declares that an open meeting may have a detrimental effect on the litigating position of the Town.

VOTE: 13 YES – PASSES (10:49 P.M.)

VOTE: ADJOURNMENT:

Upon a motion duly made and seconded it was
VOTED to adjourn:

Adjourned at 10:49 PM

Respectfully submitted,

Janet E. Murphy
Assistant Town Clerk/Town of Barnstable

NEXT REGULAR MEETING: November 16, 2017

EXHIBITS:

- A. Marina Atsalis letter
- B. Town Manager update period October 20 through November 2, 2017