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Town of Yarmouth

MINUTES OF THE PLANNING BOARD MEETING OF February 20, 2013

The Yarmouth Planning Board held a business meeting at 5:30 p.m. on Wednesday, **February 20, 2013** in the Hearing Room at the Yarmouth Town Offices located at 1146 Route 28, South Yarmouth, MA.

Planning Board Present were: Norm Weare, Ken Driscoll, Chris Vincent, Tom Roche, Tom DiPersio, and Brad Goodwin

Planning Board Absent were: None

Others Present: Kathy Williams, Town Planner; Kieran Healy; Paul Butler; Bob Dubois; Christine Greeley; Paul Greeley; Joe Glynn; and David Beatty.

Planning Board Chairman Chris Vincent opened the meeting at 5:31 p.m.

1. Public Hearing –Draft Zoning Articles for 2013 Annual Town Meeting - Presentation & Public Comments:

a. **Hearing Opening:** Chris Vincent, Planning Board Chairman opened the public hearing at 5:32.

b. **Public Hearing Notice:** The attached public hearing notice which was published in the Register on January 31, 2013 and February 7, 2013 was read into the record. Kathy Williams noted that although the Article on the Site Plan Review and Design Review was included in the Public Hearing notice, it was subsequently withdrawn.

c. **Presentation:** Chris Vincent and Norm Weare gave the attached powerpoint presentation outlining the proposed Zoning Bylaw amendments for the 2013 Annual Town Meeting (ATM). Public and Planning Board comments were solicited after each Article

d. Public and Planning Board Comments:

1) **Extended Stay Hotels (ESH):** Chris Vincent gave the powerpoint presentation.

- **Public Comments:**

1) Joe Glynn: Appreciates being heard. Have brought many issues before the Board of Selectmen over the years. Enforcement seems discretionary. Make a Bylaw that is equally enforceable and then enforce it. Problems come with interpretations that reward some hotel owners and penalizing others. People look for loopholes to get around the Bylaw. Requiring laundry facilities or fitness center at hotels may impact other existing businesses. Don't let police address social issues. If certain people or businesses violate laws, then address that. Sees changing of the Bylaw to suit the needs of the few, instead of enforcing the Bylaw. It is unconstitutional to not equally enforce the law. The Planning Board does not work at the pleasure of the Selectboard. Selectmen are not the policy making body in this town, Town Meeting is. Look at just 30-days for hotels, that's the rule existing businesses have been working under. To adjust rule to fit ESH that hasn't been paying property taxes in town is a problem, it is going around the issue we have been having for a long time in town.

- **Planning Board Comments:** None

- 2) **Affordable Housing:** Norm Weare gave the powerpoint presentation.
- **Public Comments:** None
 - **Planning Board Comments:** None
- 3) **Seasonal Employee Housing at Motels/Hotels & On-Site Managers at Motels/Hotel:** Chris Vincent gave the powerpoint presentation.
- **Public Comments:**
 - 1) **Joe Glynn:** Need to address existing problems. Issues with interpretations by project teams, ZBA, Fire, Police, and Special Permits. Foreign workers take work away from local teenagers. Hotels that hire people pay them less and give them housing. People in Town who can't pay their mortgages would love to have seasonal employees in their houses. This amendment is being done to accommodate same 1 or 2 businesses. Make it 30-days or let the market dictate how long a hotel wants someone to stay. If someone wants to stay in a hotel, who is the town to say they can't do that. People staying in hotels may be gainfully employed. Some of these people may be bad elements, but it's the police's job to take care of bad apples, not to make a bylaw to suit everybody. Even with a voluminous bylaw, will still have enforcement issues, I say its 30 days throughout Town, equal protection, equal enforcement, or let the market dictate. You are not dictating what's right or solving social ills, just saying what is fair.
 - 2) **Kieran Healy:** I was one of those students who came here a long time ago to work for the summer and the single biggest problem is where you are going to sleep. Having an opportunity for a 90 day stay is huge for a student coming here. The jobs are there, the menial jobs that need to be filled.
 - **Planning Board Comments:**
 - 1) **Brad Goodwin:** Bylaws are crafted for anyone in town who has a motel/hotel license to revamp their property and is not being done for 1 or 2 people. Would rather allow extended stays on employees to go to 20% rather than 15%, but Planning Board voted to keep at 15%. If you don't have employees, can't make money. Toughest thing is to find an affordable place to stay to put money away for college.
 - 2) **Chris Vincent:** Bylaw is meant to address enforcement issues. Employee housing is currently by-right with no criteria or standards, which is the problem. This bylaw sets minimum standards so we have enforcement capabilities. Have seen some poor employee housing conditions and this bylaw would prevent that from happening. People filling menial jobs need a place to stay because they don't get paid a lot. Seasonal employees need a good, safe, comfortable place to stay, which benefits employees, motel owners and the Town as a whole.
- 4) **Signs:** Chris Vincent gave the powerpoint presentation.
- **Public Comments:**
 - 1) **Joe Glynn:** Should make a sign code that affects all businesses and stick to it whether 8 colors or 20 colors or 2 colors, not have a different code for business center signs. This causes problems for franchise businesses. Assume that limiting colors was done for aesthetics reasons. A lot of issues are interrelated and goes back to the economy.

- **Planning Board Comments:**

- 1) Brad Goodwin: Clarified that a co-branded business is like a Getty/Dunkin Donuts or a Hess/Subway combination.

5) **Definitions:** Chris Vincent gave the powerpoint presentation.

- **Public Comments:**

- 1) Joe Glynn: Does the definition for building inspector go beyond this bylaw? (*Kathy Williams read the definition in the Article, which applies only to the Zoning Bylaw.*) This gets back to someone having authority to make interpretations. If you write the bylaw clearly and fairly, won't have to have people making interpretations. (*Kathy Williams indicated that it is the Building Commissioners job to interpret the Zoning Bylaw and is not something specific to Yarmouth.*)

- **Planning Board Comments:**

- 1) Ken Driscoll: Whatever is written is open to being questioned or challenged.
- 2) Chris Vincent: It was done this way to avoid having to go through every instance in the bylaw and make a change.

5) **Temporary Moratorium on Medical Marijuana:** Chris Vincent gave the powerpoint presentation.

- **Public Comments:**

- 1) Christine Greeley: Hyannis Park Civic Association supports the temporary moratorium. Mass. Municipal Association held a seminar at the end of January where representatives of the Dept of Public Health anticipated it will take 3-5 months after their April hearings to develop regulations. During the seminar, numerous concerns/issues were identified that needed to be worked on which need to be addressed in any local zoning proposals. Some towns have done an outright ban and are awaiting attorney general input on whether a ban is allowed. In the interim, many towns are moving toward moratoriums. Complex issues and having time to deal with it will be important to the town.

- **Planning Board Comments:** None

e. **Closing of Hearing:** Chris Vincent closed the Public Hearing at 6:22 PM.

2. **Planning Board Recommendations on Zoning Articles:** At the end of the February 20, 2013 formal Public Hearing, Board members reviewed and accepted the attached Draft 9 of the Extended Stay Hotel article and attached Draft 8 of the Sign article, both dated February 20, 2013, and voted on their recommendations for each article as follows:

a. Extended Stay Hotels:

VOTE: On a motion by Norm Weare and seconded by Tom DiPersio, the Board voted (6-0) unanimously to recommend the Extended Stay Hotel Article.

b. Affordable Housing:

VOTE: On a motion by Norm Weare and seconded by Tom DiPersio, the Board voted (6-0) unanimously to recommend the Affordable Housing Article.

c. Seasonal Employee Housing at Motels/Hotels & On-Site Property Managers at Motels/Hotels:

VOTE: On a motion by Ken Driscoll and seconded by Tom Roche, the Board voted (6-0) unanimously to recommend the Seasonal Employee Housing at Motels/Hotels & On-Site Property Managers at Motels/Hotels Article.

d. Signs:

VOTE: On a motion by Brad Goodwin and seconded by Ken Driscoll, the Board voted (6-0) unanimously to recommend the Signs Article.

e. Definitions:

VOTE: On a motion by Tom Roche and seconded by Tom DiPersio, the Board voted (6-0) unanimously to recommend the Definitions Article.

f. Temporary Moratorium on Medical Marijuana:

VOTE: On a motion by Tom DiPersio and seconded by Norm Weare, the Board voted (6-0) unanimously to recommend the Temporary Moratorium on Medical Marijuana Article.

3. **Business Item:** 2121A Preliminary Subdivision for Paul Butler to create 3 lots at 192/196 Pleasant Street, South Yarmouth, Map 51/Lot 102, RS 40 Zoning District.

a. Applicant Overview:

Paul Butler, property owner, gave a brief introduction to the proposed Preliminary Subdivision. Paul Butler indicated that although four lots could be accommodated on the 4.5 acre property, he chose to go with 3 lots of approximately 1.5 acres to better fit in with the neighborhood. He is also asking for numerous waivers to not build a full town road, but more of a private lane which better suits the area. He indicated he would be willing to build a town road, but felt it didn't go with the neighborhood. Briefly mentioned wanting to post a bond to construct the road to allow for construction on the lots without damaging the road.

Kieran Healy of BSC Group gave an overview of the project and how it meets the dimensional requirements of the zoning bylaw. The ROW was positioned to the side to match the existing driveway access per Town Planner recommendations and to avoid small slivers of land on either side of a centered ROW. They are proposing a lane similar to the adjacent Dr. Seckels Way. The existing driveway is 10' paved, hope to eliminate a lot of the impervious surfaces and are still working on options for the proposed material for the lane. He indicated that a hydrant is being proposed for the end of the cul-de-sac per recommendations by the Water Department. This will require a trench cut on Pleasant Street to allow for interconnection to the existing watermain.

Kieran Healy also responded to the comments contained in the 2/18/13 comment memo from Kathy Williams, Town Planner, as follows:

1. Shared Driveway grades: Have 1% slope for the first 70' off of Pleasant Street. There is a negative grade from Pleasant Street to the Bass River. Issue of drainage going onto Pleasant Street doesn't appear likely due to the slopes on the property as long as no bump is created at the entrance off Pleasant Street.
2. Centerline Radius/Typical Section/Paved Apron: The centerline radius as shown is 57' and 22' at the turn-around. The ladder truck minimum radius is 21, so made a little bigger

- to accommodate the ladder truck. Will have a cross section for Definitive submittal. Applicant is willing to pave the first 20' back from Pleasant Street.
3. ROW Distance between travel/ROW: Snow would be able to be pushed on other side of the road into cul-de-sac where there is sufficient room.
 4. Drainage: Discussed drainage with the Engineering Department and they provided a supplemental memo on this issue.
 5. Waivers: Spelled out the waivers requested, don't need to do things like berms and sidewalks for a lane. The intent is to keep the same wooded view as you drive by on Pleasant Street, to keep privacy and minimal tree removal.
 6. Historic Issue: The 1960 portion of the existing house on Lot 2 needs to be removed to meet the minimum side yard setback. Have met with the Historic Commission, but they did not have a quorum and will meet again with them on March 7th. The wing does not appear to have historical significance.
 7. Lot Releases: Would like to do this with a bond versus a covenant to protect the roadway and still allow for the lots to be developed.
 8. Parcel A: Parcel A is to ensure maintenance of a natural buffer along Pleasant Street and would be owned by the homeowners association. It would also prevent Lot 3 from being considered a corner lot, which requires a minimum of 100' on the side road.
- b. Town Planner Comments: Kathy Williams indicated that it does make sense to have a shared driveway in this location to improve aesthetics, minimize the amount of impervious area and removal of vegetation. Although waivers for narrowing the road and eliminating berms may make sense, the road needs to be designed and constructed to a Town Road standard, but including those particular waivers. The Definitive Plan needs to include all the information required for a Definitive such as centerline layout, typical section, and profile to prove 1% slope, in order to be sure that the future property owners get a good solid access. With regard to drainage, in a rural area with large lots, with low density and impervious area, allowing sheet flow may be an appropriate way of addressing drainage, versus concentrating it and having potential issues with erosion or potentially directing pollutants to the groundwater through infiltrations. The Planner was very interested in hearing the input from the Planning Board regarding the drainage waiver request.
- c. Planning Board Comments:
- Tom DiPersio: Generally agree that this would be a good case for leaving it as a lane and that a full road doesn't make sense. It appears that the applicant can build a roadway meeting the design standards, so waivers aren't a result of an inability to build a conforming road. Like the fact that you can accommodate SU-30 vehicles. Fire chief appears happy with 14'. That is narrow, but okay with it if the local fire chief finds it adequate. With regard to the drainage, the test holes show sandy material and agree letting the runoff sheet flow off and allowing the vegetation to absorb some of the pollutants and recharge into the ground is fine. Doesn't think formal drainage is appropriate. Asked about who would own Parcel A. Kieran Healy indicated that the association would own that parcel along with the storm wall along the Bass River. Asked if there would be an agreement submitted with the Definitive Plan that demonstrates that the property owners would be responsible for the care of the road and plowing. Paul Butler indicated they would submit that for the next meeting for parcel A and the Roadway, and that this would be a private road.
 - Ken Driscoll: Clever reconfiguration of the space and thinks it is a good idea.
 - Norm Weare: Can't comment on drainage or construction, but likes the overall plan and feels it be a benefit for the town.

- Tom Roche: Thought this was a thoughtful use of land with minimal impact. Creating the 3 lots is good compared to four lots. Did question the roadway width and the ability for two vehicles to pass, especially service type vehicles and at the entrance. Kieran Healy indicated that 2 vehicles can't comfortably pass. Would need 16'-17', but didn't want such a wide area. The entrance does have a widened width. The 14' gives fire truck adequate space on either side for access. There is the possibility of widening the road at the bend, to 18' wide so there is a pull-off.
- Brad Goodwin: Is there land on either side of the road to allow for snow storage? Kieran Healy indicated that space would be available, to allow for construction equipment, there will be an 18' wide cleared area. Brad Goodwin indicated it is a creative plan and didn't think could make the "T" with the fire truck, but the Fire Dept appears okay with it.
- Chris Vincent: Would also defer to the fire department. Okay with the drainage waiver. The 2/20/13 memo from Richie Anctil of the Engineering Department did ask for some assurance that the development of the lots is not higher than Pleasant Street. Kathy Williams indicated that Richie Anctil was looking for monetary assurance to cover cost of drainage until a time it is determined that the constructed subdivision does not adversely impact Pleasant Street or the shared driveway. Chris Vincent indicated that he thought it was the feeling of the board that the drainage does not need to be designed. Kathy Williams indicated that Kieran Healy stated the road will have a 1% slope away from Pleasant Street. Paul Butler indicated that the bond could include this drainage assurance. Chris Vincent agreed that the bond might be a good way to go to avoid having to rebuild the road, and is in favor of building the road later.

d. Miscellaneous Discussions: Based on further discussion, the Planning Board agreed to the following:

- Proximity of ROW to edge of travelway: Per Tom DiPersio's suggestion, applicant to increase 30' radius on the ROW to increase distance between edge of travelway and ROW to a minimum of 5'.
- Lane Width: It was determined that the 14' wide shared driveway with the slight widening at the entrance and a pull-off at the corner would be adequate and would maintain the look of a lane from Pleasant Street. There will be a minimum 18' overall clearance for the roadway (2' clear on either side of 14' road). Road to be paved for first 20', applicant to provide information on surface material for remainder of driveway within the ROW during the Definitive stage.
- Homeowners Association: The applicant shall provide documentation regarding a homeowners association which would be responsible in perpetuity for this private road for the maintenance, plowing and repair of the access lane. The applicant shall include a note indicating this on the Definitive Plan.
- Definitive Plan Submission: Applicant to provide all the information typically required for a definitive plan, except for items that have been waived as outlined below. Applicant to include roadway layout, centerline profile, grading at 0.5' intervals, utility locations, monumentation, typical section, etc.
- Street Name: Roadway to get a street name as part of the Definitive Plan process.

VOTE: On a motion by Brad Goodwin and seconded by Tom Roche, the Board voted (6-0) unanimously to approve, in concept, the preliminary subdivision plan for Paul K. Butler as shown on the plan entitled PRELIMINARY PLAN OF LAND, #192 AND #196 PLEASANT STREET BASS RIVER IN SOUTH YARMOUTH MASSACHUSETTS, SHEET 1 OF 1 and SHEET 2 OF 2, both dated January 17, 2013, prepared by BSC Group, conditioned upon the applicant addressing the comments outlined in Town Staff Responses. The following relief has been granted:

1. **Section 4.2.1.f – Centerline Radius:** Reduce centerline radii from 125' to that required by the Fire Department for Tower 41 truck access and turn around, as generally shown on Sheet 2 of 2.
 2. **Section 4.2.1.i – Intersection radius:** Reduce the radius at the edge of the traveled way at intersections from 50' to 30'.
 3. **Section 4.2.6.b – Dead End Road:** Waive the requirement for an 80' diameter turn around at the dead end road and require a "T" style turn-around adequate for the Tower 41 fire truck, as generally shown on Sheet 2 of 2.
 4. **Section 5.1.6 – Pavement Width:** Reduce the required roadway width from 20' to 14'. Require pavement only for the first 20' off Pleasant Street.
 5. **Section 5.2 – Berms:** Waive the requirement for berms.
 6. **Section 5.3 – Sidewalks:** Waive the requirement for sidewalks.
 7. **Section 5.5.5 – Planting:** Waive the requirement for planting of shade trees.
 8. **Section 4.4 – Drainage:** Waive the requirements for drainage if 1% constant slope is maintained away from Pleasant Street.
4. **Articles to Move/Recommend & Explain for ATM:** The Board approved the following Planning Board members to move, recommend and explain the Zoning Articles at the 2013 Annual Town Meeting as follows:
- a. **Extended Stay Hotels:** Brad Goodwin
 - b. **Affordable Housing:** Norm Weare
 - c. **Seasonal Employee Housing at Motels/Hotels & On-Site Property Managers at Motels/Hotels:** Chris Vincent
 - d. **Signs:** Chris Vincent
 - e. **Definitions:** Brad Goodwin
 - f. **Temporary Moratorium on Medical Marijuana:** Tom DiPersio
5. **ZBA Agenda & Decisions:** None.
6. **Correspondence:** The following correspondence was distributed:
- Barnstable ZBA Notice of Public Hearing 2/27/13
 - Notice to Abutters for Dennis ZBA Legal Notice for 2/25/13 Public Hearing.
 - February 8, 2013 FIRM map update letter from FEMA.
 - February 5, 2013 memo from Carl Lawson to ZBA on Dig-it Excavation 546B Higgins Crowell Rd.
 - Paul Neitz comment e-mail dated 2/8/13. Comments on Sign Article were briefly reviewed at the meeting.
7. **Board Items:** None.

8. Staff Update: None.

9. Next Meetings:

- a. February 27, 2013
- b. March 5, 2013 – Board of Selectmen
- c. March 6, 2013

11. Adjournment:

VOTE: On a motion by Tom Roche, seconded by Tom DiPersio, the board voted (6-0) unanimously to adjourn at 7:37 p.m.

ATTACHMENTS:

- PB Agenda 02/20/2013
- February 20, 2013 Powerpoint of Draft Zoning Articles for 2013 ATM.
- Public Hearing Notice for February 20, 2013 Public Hearing.
- Paul Neitz comment e-mail dated 2/8/13.
- February 18, 2013 Staff Report on 2121A – Preliminary Subdivision for 192/196 Pleasant Street, including Draft Certificate of Approval, Planner Comments 2/18/13, Engineering Comments 2/6/13, Health Comments 2/6/13, Building Dept Comments 2/15/13, Fire Dept Comments 2/5/13, Water Dept Comments 2/8/13, Conservation Comments 2/6/13, Surveyor Comments 2/7/13, Kieran Healy e-mail dated 2/15/13, Excerpt of Sections 4 & 5 of Rules & Regulations Governing Subdivision, Form B and Sheet 1 of 1 and Sheet 2 of 2, both entitled Preliminary Plan of Land, #192 & #196 Pleasant Street Bass River in South Yarmouth Massachusetts, dated January 17, 2013 and prepared by BSC Group of West Yarmouth.
- Supplemental engineering comments on 2121A dated 2/20/13.
- Board of Selectmen Meeting 2/12/13 Summary and Norm Weare comments on meeting.
- Draft 7 – Sign Article, dated February 20, 2013
- Draft 9 – Extended Stay Hotels, dated February 20, 2013
- Barnstable ZBA Notice of Public Hearing 2/27/13
- Notice to Abutters for Dennis ZBA Legal Notice for 2/25/13 Public Hearing.
- February 8, 2013 FIRM map update letter from FEMA.
- February 5, 2013 memo from Carl Lawson to ZBA on Dig-it Excavation 546B Higgins Crowell Rd.

Approved on February 27, 2013

On a motion by Norm Weare, seconded by Ken Driscoll, members voted (6-0) unanimously to approve the minutes of February 20, 2013, as amended.