



Town of Barnstable Planning Board



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 Steven Costello – Chair Stephen Robichaud – Vice Chair Mary Barry - Clerk Robert Twiss Michael Mecenas Raymond Sexton Tim O’Neill
 Mathew Levesque – Town Council Liaison
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 Elizabeth Jenkins, AICP, Director
 Kaitlyn Maldonado, Assistant Director
 James Kupfer, AICP, Senior Planner
 Karen Herrand – Principal Assistant - karen.herrand@town.barnstable.ma.us

BARNSTABLE TOWN CLERK

2021 NOV 30 PM 3:54

Town of Barnstable PLANNING BOARD Minutes November 8, 2021

Steven Costello – Chairman	Present
Stephen Robichaud – Vice Chairman	Present
Mary Barry – Clerk	Present
Robert Twiss	Present
Michael Mecenas	Present
Raymond Sexton	Present
Tim O’Neill	Present

Also in attendance via remote participation were Planning & Development Staff; Elizabeth Jenkins, Director, Kaitlyn Maldonado, Assistant Director, James Kupfer, Senior Planner, and Karen Herrand, Principal Assistant.

The Planning Board’s Public Hearing will be held at 7:00 p.m. by remote participation methods.

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be viewed via the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/>
2. Real-time access to the Planning Board meeting is available utilizing the Zoom link or telephone number and Meeting ID provided below. Public comment can be addressed to the Planning Board by utilizing the Zoom link or telephone number and Meeting ID provided below:

Link: <https://zoom.us/j/99923429617>

Phone: 888 475 4499 US Toll-free

Meeting ID: 999 2342 9617

3. Applicants, their representatives and individuals required or entitled to appear before the Planning Board may appear remotely and may participate through the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting so that they may be displayed for remote public access viewing.

Application materials may be accessed by contacting [Karen.herrand@town.barnstable.ma.us](mailto:karen.herrand@town.barnstable.ma.us) or calling 508-862-4064.

Call to Order

Introduction of Board Members and Staff Members

Attendance Roll Call

Steven Costelo
Stephen Robichaud
Mary Barry
Bob Twiss
Michael Mecnas
Ray Sexton
Tim O'Neill

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.

Public Comment

Cody Jones
Rob Wilson
Catherine and Kristine McDonough
All for Wakeby Rd. Zoning Amendment, which is an item on tonight's Agenda

Zoning Amendments:

Zoning Amendment TC Item No. 2022-034 - Proposal to amend the Town of Barnstable Zoning Ordinance by amending the code of the Town of Barnstable, Part I, General Ordinances, Chapter 240 Zoning by expanding the Ground-Mounted Solar Photovoltaic Overlay District to include the property located at 810 Wakeby Road, Marstons Mills (Assessors' Map 013 Parcels 004, 005, 052) and by requiring a Special Permit for large-scale ground-mounted solar photovoltaic installations located within any residential district located within the overlay district.
(Public Hearing) (Majority of members present and voting for recommendation to Town Council)

Chair Steven Costello entertains a motion to open the public hearing, moved by Mary Barry, seconded by Stephen Robichaud,

Roll Call Vote:

Steven Costello - aye
Stephen Robichaud - aye
Mary Barry - aye
Bob Twiss - aye
Michael Mecnas - aye
Ray Sexton - aye
Tim O'Neill - aye

Attorney Michael Ford in attendance on behalf of TJA. Gives a history of the property. Large size, long history of use, sand & gravel and then salvage yard. Has been litigation between Town and the owner of property. Sand and Gravel could no longer continue. Variance granted for a portion still in force. Located in single family zone. The site has been substantially disturbed, good location for a solar array. Site does not have trees and would make a good site for this. Population around here, would be a good neighbor in a residential district, no wastewater, no traffic, little noise. Provide by way of special permit condition now. It has built this into it, section 4 of the proposed amendment. The Planning Board to make specific findings – this provision addresses the due process. This site has always been used for commercial purposes. The site has become contaminated over the years. DEP says needs to be cleaned

up. This process has begun. TJA would be committed to continuing and finishing this. This would be a condition. The ordinance provides for site plan review, gives Building Commissioner authority to make requirements of the project to protect public health and safety, including the discontinuance of the purpose of the site for non residential purposes. The salvage yard use is still there and could operate in this district. This site appears to meet all the requirements when looking for a solar array site. Number of benefits for all. Set backs would now be a 75 ft. minimum and issue of any special permit would have to require that. The land is a unique parcel. The issues previously heard seem to be addressed in this proposal. There is litigation currently over whether the Town's current zoning ordinance is more restrictive than the state allows. If this goes through it would eliminate this. His clients are open to any site visits, can facilitate if Planning Board wanted to do so on site.

Elizabeth Jenkins, this matter is a proposed Zoning Amendment map and text. Mass General Law 40A procedure. Planning Board plays advisory in this process to make to Town Council, who makes the decisions on amendments. This comes forward in response to an ongoing proposal to redevelop with a large scale solar array. Town is contending with section 3, Mass General Law – the provision of solar energy systems as a use to promote the public safety/welfare. 2010 the Town of the Green Communities Act did adopt an overlay district, Ground Mounted Solar Protection Overlay District (GMSPOD) – this was drafted based on a state model and allowed for the regulation over 250 kilowatts. The Town adopted that back in 2010. This is the zoning that we are looking at amending the applicability of and the map. Exhibit A, screen share of the map with blue outline of the 3 parcels in the district – map amendment. Text amendment – Staff Report, Exhibit B, to require a special permit for large scale solar voltaic in residential districts. Standards, Planning Board would be Special Permit Granting Authority (SPGA) and the criteria to go by. Such as increased setbacks, vegetative or hardscape screening in buffer areas, FAA study, solar flare and attention to hazardous products and materials, to see properly contained. Also any revocations of land use permits.

Chair Steven Costello asks for clarification about the lawsuit and how it would affect this?

Town Attorney Charles McLaughlin in attendance. The theory of the lawsuit is that 40A 3, which was referred to the new zoning act, goes back to 1975. Statute is clear makes solar exempt. Health, safety and welfare has been left to Site Plan review. Widespread projects now. 2010 enacted a comprehensive statute called Green Communities Act. Encourage with financial support "Green Communities". In order to qualify, would be other incentives to help municipalities to move towards more sustainable eco structure. Also to create zoning as of right. Renewable solar cases have come forth with the as of right that 40A, 3 has provided. If as of right, why did legislature say to qualify you need to enact GMS, some confusion. Case in Land Court re the confusion for as of right use and the Green Communities zoning. Site Plan review not a good public input. The developer would be willing to forgo any and all uses by any argument of pre existing non conforming uses.

Public Comment

Rob Wilson in attendance. Centerville resident. Should look towards energy independent. The developer said forgo any uses of the property, is that different from the owner? Thought 20 year rental would be more than the purchase price of the land.

Attorney Ford replies – it is not the same/owner and developer. The revocation is all permits that the property has the benefit of. Would cover the permits that have been granted to the owner or any subsequent owner or developer. It is that broad.

Catherine McDonough, 111 Mockingbird Lane. Two years since last this was in front of us. The pit in the backyard. An Engineer said didn't even know where to start. The salvage yard use. So many red flags. Have the environmental issues been looked into since the last meeting. How many trees cut down, the

property has grown back, lots of trees, that have been clear cut this summer. DEP should be involved. In the past there was tons of fill and the former owner profited from selling it. This is unusable now for residential use. – opposed.

Kristine McDonough. Don't want it in their back yard. 75 ft. is not enough protection for us. – opposed.

Anne Salas in attendance. TJA sued the Town to get this amendment. This proposed solar farm would devastate. Protect the health and well being of our neighborhood. FEMA warns against the probable explosions that would occur with these types of batteries. The site is adjacent to watershed to protect our water. This is an opportunity to prevent against further extortion. Solar developers should not be allowed to wreak havoc. Barnstable could be a leading example to stop and prevent more destruction from developers looking for tax credits. – opposed.

Nancy (no last name provided) with Anne Salas in attendance. Herbicides will seep into the soil aquifer, will cause cancer causing agents. Fires are put out with chemical foams. Whatever leaches from 810 Wakeby will contaminate. A 75 ft. buffer will not shield residents. How and who will monitor this. Properties are devalued with solar arrays next to them. Clearly spot zoning. Utilize and produce toxic waste. Acres of bogs will be covered with these panels. – opposed.

Mary (no last name provided) with Anne Salas– direct abutter. We all like solar power and alternative energy. There are areas of the Town where something like this could be sited on. This will benefit an individual not the Town. Fencing issues. Little confidence that this property will be maintained. Used to be all woods, been clear cut several times. Dredging. – opposed.

Cody Jones in attendance. Clear cutting being done. Cranberry owners are losing money to solar companies. Would be humming and buzzing. Not worth it for the abutters. – opposed.

Tim O'Neill, in reviewing, a lot of good language if someone brings solar project. Long term use of property, construction of panels, materials used in construction and maintenance. These are things that the Board would want to look into. A lot of good concern. This site seems to have been mined for fill and gravel and there could be a lot of grading changes to construct a solar array possibly, re grade and height. Would be interested in seeing the site. Good language in proposed zoning amendment.

Ray Sexton, appreciates the concerns that are being expressed. 16 acres, closer to 19. Will entire parcel be used for the panels? Who decides how many panels?

Attorney Ford replies that it depends upon the solar arrays that will be used. A substantial portion of the site would be covered with array. The review would be at Site Plan Review and then the Planning Board in a Special Permit hearing. A special permit requires notice and opportunity to be heard. Reviewed by Cape Cod Commission (CCC) - over 40, 000 sq. ft. possibility that application could go to CCC where existing use reviewed and decide if need full review or not, but will undergo as full Development of Regional Impact (DRI). Site Plan review calls upon all departments that need to be involved with their professional review.

Ray Sexton, clarifies the site clean up plan that currently exists?

Attorney Ford, yes, it was approved by Dept. of Environmental Protection (DEP) and they are responsible for seeing it cleaned up.

Ray Sexton re: Exhibit A/Map. Lot that doesn't have any residences, is this conservation area?

Elizabeth Jenkins puts up map - points out the parcel to the west, also previously been divided into two lots, one has a telecommunications tower on it and the remainder is the lot in question – Conservation.

Michael Mecnas appreciates the concerns. 75 ft. to someone's backyard and toxic chemicals are a big concern. I have a lot to learn about this.

Bob Twiss would like to do a site visit. Walk the terrain and see the slopes. Need to do some research re the contaminants involved in this type of land use. Aquifer, in what direction does it flow. Need more information before address if this geographical area is good for this use.

Chair Steven Costello also would like to visit the site. Staff to coordinate for all or separately.

Mary Barry asks about what happened with Cotuit/MM Water Dept. when they wanted to do a solar field to support their revenues. Process. Would like to walk the property as well.

Elizabeth Jenkins replies, in 2016 or 2017 – similar map amendment to expand the extent with idea to utilize for large scale solar array. That proposal produced some controversy as extensive cutting of trees and the well fields, zone 2 and 1. This was withdrawn. Town Council did take action and amend as as to require additional set backs to take place in conjunction with these types of projects.

Stephen Robichaud, Chapter 40A, 3. The storage is a big question. Installation of system, definition?

Town Attorney Charles McLaughlin replies doesn't think the legislation addressed it. The question of battery storage has become of interest to the regulators at both levels. The more stored the less generating facilities need to be constructed – employ into the system. Timely. Hasn't seen any particular recollection of seeing anything trying to define this. There is a distinction re production and distribution. Placeholder to put in a design component appropriate for the Planning Board. Battery storage is another component.

Stephen Robichaud, this was his issue when this last came to the Board. He has heard of incidences with thermal runaway and some not trained or educated enough. We need to be more educated on the storage aspect. 40A does not speak towards storage. Most of the batteries are lithium ion chemicals. All storage potentially could harm, so storage shouldn't be allowed in residential situation. Would like to address it now/storage aspect and what's involved. Would like to do site visit as well.

Town Attorney Charles McLaughlin replies. Whether or not get into storage by zoning amendments or through the Board of Health, who would have jurisdiction of protecting groundwater. Come back with some recommendations. Petroleum based threats and the battery storage. How and what Board should this go to.

Chair Steven Costello – any threat to groundwater is of ultimate concern. No exempt use for this property. Site being cleaned up is a critical issue. Unfavorable situation with this neighbor. If amendment not approved what realistically given current zoning could be possible other uses for this property.

Elizabeth Jenkins, the underlying zoning is single family, residential, 2 acre zoning. Use variances granted in the past for this property.

Chair Steven Costello – potential CCC involvement with this project. Water concerns. Ultimate system that would be proposed for this site. Set backs. Site Plan review. Safety concerns. Set back concerns.

Chair Steven Costello entertains a motion to continue and keep public hearing open, schedule a field trip as well, moved by Mary Barry to continue TC Item No. 2022-034, to Dec. 13, 2022, seconded by Stephen Robichaud,

Roll Call Vote:

Steven Costello - aye
Stephen Robichaud - aye
Mary Barry - aye
Bob Twiss - aye
Michael Mecnas - aye
Ray Sexton - aye
Tim O'Neill - aye

Subdivisions:

Modification to Subdivision No. 826 Loomis Lane. The application was submitted by Attorney Schulz on behalf of the following property owners, Eric J. Fischer, Simone S. Fischer, Dean C. Swartz, Maureen F. Swartz, and Herbert K. Bodensiek. The request is to modify the roadway layout of a section of Loomis Lane to coincide with the traveled portion. The subject properties are shown on Assessors Map 230 Parcel 104, Map 230 Parcel 105 and Map 230 Parcel 111.
(Public Hearing) (Majority of the full Board)

Chair Steven Costello entertains a motion to open the public hearing, moved by Michael Mecnas, seconded by Mary Barry,

Roll Call Vote:

Steven Costello - aye
Stephen Robichaud - aye
Mary Barry - aye
Bob Twiss - aye
Michael Mecnas - aye
Ray Sexton - aye
Tim O'Neill - aye

Chair Steven Costello entertains a motion to continue to December 13, 2021 at 7 p.m., moved by Michael Mecnas, due to the Board not in receipt of the waivers needed, motion to renotece requesting the necessary waivers and continue Modification to Subdivision No. 826 Loomis Lane with Attorney Schulz on behalf of the following property owners, Eric J. Fischer, Simone S. Fischer, Dean C. Swartz, Maureen F. Swartz, and Herbert K. Bodensiek to the December 13th Planning Board meeting at 7:00 PM., seconded by Mary Barry,

Roll Call Vote:

Steven Costello - aye
Stephen Robichaud - aye
Mary Barry - aye
Bob Twiss - aye
Michael Mecnas - aye
Ray Sexton - aye
Tim O'Neill - aye

Regulatory Agreements:

Jennifer and Jeffrey Lyon, Trustees, Lyon Investment RT seek to enter into a Regulatory Agreement

The subject property is located at 80 Pearl Street, Hyannis, Map 326 Parcel 008. The Applicant's proposal is to redevelop the property, formerly Cape Cod Child Development, as a multifamily development consisting of eight (8) apartments with a combined total floor area of 4,481 sq. ft. A waiver

is being requested to allow development of multi-family units within the Single Family District.
Continued from August 9, 2021, August 23, 2021, September 27, 2021, and October 25, 2021
(Public Hearing) (Majority of members present and voting)

Attorney Paul Revere in attendance. Exhibit B, site plan. He gives a brief history of the past meetings and the property. Workforce housing.

Jim Kupfer explains the work that was revisited. Parking and have come to a resolution for the regulatory agreement with the Legal Dept. and Staff.

Kate Maldonado confirms the copy as sent to the Board. Site plan has been submitted but not a landscape plan - this will need to be submitted before any Building Permit can be obtained.

Elizabeth Jenkins confirms that the typical Mullin Rules do not apply for the vote, regulatory agreement.

Tim O'Neill has reviewed previous minutes and video of the meeting for this regulatory agreement application.

Ray Sexton asks about the landscape plan, does this need to be done or can we vote on this now?

Kate Maldonado reiterates that before any building permit issued the landscape plan has to be in hand.

Mary Barry clarifies that she has only missed one meeting per this application.

Chair Steven Costello entertains a motion to close the public hearing, moved by Bob Twiss, seconded by Ray Sexton,

Roll Call Vote:

Steven Costello - aye
Stephen Robichaud - aye
Mary Barry - aye
Bob Twiss - aye
Michael Mecnas - aye
Ray Sexton - aye
Tim O'Neill - aye

Chair Steven Costello entertains a motion, moved by Bob Twiss to recommend with all amendments as summarized and recommend the execution of Regulatory Agreement No. 2021-03 with Lyon Investment Realty Trust, Jennifer and Jeffery Lyon, Trustees to Town Council, seconded by Mary Barry,

Roll Call Vote:

Steven Costello - aye
Stephen Robichaud - aye
Mary Barry - aye
Bob Twiss - aye
Michael Mecnas - aye
Ray Sexton - aye
Tim O'Neill - aye

Airview LLC, Inc. – Modification of an existing Regulatory Agreement - No. 2019-03

The previously approved Regulatory Agreement, 2019-03, recorded on July 28, 2020, enabled the development of 451 and 467 Lyannough Road and 400 Barnstable Road in Hyannis to incorporate the

construction of two buildings: a one-story retail pharmacy building with a drive through lane and a gross floor area of approximately 10,000 square feet (Building A) and a one-story building to be reserved for future retail use with a gross floor area of approximately 6,000 square feet (Building B). Airview LLC, seeks to modify the previously approved Regulatory Agreement to incorporate a food and beverage service business (Starbucks) with a drive-through window within one of the tenant spaces of Building B. Said proposal requires a waiver as drive-through windows, for uses other than banks, are prohibited per zoning. Additionally, the applicant seeks to modify the request associated with the need for the previously approved signage waivers to incorporate signage proposed for Starbucks and the applicant seeks to modify the request associated with signage established for Building A. *Continued from August 23, 2021, September 27, 2021, and October 25, 2021*
(Public Hearing) (Majority of members present and voting)

Matt Eddy, of Baxter Nye in attendance. Exhibit C. Shows site plan with a revision per signage. Bike rack to be added. Note re outside storage not allowed. Clearance bar at back of the bldg. that wasn't done originally. The landscape plan, comment about island in front of Starbucks to adjust that it be updated prior to bldg. permit application.

Stuart Bornstein in attendance.

Attorney Michael Princi in attendance. Has been working on this with Staff. Signage – need to finalize this. Mitigation – Go back and look through a number that would be consistent with others that have had drive throughs done, Chic Filet is one that comes close.

Allen Cloutier in attendance. Exhibit D – Memorandum, took numbers that Chic Filet's traffic impact study had. Our numbers from the changing use. Daily trip comparison. Chic Filet site had 1,146 trips per day and \$228,000 mitigation. Cape Cod Commission impact fee. Equivalent is \$31,788.

Jim Kupfer hasn't had a chance to look at this information yet. We can look closer at this. Staff has taken a robust look at traffic. Cape Cod Commission has new tools for traffic analysis and shared with us.

Attorney Princi in attendance. We have some more work before the Board can do much more. Will need it before put into final form.

Chair Steven Costello replies maybe help us to understand what mitigation and to what benefit.

Jim Kupfer not just traffic mitigation but multi model opportunity and how connects to this site. Town looking to improve Rte 132 and how improve streetscape. This could point to some mitigation that would help start the narrative for the Rte 132 corridor.

Chair Steven Costello, when would this study happen?

Jim Kupfer, yes meetings with DPW, conceptals up and running. This is one site that would contribute but many other locations around town as well.

Kate Maldonado a few outstanding items, would like floor plan for Bldg. B, signage plan should be updated, clearance bar, landscape plan, island now proposed to be a patio. Would like to obtain these things.

Stephen Robichaud clarifies mitigation are funds held in escrow until they are needed?

Jim Kupfer, yes held and dedicated specifically/potentially grants.

Elizabeth Jenkins – memorandum submitted, Staff would like to look this over, possibly keep the public hearing open. Evidence of how other mitigation has been done.

Chair Steven Costello entertains a motion to continue to Nov. 22, 2021, moved by Stephen Robichaud, seconded by Mary Barry,

Roll Call Vote:

Steven Costello - aye

Stephen Robichaud - aye

Mary Barry - aye

Bob Twiss - aye

Michael Mecnas - aye

Ray Sexton - aye

Tim O'Neill - aye

Matters Not Reasonably Anticipated by the Chair

General Business

Local Comprehensive Plan (LCP) update – Discussion of the Local Comprehensive Planning Committee (LCPC).

Elizabeth Jenkins, Town issued Memorandum on Oct. 21st 2021, establishment of LCP Committee, citizen planners, to guide and steer for the Town. Making sure well communicated, recommendation to Town Council. Community visioning. Role in creating and carrying out plan. To allow for public comment and input. CCC guidance on putting together. Both Town Manager and selection to be ratified by the Town Council. Criteria in memo, 7 individuals from each of the villages in the Town. Priority to Planning Board, Zoning Board of Appeals and Board of Health, Conservation Commission and Historical Commission as well as the Youth Commission and the business community. Between 9 and 15 on the Committee, and an interview process done via Zoom and videotaped. Town Manager and Appointments Committee Chair will weigh in and make recommendation for ratification to Town Manager. Open through the November 15th. Will provide an update to Town Council at Nov. 15th hearing, currently just taking comment.

Chair Steven Costello asks what is the time/function for.

Elizabeth Jenkins, potentially terms, first phase taking between a year and 18 months. All members would be up for reappointment at that time.

Correspondence

Chapter 91 Application – 671 Old Post Rd. – reconstruct/maintain existing bulkhead – AAR Legacy, LLC

Approval of Minutes

October 25, 2021, draft minutes

Motion made by Mary Barry to approve the October 25, 2021, draft minutes, seconded by Ray Sexton,

Roll Call Vote:

Steven Costello - aye

Stephen Robichaud - aye

Mary Barry - aye

Bob Twiss - aye

Michael Mecnas - aye

Ray Sexton - aye

Tim O'Neill – aye

Future Meetings: November 22, 2021 and December 13, 2021, @ 7:00 p.m.

Adjournment

Chair Steven Costello entertains a motion to adjourn, moved by Mary Barry, seconded by Stephen Robichaud,

Roll Call Vote:

Steven Costello – aye

Stephen Robichaud – aye

Mary Barry – aye

Bob Twiss – aye

Michael Mecnas – aye

Ray Sexton – aye

Tim O’Neill - aye

The meeting adjourned at 9:37 p.m.

Respectfully Submitted

Karen Herrand, Principal Assistant, Planning & Development

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 - Zoning Amendment TC Item No. 2022-034 - Map

Exhibit B – RA 2021-03 Lyon Investment - Site Plan

Exhibit C – Airview LLC, Inc. – Modification of RA No. 2019-03 - revised site plan

Exhibit D - Airview LLC, Inc. – Modification of RA No. 2019-03 - memorandum comparison and mitigation, dated November 8, 2021.