

Town of Yarmouth
MINUTES OF THE PLANNING BOARD MEETING OF
April 5, 2023

The Yarmouth Planning Board held a Hybrid in-person/remote access Business Meeting at **5:30** p.m. on Wednesday **April 5, 2023** in the Hearing Room at the Yarmouth Town Offices located at 1146 Route 28, South Yarmouth, MA.

Planning Board Present: Susan Brita (left at 6:30), Chris Vincent, Joanne Crowley, Will Rubenstein, Ken Smith, and Peter Slovak (new member)

Planning Board Absent: Jim Saben

Staff Present: Kathy Williams, Town Planner; and Town Counsel Jay Talerman of Mead, Talerman & Costa, LLC.

1. **Meeting Opening:** Chair Joanne Crowley opened the hybrid meeting at 5:31PM. Planning Board members were all in-person, except for Will Rubenstein who was remote. All votes were roll call votes. Joanne Crowley introduced new Planning Board member, Peter Slovak.
2. **Apartment Bylaw Amendments:** Continued discussion on zoning amendments related to Accessory Apartments/Accessory Dwelling Units (ADUs) with an emphasis on reviewing current draft, input from Town Counsel, supplemental mapping and public engagement process.

Joanne Crowley gave a brief overview of the status of the Accessory Apartment bylaw amendments, noting the vote at the February 22nd Planning Board meeting to defer the amendment to the 2023 fall Special Town Meeting to allow time for further review from Town Counsel and for more public engagement. The Board reviewed the public engagement process and latest draft at the March 1st meeting noting edits from Town Counsel who is here this evening to answer questions from the Board.

- a. **Town Counsel:** Jay Talerman ran through the highlighted edits in the attached Draft #9, many of them were form related and not substantive. The Board had a general discussion on the inability to prevent someone from seeking a dimensional variance per Ch 40A Section 10, although can tailor to require certain use variances; restricting parking locations to retain some buffers with abutters; differences related to using "may", which gives flexibility, rather than "shall", which is a requirement; and Special Permits run with the land unless otherwise specified to be limited to the owner.

The Board had a more involved discussion on the Transfer of Sales for units, both new and existing. The Board wanted to be sure new units which transfer upon sale and already have a tenant can continue to rent seamlessly. The Board also discussed how complicated the process would be and whether an attorney would be needed. Kathy Williams noted that we currently have a standard form for the Family-Related Covenant, which we could work with Town Counsel to develop a form to release the Covenant. Jay Talerman noted that the Affordable Accessory Apartments could be more complicated depending upon the restrictions in place and from whom releases would be needed, which may necessitate use of an attorney to ensure no issues with the title are inadvertently created. Kathy Williams noted that the research done by Mary Waygan, Housing Administrator, only shows three (3) active Special Permits for Affordable Accessory Apartments and none of them have a Housing Restriction.

Jay Talerman also briefly discussed the case law that prevents the on-going restriction on the number of annual permits issued for accessory apartments. If a restriction in the number were included, it needs to have a time limit and identification of the purpose for the limitation.

Susan Brita left at 6:30 prior to the Board reviewing the attached written correspondence. The Board briefly discussed enforcement and the potential for penalties as noted in the correspondence from Luke Chapman. Jay Talerman noted that penalties like that cannot legally be imposed by the Town, however, the bylaw allows for enforcement with fines of up to \$300/day. The Board noted they would like to review enforcement in general. The Board reviewed the comments and questions from Christine Greeley and noted that answers should be incorporated into Frequently Asked Questions (FAQs) with input from the Health Department on septic. Kathy Williams noted that the current regulations for septic are Title 5 which would allow for the addition of bedrooms if a septic system could be constructed in accordance with Title 5, without any variances. Joanne Crowley discussed the potential of limiting the apartments to one bedroom which would limit the environmental impacts.

Public Comment: Vida Morris inquired as to whether there was any reference to by-right. Kathy Williams noted that Section 407.4 indicates all accessory apartment are by Special Permit except for the three instances outlined in this section which would be by-right, which still means the Building Commissioner could issue a building permit without the need to go to the Zoning Board of Appeals if the project adheres to the zoning bylaw provisions. Ms. Morris inquired as to whether the bylaw includes any restrictions on parking. Kathy Williams indicated the bylaw includes parking restrictions for commercial, but not residential. Ms. Morris noted a property off West Yarmouth Road that has 4-5 vehicles parked in front of a small house.

- b. **Lot Size Table & Mapping:** The Board reviewed the attached updated table showing the number of various size residential lots in Town, along with the updated Map. The Map shows residential parcels that are less than 10,000 square feet (sf) and ineligible for an accessory apartment; those 10,000-14,999 sf which would be eligible for a studio/1-bedroom apartment; and those 15,000 sf and larger which would be eligible for a 2-bedroom accessory apartment.
 - c. **Public Engagement Process:** Kathy Williams reviewed the attached Planner Memo outlining the timeline over the next several months to get to the fall Special Town Meeting. The public listening sessions will occur in June and Board members will provide to the Town Planner their availability for Mondays and Wednesdays in June. The Board also discussed the potential for having the Map be more interactive to allow people to access their lot size, zone 2 and other assessor information. Kathy Williams will discuss with the GIS department. Chris Vincent indicated he would try his hand at a flow chart.
3. **Meeting Minutes:**
- a. **February 22, 2023:** On a motion by Ken Smith, and seconded by Chris Vincent, the Planning Board voted (4-0-1) to approve the meeting minutes of February 22, 2023, with Joanne Crowley, Ken Smith, Chris Vincent, and Will Rubenstein voting in favor, and Peter Slovak abstaining.
 - b. **March 1, 2023:** On a motion by Will Rubenstein, and seconded by Ken Smith, the Planning Board voted (3-0-2) to approve the meeting minutes of March 1, 2023, with Joanne Crowley, Ken Smith, and Will Rubenstein voting in favor, and Peter Slovak and Chris Vincent abstaining.
4. **Board of Appeals Agenda & Decisions:** The attached ZBA Agendas and Decisions were sent to the Planning Board via e-mail.

5. **Committee Updates from Board Members:**

- a. **Water Resources Advisory Committee (WRAC):** Ken Smith indicated the WRAC formally voted to recommend the municipal wastewater plan including the finance plan and noted the publicity going out about the sewerage articles for the Annual Town Meeting.
- b. **DY Intermediate Middle School:** Will Rubenstein noted that the new middle school will have a ribbon cutting ceremony on Saturday May 6th at 10:30 AM.
- c. **Community Preservation Committee (CPC):** Joanne Crowley noted that the CPC met today and reviewed warrant articles. Stefanie Coxe, Chair of the Finance Committee, attended the meeting to offer insights into the 3-2 vote for the bonding authorization for the Riverwalk Park. There were concerns from some finance committee members about the reduction of CPA revenue that would be available to assist with the housing crisis with a portion going towards the 10-year debt service for the Riverwalk Park. However, it appears the annual growth in CPC funds can absorb the debt without jeopardizing other projects.
- d. **Open Space & Recreation Plan Ad-Hoc Committee:** Will Rubenstein noted that the Committee was making good progress developing an action plan with a 2nd survey going out at the end of April. He noted the participation from other town departments including the DPW, Conservation, Natural Resources and Recreation.
- e. **Design Review Committee (DRC):** Kathy Williams noted that the DRC met on April 4th to review improvements to the Sunbird and Sunbird Annex Motels.

6. **Board Member Items:** None.

7. **Correspondence:** The attached correspondence was sent to the Planning Board via e-mail.

8. **Staff Updates:** Kathy Williams noted that the Affordable Housing Trust would like to have a representative from the Planning Board on the Trust. It sounded like Jim Saben may be interested in that role with Peter Slovak taking over the CEDC assignment. This will be placed on the 4/19 Agenda when Jim Saben returns. Kathy Williams noted an upcoming ANR Plan and the HMOD2 project for the Red Jacket. Ken Smith inquired about any conflicts as he used to run the hotel when under previous ownership. Kathy Williams suggested he speak with Mary Maslowski, Town Clerk, and he should call the attorney of the day to clarify any declarations he needs to make.

9. **Upcoming Meetings:**

- a. April 19, 2023
- b. May 3, 2023

10. **Adjournment: VOTE:** On a motion by Chris Vincent, seconded by Will Rubenstein, the Planning Board voted unanimously (5-0) to adjourn at 7:14 PM.

ATTACHMENTS:

- **April 5, 2023 Agenda**
- **Accessory Apartments Bylaw Amendments:** Draft #9, dated March 9, 2023; March 31, 2023 e-mail from Town Counsel on Draft #9; three written comments from the public; March 15, 2023 e-mail from Town Counsel on penalties; Table of lot sizes and Residential Parcel Size Map for Accessory Apartment Analysis, both updated March 9, 2023; and March 31, 2023 Memo from Town Planner on tasks and timeline for fall Special Town Meeting.
- **Meeting Minutes:** February 22, 2023 and March 1, 2023
- **Miscellaneous Correspondence:**
 - Conservation Commission Agenda for 3/16/23 & 4/6/23
 - ZBA Agendas for 3/9/23 & 3/23/23
 - ZBA Decisions 4992, 4995, 4996, 4998, 5004, & 5008

- Barnstable County Aquifund Information
- Blue Sky Tower ZBA summary email March 10, 2023
- Brad Goodwin Resignation Letter

'23MAY4PM4:17 REC

Approved on April 19, 2023:

On a motion by Susan Brita, and seconded by Ken Smith, the Planning Board voted (5-0) to approve the meeting minutes of April 5, 2023, with Susan Brita, Joanne Crowley, Ken Smith, Peter Slovak and Will Rubenstein voting in favor.