

Town of Yarmouth
MINUTES OF THE PLANNING BOARD MEETING OF
June 15, 2022

The Yarmouth Planning Board held a Hybrid in-person/remote access Business Meeting at **5:30** p.m. on Wednesday **June 15, 2022** in the Hearing Room at the Yarmouth Town Offices located at 1146 Route 28, South Yarmouth, MA.

Planning Board Present: Brad Goodwin, Susan Brita, Joanne Crowley, Liz Hartsgrove, Jim Saben, and Will Rubenstein

Planning Board Absent: Chris Vincent

Staff Present: Kathy Williams, Town Planner

Applicant Representatives: Christian Davenport, The Davenport Companies; Attorney Paul Tardif; Hal Choubah, CEG Consulting Professional Engineers; and Jay Imad

Guests: See attached sign-in sheet and list of remote participants

1. **Meeting Opening:** Chair Joanne Crowley opened the hybrid meeting at 5:35. All Planning Board members were in-person, except Brad Goodwin, Liz Hartsgrove and Will Rubenstein who were remote.
2. **PUBLIC HEARING - CONTINUED: Definitive Subdivision No. 2936A and Special Permit #116:** Owner: The Roman Catholic Bishop of Fall River, 450 Highland Ave, Fall River, MA 02720-3701. Applicant: The Davenport Companies, 20 Main Street, South Yarmouth, MA 02664. **Property Location: Unnumbered lot on the south side of Route 6A, between Kencomsett Circle and Outward Reach and across the street from Hockanom Road; Assessor's Map 125, Parcel 39; 15.3 acre lot; Zoning District R40 Residential.** The Applicant is seeking approval for a 14-lot single-family cluster Definitive Subdivision Plan entitled "Definitive Subdivision Plan of Land of the proposed Single-Family Cluster Development at Lot 2, Route 6A, Yarmouth Port, MA for The Davenport Companies" with waivers; and a Special Permit for a 14-lot single-family cluster subdivision under the provisions of Yarmouth Zoning Bylaw Section 402.

Attorney Paul Tardif gave a brief overview of the attached request to continue the Public Hearing to July 6, 2022 to allow more time for their team to investigate another alternative which would access the subdivision further to the east along Route 6a and would not require a waiver from the requirement for a 400' separation between roads. The applicant wants to extend this hearing to allow time to further vet this idea. Should they propose a change to the access and layout for the subdivision, they would need to restart the process with a preliminary subdivision application. The Board noted their appreciation to the Applicant for listening to the comments expressed and trying to address them.

VOTE: On a motion by Susan Brita, and seconded by Jim Saben, the Planning Board voted (6-0) to continue the Public Hearing for Definitive Subdivision No. 2936A and Special Permit #116 to the regularly scheduled Planning Board meeting on July 6, 2022 at 5:30 PM, with Brad Goodwin, Liz Hartsgrove, Susan Brita, Joanne Crowley, Will Rubenstein and Jim Saben voting in favor.

3. **PUBLIC HEARING - ROAD Application 2022-1:** Owner/Applicant: Ekaterina & Family LLC and Jay Imad, Trustee of the Cedars of Lebanon Trust, 381 Camp Street, West Yarmouth, MA 02673. **Property Location: 1276 and 1282 Route 28, South Yarmouth, MA; Assessor Map 60, Parcels 131 & 132; Zoning Districts B2, HMOD1, and ROAD.** The Applicant seeks

approval for a ROAD District Development Plan to demolish all existing buildings on the two sites and construct a gasoline filling station with five dispensers, overhead canopy, a 6,560 square foot mixed-use building, and various site improvements. The mixed-use building is proposed to include a convenience store, coffee shop area, and drive-thru on the first floor; and four (4) residential apartments on the second floor. The lots currently contain five cottages, a convenience store and two gas pumps with canopy.

- a. **Hearing Opening**: Joanne Crowley, Planning Board Chair, opened the public hearing at 5:45 PM.
- b. **Public Hearing Notice**: The attached public hearing notice was published in the Cape Cod Times on May 31, 2022 and June 7, 2022 and was read into the record. Joanne Crowley then gave a brief overview of how the meeting will be run, noting the opportunities for public comment.
- c. **Presentation**: Attorney Paul Tardif gave an overview of the project and elaborated on the attached Project Narrative outlining how the project could be considered to have met the requirements of the ROAD bylaw, if taking into consideration the use as a gas station where visibility of pumps is important. He noted the Planning Board is the Design Review Authority for the project and approval by the Planning Board would allow the applicant to move to the Zoning Board of Appeals for relief via a Special Permit. Attorney Tardif went through Section 411.5 – General Criteria for approval in detail going through the Site Plan Review, Design Review and ROAD goals and objectives noting how he felt the project complied; gave an overview of the economic benefits including job creation and increased tax revenues and noting the recommendation from the Community & Economic Development Committee (CEDC); the 4/19/2 Site Plan Review Comments (SPR); the recent 6/7/22 Design Review Committee recommendations; and the specific supplemental ROAD Standards. He noted that approval would be via a simple majority of the Board (4 out of 7).
- d. **Staff Report**: Kathy Williams, Town Planner, gave a brief overview of her attached June 9, 2022 Staff Report. Ms. Williams noted that the first hurdle is to determine if the project substantially adheres to the Architectural and Site Design Standards. She noted that her SPR comments called into question how the applicant was substantially adhering to Siting Strategy #1 – Streetscape as the new building is not located along the street, but is behind the gas pumps/canopy, and to Siting Strategy # 8 – Parking Lot Visibility, as the parking is not located to the side or rear of the building, but is located in the front.
- e. **Planning Board Comments**:
 - **Susan Brita**: Ms. Brita had several questions clarifying that the canopy will be 22' from the property line; the applicant would no longer be selling cars or renting u-hauls; hours of operation would be from 6AM-10 PM; location of parking is in front of the convenience store; large amount of impervious; maximum number of possible cars at pumps is 10; no electric car charging stations or solar on the building; total number of signs is 5 with 1 free standing sign; gas prices would be digital; 6 resident parking spaces would have restrictive signage; apartments would be rental units maintained by the owner; walkway to rear apartments is for emergency egress and not outdoor space; discussion on sound decibel levels from speaker and car horns; and no stacking allowed in the escape lane.
 - **Liz Hartsgrove**: Ms. Hartsgrove inquired as to whether there would be alcohol sales (none currently proposed); commented on potential for backups onto Route 28; noted the access to angled parking for the residents would be through the rear escape lane; and that no picnic tables/outdoor seating areas are provided.
 - **Brad Goodwin**: Mr. Goodwin noted that the stacking provided is 12-15 cars, and that he would like to hear from the public before commenting further.

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- Jim Saben: Mr. Saben inquired as to the location of the drive-thru speaker.
 - Joanne Crowley: Ms. Crowley asked if the applicant had or would consider reducing the number of gas pumps to provide a smaller canopy as the canopy is large and falls short of the streetscape requirements. She further noted the pumps essentially serve as a short-term parking lot.
- f. **Written Comments:** Kathy Williams summarized the attached written comments as follows:
1. 6/14/22 e-mail from Michael Kelly, 17 Nauhaught Road:
 - Opposed to the proposal seeking a drive-thru which will only increase traffic, car idling, noise, and air pollution.
 - Felt it would increase vehicles using Nauhaught Road as a cut through.
 - Inquired as to why three (3) additional dispensers are needed.
 2. 6/14/22 e-mail from Peter Slovak, condo owner at 1292 Route 28 (direct abutter):
 - Expressed concerns about the noise from the proposed drive-through speaker which is about 90' from his office window.
 - Expressed security concerns about an increase in pedestrian traffic from people cutting across his property to access the convenience store.
 - Biggest issue was potential traffic problems noting the traffic back-ups onto Route 28 from the current Dunkin Donuts at the corner of Route 28/Forest Road, noting both sites have similar space for 4-5 cars prior to the speaker. This traffic will be in addition to the fueling stations and convenience store.
 - Expressed concerns about the overall density of the project on this size lot which may cause problems for abutters.
 - Noted concerns that people may park in his parking lot to walk over to the project site due to the density and limited on-site parking.
 3. 6/14/22 Letter from Audrey Pitts, 15 Bryar Lane (4 pages):
 - Expressed multiple concerns about the proposal, especially regarding ROAD eligibility. She felt a gas station does not qualify and referenced various goals, purpose and objectives of the ROAD Bylaw, highlighting the following:
 - Noted that the gas station is geared solely toward vehicles and the drive-through and traffic lanes make it virtually impossible for pedestrians/cyclists to access the store/apartments.
 - Indicated the style was not Cape Cuddy and see this type of gas station, convenience store, coffee shop combination on every major route in every state.
 - Noted the project would not notably increase economic activity, but could take business away from other identical businesses noting the significant number of other similar businesses in the vicinity.
 - Indicated the project was resubmitted as a ROAD project to avoid the need for variances.
 - Expressed concerns about too many things on too small a lot and not meeting zoning, referencing:
 - Not meeting the front buffers
 - Insufficient parking for apartments and employees
 - No direct pedestrian access to store or apartments
 - Do not meet separation distances for residential zones to the drive-thru which will have continuous traffic, idling cars, noxious conditions, noise from cars and ordering speaker from morning until closing time.
 - Expressed concerns about placing residences on the same lot as a gas station noting potential releases of materials that contain carcinogens and referenced recent studies on exposure risks and included a study link.

- Expressed concerns about expanding the number of pumps, light pollution, feels second story is out of character for the neighborhood, rear fence is non-traditional vinyl and may glare and get moldy, and concerned about fuel deliver/dumpster truck noise.
 - Also noted the long-standing neglect of the current property and resistance to rectifying issues, noting a list of various previous complaints.
 - Suggested whittling the project down to a reasonable size requiring no or very few zoning variances, and offered various options and an example from Harwich.
4. 6/14/22 e-mail from Arthur & Judith Warren, 2 Shore Road:
- Urged the Planning Board to vote no on this proposal.
 - Expressed concerns about the health and safety of residential tenants located in close proximity to gas/diesel pumps, fumes, storage tanks, directly above a drive-thru with idling cars and above a convenience store.
 - Concerned with placing affordable housing in a location without regard for the health hazards.
 - Inquired as to whether the Planning Board considered this affordable housing, is the Town opening itself up to criticism for allowing affordable housing in a hazardous environment, would high priced dwelling units be proposed in the same location, and why would the Town want someone living on the same premises as a gas station.
 - Inquired as to whether the proposed project which eliminates several residential properties would constitute "encroaching commercialism", noting the abutters to the north currently abut residential cottages and not the existing gas station.
 - Expressed concerns about overdevelopment of the site noting the 5 pumps with 10 hoses, and felt it was a detraction and detriment to the value of homeownership in Town.
5. 6/15/22 e-mail from Christine Greeley, 48 Glenwood Street:
- Stated that the project should not be approved as proposed as it is an over-use of the property abutting residential uses and is an inappropriate site for affordable housing.
 - Questioned the need for the increased number of pumps given the size, proximity to other gas stations and focus on alternatives for fuel/powering of cars.
 - Expressed concerns about the drive through causing backups onto Route 28 similar to Dunkin Donuts and McDonalds.
 - Expressed concerns about health and safety of residents with affordable housing on the second story of a facility with fumes, congestion and noise of businesses.
6. 6/15/22 e-mail from Chris Vincent, Planning Board and Design Review Committee:
Chris Vincent was unable to attend the Planning Board meeting and requested that his e-mail be read into the record noting that he feels the application should be denied because of the lack of substantial adherence to the Site Strategies #1 and #8 as outlined in the Architectural and Site Design Standards, adherence to which is compulsory for ROAD applications.

g. Public Comments:

- Attorney David Reid, Representing Nancy Reyburn, Bryar Lane (direct abutter): Attorney Reid stated the proposal was completely inconsistent with the ROAD bylaw, noting the purpose of the bylaw is to provide a trade-off to developers to relax the zoning to allow relief through a Special Permit rather than Variances, if they substantially adhere to the Architectural & Site Design Standards which are compulsory. Attorney Reid noted lack of village setting, placement of the building further from the street, and less pedestrian oriented design with parking in the front. He noted various site design issues including location of resident parking making it difficult to access; not having accommodations for employee parking; drive-thru lanes blocking the loading area; pedestrian route requiring

crossing of the stacking lane; lack of 100' separation from ordering speaker to property line; proximity of escape lane to property line (10'); noise from speakers and proximity to residences; no outside space for residents; and proximity of dumpster area and truck noise to residences. Attorney Reid noted that gas stations are not exempt from compliance to the Design Standards; the relief sought are major deviations without a net benefit; questioned the economic benefits and amount of tax revenue; and encouraged the Board to not misuse the ROAD bylaw as this project doesn't provide what is required.

- Audrey Pitts, Bryar Lane (also submitted written comments): Ms. Pitts noted her agreement with Attorney Reid and that the project is not appropriate.
- Leslie Goldsmith, Geneva Road: Ms. Goldsmith noted her agreement with the written comments, Attorney Reid, and comments from Susan Brita and Liz Hartsgrove, noting this is too much on a small lot.
- Nancy Reyburn, Bryar Lane (direct abutter): Ms. Reyburn noted her long history with the abutting property and her plans to retire on the property where she grew up, stating that this project would make her property unlivable with activity all day and no peace.
- Shelly Morrison, Bryar Lane: Ms. Morrison indicated the current site is already loud with trash removal, expressed concerns about carcinogens and people living above the gas station, questioned the need for 10 filling spots, did not want a Dunkin Donuts in her backyard, and although she was for revitalization, this development is too big for the area.
- Jeanne Huseby, Nauhaught Road: Ms. Huseby expressed concerns about the drive-through, noise, car pollution, diesel trucks, proximity of development to her property line, and not an appropriate design.
- William Pear, Nauhaught Road: Mr. Pear noted the Route 28 traffic, lack of room on the site and that we do not need another Dunkin Donuts.
- Judy Warren, Shore Road (remote access and also submitted written comments): Ms. Warren commented on the density, housing over a gas station, inquired as to the role of the Planning Board in relation to the other committees noted, whether there is a set maximum number of pumps; commented on the lack of outdoor space for residents, and the encroaching commercialism with the removal of the residential cottages and replacement with commercial development.
- John Frost, Nauhaught (remote access): Mr. Frost inquired about the location of the buried gas tanks and how they would be filled without impacting access to the other businesses on the site.

- h. **Planning Board Discussions**: Prior to the Planning Board asking further questions or starting their deliberations, Ms. Crowley asked the applicant to answer some of the questions from the public. At this time, Attorney Tardif asked for a five-minute recess to speak with his client. Upon his return, Attorney Tardif noted that they would like to withdraw the application without prejudice. Kathy Williams noted that this means they would have the opportunity to come back to the Planning Board if they chose to do so. During discussion on the following motion, both Liz Hartsgrove and Jim Saben commented that they did not want the Applicant to be coming back with the same project or with only minor tweaks.

VOTE: On a motion by Jim Saben, and seconded by Susan Brita, the Planning Board voted (6-0) to approve the request by the Applicant to withdraw without prejudice ROAD Application 2022-1 for property located at 1276 and 1282 Route 28, South Yarmouth, with Brad Goodwin, Liz Hartsgrove, Susan Brita, Joanne Crowley, Will Rubenstein and Jim Saben voting in favor.

4. **Committee Assignments:**

a. **Community Preservation Committee (CPA):** The Board briefly discussed representation on the CPA as Liz Hartsgrove will be leaving the Planning Board and she is the representative to this Committee. The CPA will need to meet in July to conduct some business and are having difficulty getting quorum. After discussion it was agreed that Kathy Williams will provide Liz Hartsgrove with the dates of a potential CPA meeting to see if she would be able to attend. The Board can also revisit the topic at their July 6th meeting if reappointing someone to the CPA before September is needed.

b. **Open Space & Recreation Plan Update - Ad-Hoc Committee:**

VOTE: On a motion by Susan Brita, and seconded by Jim Saben, the Planning Board voted (6-0) to have Will Rubenstein serve as the Planning Board representative to the Open Space & Recreation Plan Ad-Hoc Committee, with Brad Goodwin, Liz Hartsgrove, Susan Brita, Joanne Crowley, Will Rubenstein and Jim Saben voting in favor.

5. **Planning Board Recommendations to Board of Selectmen on Top Three Town Priorities:**

Joanne Crowley gave a brief overview of the attached request from the Board of Selectmen (BOS), via the Town Administrator, for various Boards and Committees to offer their top three town priorities to assist the BOS in development of their goals. After discussion, the Board developed multiple three priorities as follows:

a. Wastewater

b. Local Comprehensive Plan

c. Housing

d. Economic Development:

1) Provide Town assistance to redevelop the long blighted Great Island Plaza

2) Complete the Riverwalk Park, Boardwalk and Event Space

e. Upgrade and streamline government processes and systems to improve efficiencies, including the budgeting process, permitting processes, and review of department personnel to identify where staffing is needed to meet Town goals and priorities.

6. **Meeting Minutes:**

a. **May 18, 2022:** On a motion by Susan Brita, and seconded by Jim Saben, the Planning Board voted (6-0) to approve the meeting minutes of May 15, 2022, with Brad Goodwin, Liz Hartsgrove, Joanne Crowley, Susan Brita, Jim Saben, and Will Rubenstein voting in favor.

7. **Board of Appeals Agenda & Decisions:** The attached ZBA Agenda and Decisions were sent to the Planning Board via e-mail.

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

a. **Community and Economic Development Committee (CEDC):** Jim Saben noted that he attended the 6/14/22 CEDC meeting where there was a discussion on allowing recreational marijuana. The Committee is going to conduct further research to identify the advantages and disadvantages.

b. **Design Review Committee (DRC):** Kathy Williams noted that the DRC held a meeting on 6/14/22 to review modifications for the proposed communication tower at 1044 Route 28 which included a simulated clock tower. The Applicant will be going to Site Plan Review prior to going to the Zoning Board of Appeals.

9. **Board Member Items:** Joanne Crowley and other members expressed thanks to Liz Hartsgrove for her service to the Planning Board as she will be stepping down from the Board.
10. **Correspondence:** The attached correspondence was sent to the Planning Board via e-mail.
11. **Staff Updates:** Kathy Williams noted the upcoming schedule for the Housing Production Plan update with a potential Planning Board hearing in late October/early November.
12. **Upcoming Meetings:**
 - a. July 6, 2022 – Public Hearing Continuation
 - b. July 20, 2022
13. **Adjournment: VOTE:** On a motion by Jim Saben, seconded by Will Rubenstein, the Planning Board voted unanimously (6-0) to adjourn at 7:45 PM.

ATTACHMENTS:

- **June 15, 2022 Agenda - Amended**
- **Sign-In Sheet and List of Remote Participants**
- **Public Hearing Continuation - Def Subdivision No. 2936A and Special Permit #116:** June 9, 2022 Letter from Attorney Paul Tardif requesting an extension and executed Agreement for Extension
- **Public Hearing ROAD Application 2022-1:** June 9, 2022 Staff Report; Hearing Notice; 6/7/22 CEDC Memo and 5/25/22 Letter from Attorney Tardif; 6/7/22 DRC Comments Sheet; Aerial Map; Application Forms and Materials including Project Narrative, 1/18/22 DRC Comment Sheet, 4/19/22 SPR Comments and Site and Architectural Plans; and Written Comments
- **Planning Board Recommendations to BOS on Top 3 Town Priorities:** 6/9/22 e-mail request from Bob Whritenour, Town Administrator
- **Draft Minutes:** May 15, 2022
- **Miscellaneous Correspondence:**
 - ZBA Agenda for 6/9/22 and ZBA Decisions 4951, 4952, 4953, 4954, 4941, 4956, & 4955
 - Conservation Commission Agenda for 6/16/22
 - 6/15/22 e-mail from Mary Waygan on the Schedule for the Housing Production Plan.

Approved on July 6, 2022:

On a motion by Susan Brita, and seconded by Will Rubenstein, the Planning Board voted (5-0) to approve the meeting minutes of June 15, 2022, with Brad Goodwin, Chris Vincent, Susan Brita, Joanne Crowley, and Will Rubenstein voting in favor.