

**Town of Yarmouth**  
**MINUTES OF THE PLANNING BOARD MEETING OF**  
**January 18, 2023**

YARMOUTH TOWN CLERK

'23FEB16PM1:49 REC

The Yarmouth Planning Board held a Hybrid in-person/remote access Business Meeting at **5:30** p.m. on Wednesday **January 18, 2023** in the Hearing Room at the Yarmouth Town Offices located at 1146 Route 28, South Yarmouth, MA.

**Planning Board Present:** Brad Goodwin, Chris Vincent, Susan Brita, Joanne Crowley, Will Rubenstein, Jim Saben and Ken Smith (left at 8:30)

**Planning Board Absent:** None

**Staff Present:** Kathy Williams, Town Planner

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

1. **Meeting Opening:** Chair Joanne Crowley opened the hybrid meeting at 5:31. All Planning Board members were in-person. All votes were roll call votes.
2. **PUBLIC HEARING - ROAD APPLICATION 2022-2:** **Owner/Applicant:** Ekaterina & Family LLC and Jay Imad, Trustee of the Cedars of Lebanon Trust, 381 Camp Street, West Yarmouth, MA 02673. **Property Location:** 1272, 1276 and 1282 Route 28, South Yarmouth, MA; **Assessor Map 60, Parcels 130, 131 & 132; Zoning Districts B2, HMOD1, and ROAD.** The Applicant seeks to develop the project using Zoning Bylaw Section 411 – Revitalization Overlay Architectural District (ROAD). This modified project would demolish all existing buildings on the three adjoining properties and construct a gasoline filling station with four dispensers, overhead canopy, a 4,000 square foot (footprint) 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 multiple buildings, a convenience store and two gas pumps with canopy.
  - a. **Hearing Opening:** Joanne Crowley, Planning Board Chair, opened the public hearing at 5:32 PM.
  - b. **Public Hearing Notice:** The attached public hearing notice was published in the Cape Cod Times on January 3, 2023 and January 10, 2023, and was read into the record.
  - c. **Meeting Format:** Joanne Crowley gave a brief overview of how the meeting will be run with a presentation by the Applicant prior to soliciting planning board and public comments.
  - d. **Presentation:** Attorney Paul Tardif, and Hal Choubah, Choubah Engineering Group, represented the owner Jay Imad. Attorney Tardif gave an overview of the new project that includes 3 lots, reviewed existing uses on the properties, the proposed uses, dimensional requirements and reduction in curb cuts from 4 to 3. Hal Choubah noted this was a second submission and included moving the building closer to the street with pedestrian amenities, reducing the number of pumps to 4, reducing pavements and increasing queuing for the drive-thru, wider and more robust buffer landscaping, parking to the rear/side of the building, separate parking for the residences, new stormwater management system where none exists now and new title 5 septic system. Attorney Tardif gave a detailed presentation on the criteria for ROAD approval including how he felt the proposed project met the criteria related to Site Plan Review Objectives; Design Review Objectives; ROAD Goals, Purpose & Objectives; Economic Benefits; and Supplemental ROAD District Standards. He emphasized that the Planning Board approval would make any relief required for the project eligible for a Special Permit rather than Variances. Attorney Tardif also reviewed the Special

Permit relief which would be sought. Hal Choubah reviewed the architectural renderings outlining the materials and colors.

- e. **Staff Report:** Kathy Williams briefly reviewed the attached January 10, 2023 Planner Report noting the need to determine if the project substantially adheres to the Architectural and Site Design Standards, noted the approval criteria, and input from other committees including the CEDC recommendation memo, Site Plan Review Comments, and Design Review Committee Comments, which had two recommendations for a wider variety of tree species and a reduction in footcandles under the pump canopy.
- f. **Planning Board Initial Comments:**
- **Susan Brita:** Ms. Brita confirmed that the landscaping will be irrigated. She inquired about the sign relief needed for the two attached signs, the allowed one free standing sign for the combined lot, the look of the signs, outreach to the neighbors and input from the last public hearing, reviewed the 8-9 items for special permit relief being requested and whether this constitutes substantial adherence. She also inquired about whether electric charging stations would be provided. The current plans to not include them.
  - **Jim Saben:** Mr. Saben noted the efforts to improve the plan. He inquired about why a third in-lot tree can't be provided with Attorney Tardif noting that it would require the elimination of a parking space. Mr. Saben appreciated the concerns about foot traffic and fencing and long-term maintenance of fencing. He inquired about the triangular shaped variation in lot limits along the eastern property line and maintaining access to the abutting property. Attorney Tardif noted the property was surveyed by Borderland Engineering, Inc., who indicated their research showed the eastern property line as represented on the plans. Attorney Tardif submitted the attached January 18, 2023 Letter from Borderland Engineering. Mr. Saben had additional comments about possibly relocating the drive-thru window to the west side and to eliminate "please" in the no smoking sign. He also inquired as to whether the Health Dept provided any comments. Mr. Choubah noted that the plans were submitted to the Health Dept subsequent of the Site Plan Review meeting.
  - **Will Rubenstein:** Mr. Rubenstein was also thankful for the improved plans. He noted the doubling of the number of pumps from 2 to 4, and expressed concerns about the hours of operation (6AM to 8 or 10PM) and impacts to abutters.
  - **Joanne Crowley:** Ms. Crowley commented on the footcandles of lighting under the canopy. Mr. Choubah noted that safety standards require a certain level of illumination. Kathy Williams noted other gas stations had 30 footcandles at the pumps. Ms. Crowley inquired as to the hours of operation for the gas pumps (6AM-10PM).
  - **Chris Vincent:** Mr. Vincent noted he is the Planning Board's representative to the Design Review Committee. He pointed out some of the benefits of the project including new septic, stormwater control, new housing stock, reduced curb cuts, site improvements and landscaping, and a new building along Route 28.
- g. **Public Comments:**
- **Attorney David Reid (representing Nancy & Scott Reyburn, 28 Bryer Lane):** Attorney Reid noted that Ms. Reyburn's family has owned the property at 28 Bryar Lane since the 1950s, where she grew up and hoped to retire. He stated that without the Planning Board's approval, the project cannot proceed to the ZBA to seek Special Permit relief under the ROAD bylaw, they would need Variances and Special Permits. He noted the need for intense architectural review with specific criteria and objectives under the ROAD Bylaw, in exchange for relaxation of the rules that apply to everyone else in the underlying zoning district. Attorney Reid provided handouts with highlighted portions of the ROAD Bylaw and architectural standards to the Planning Board Members. He

'23FEB16PM1:49 REC

stated that it is not just if the project is a nice-looking building or an improvement over what is there now, but whether it enhances or preserves the historic seaside village and old Cape Cod character that this bylaw seeks to preserve and replicate in sites that are developed or re-developed. He cited Section 411.5, which noted plans should include one or a mixture of the following styles: historic seaside village; colonial; and/or old Cape Cod style. He questioned whether this gas station, as proposed, meet this standard. In addition to the architectural review, he questioned the good of the project to the Town. Attorney Reid noted that drive-throughs must be 100 feet from a residential property or zone whereas the proposed drive-thru is 41 feet, with a travel lane only 21 feet from the adjoining residential properties. The drive-thru is proposed to be open 16 hours a day. He further noted the LED lights under the canopy and the proposed 16-foot lamp poles located 10-13 feet from his client's property. Attorney Reid questioned the size of the building, noting the footprint of 4,000 sf with a total building size of 8,000 sf, which is an actual 25% increase over the previous proposal. He further noted that the test is not comparing the latest plan to their previous plan, but to what is there now and their most recent proposed plan. He noted that the parking spaces for the residences is access through a one-way travel lane with a pedestrian crosswalk at the corner directly after the drive-thru pickup window. Attorney Reid noted that the Planning Board is tasked with assessing how the project deviates from the underlying rules and standards that would otherwise apply. He disagrees that most or all are Special Permits because the gas station is on one lot, the residences are on a second lot, and the vacant property to the west is a third lot. The grandfathering of businesses and non-conformities does not extend from one lot to another. You cannot expand a nonconforming situation from one lot to another lot that does not presently or historically exist; would require 7-8 Variances for these non-conformities, plus a Special Permit for the gas station. Multi-family housing is going in a different building on a different lot and is also not grandfathered. The drive-thru and the multi-family housing would require a Variance. He questioned whether the benefits to the Town outweigh the detriments. Attorney Reid questioned the actual tax revenue that the Town would receive. He also questioned whether there was a compelling need for an additional large gas station in Town, as there are 3 existing convenience stores and 4 existing gas stations within a mile of this site. He noted that in order to get the benefits of this bylaw, the applicant is required to give back to the Town some of those values that the ROAD Bylaw is intended to elicit. He felt this is not an old Cape Cod style site, building, sign, or use and does not fulfill the real purpose of ROAD Bylaw and asked that the Board not look at this site only from Route 28, but also from Bryar Lane.

- Mark Noone: Mr. Noone indicated he is a Yarmouth resident and a police officer in town for 17 years. He indicated Mr. Imad lives in this town, has pride in his town, and visits his businesses multiple times a day. He felt that if there's any lack of upkeep on any buildings, it's because the owner is attempting to tear them down. He questioned how this project could bring someone's ability to live behind it into question, noting shrubs can block the lights. He noted that Mr. Imad isn't just a businessman; he's a family man committed to this community. This project is costing hundreds of thousands of dollars and no one is getting a free pass.
- Peter Scordis (sp): Mr. Scordis noted that he owns a business in Yarmouth and we need something to help create jobs. He further noted that a \$4 million investment is not a free pass and Mr. Imad will do the project right. He also noted his agreement with the overall project benefits noted by Chris Vincent.
- Chuck Holloway: Mr. Holloway noted that he has had a business in town since 1966. He emphasized that Mr. Imad is building a business in a commercial zone and that more businesses in this town has been necessary for 50 years.

- Nancy Reyburn: Ms. Reyburn owns the abutting property at 27 & 28 Bryar Lane. She noted her agreement with Attorney Reid that this project doesn't meet all the ROAD principles. Ms. Reyburn commented on the impact to her neighborhood and health noting light pollution, smell of gasoline, exhaust from cars 20-30 feet away along the entire lot line, and noise from the cars & trucks. She indicated that the drive-thru and gas pumps will be the closest to a residential zone than any other station. She noted articles about health impacts (benzene & respiratory illness, cancer) of living near a gas station. The safest minimum distance for people living/working in the area would be 500 feet. Although the J-Mart gas station is there now, the gas station was built in 1942, long before awareness of these issues. She noted that there are now 2 pumps with 4 nozzles 100 feet from lot line whereas the proposed 4 pumps with 8 nozzles would be 49 feet from her lot line. She also questioned whether people living in these residences, could ever open their windows for fresh air. She noted that fences would not stop these gases. She indicated homeowners have some rights in the bylaw around noise, light, and noxious odors, but what about those living in these apartments. She noted that drive-thrus have a large carbon footprint because of emissions from idling. She quoted the Yarmouth's Vision Plan about climate resiliency and sustainability and reduction in energy consumption and vehicle emissions. She indicated Dennis doesn't allow any drive-thrus in any of the villages; only on Route 134 where it's all commercial. She questioned the quality of life for people living in these apartments and for those living next to it. Ms. Reyburn inquired as to whether the building (due to its square footage and two floors) needs an elevator and would disabled tenants have a parking spot. She noted that they have a quiet neighborhood but this project would pull Route 28 right up to them with cars stopping, not just passing by. She questioned putting a playground and picnic tables in a buffer zone and a sign saying "no smoking" doesn't mean people won't smoke. What is referred to as a vacant land is her green space. Ms. Reyburn did note some outreach from the applicant but that she was the only abutter contacted directly by the applicant.
- Scott Reyburn: Mr. Reyburn noted that the applicant was told not to back with the same old plan with just tweaks. He felt that this is the same plan, just turned sideways on the lot, the building is bigger, the gas pumps are closer to the neighbors, more lights are facing the neighbors, and the drive-thru now runs the whole length of the two abutting residential properties. He indicated that drive-thrus, gas station, gas pumps are not within a building, and noxious fumes go unhindered into the surrounding areas. He noted that a drive-thru less than 40 feet from a residential property line and directly below the proposed residential apartments, and gas pumps less than 50 feet from the same residential properties, clearly disqualify this property under the ROAD Bylaw, which was never intended to build projects of this nature. He felt the lot was being overfilled with a drive-thru coffee shop, convenience store, gas station, and multi-family apartment building. He questioned the value of the estimated assessment giving estimates of other coffee shop/convenience store and smaller sized homes, which would total about \$2,050,000. He felt taxes would be lost on 28 Bryar Lane as the house would be unlivable. He noted property values of other surrounding homes on Bryar, Geneva and Nauhaught Roads would also drop and the overall loss in tax revenues from these homes would not made up from this project. He noted that the project would not create new jobs as the owner already has employees for his business. Many businesses in the area have been forced to reduce their hours of operation and services because they don't have enough employees. He also noted surrounding gas stations had few vehicles and felt there was not a need for more gas pumps. He also questioned the size of the building on the old plan and that the new plan is actually an increase in size from 7,710 sq ft to 8,693.6 sq ft. On the old plan, all the apartments were less than 800 sq ft. On the new plan, all the apartments are more than 800 sq ft. Mr. Reyburn

also questioned whether deliveries would really be by box trucks, as many suppliers use tractor-trailers. The location of the loading zone reduces the number of parking spaces. He also questions how the Health Department can sign off on people living above a drive-thru or a gas station or both at the same time and felt this is a lawsuit waiting to happen. He felt studies should be done to determine the need for another gas station, another Dunkin' Donuts, another drive-thru, the effects on the environment, the adjacent neighborhoods, traffic, noise, lights, air pollution, property values, and the long-term negative effects on the area. Mr. Reyburn commented that Mr. Imad has owned the gas station for more than 25 years and the adjacent cottages for more than 16 years, and has let those properties deteriorate so badly that the Town looks at the property as blight, and will do anything that's better than what's there now, regardless of how it affects the neighbors.

- Madison Wallace (23 Bryar Ln): Ms. Wallace noted that she lives in her mom's house, but may if she were to inherit it, she is not going to want it as it won't be worth living there. She noted that she has lived there 23 years and the fence has always been down next door and noted rodent infestations. She noted that she loves having her window open in the spring and summer but will lose sleep due to noise from the project. She indicated her quality of life will go down as she currently lives on a quiet, peaceful dead end street.
  - Audrey Pitts (15 Bryan Ln): Ms. Pitts noted her agreement with the previous speakers opposed to the project. She emphasized that this is not a ROAD project and is highly vehicle-centric with increased pavement and traffic. She noted that she understands that people want a business there, but there are other options and thinks it would be a travesty to let this go through as a ROAD project.
  - Charlie DeSimone (1279 Route 28): He noted that like all the abutters he overlooks and abuts a 75-year-old gas station. He said he would welcome a new facility that would be environmentally safe, contained, and aesthetic for the Town and is strongly in favor of the proposal.
  - Dave Murdock (20 Bryar Ln): Mr. Murdock indicated he has lived here since 1984 and is borne and raised on Cape Cod. Although glad to see a business, the proposed business plan would change his life with the drive-through, lights until 10 PM at night, and listening to traffic all day. He felt this would be an unfair impact to his peace of mind and his home and should not go through.
  - Jeanne Huseby (10 Nauhaught Rd): Ms. Huseby indicated she did not believe in this new project. Overwhelmingly, we are focused on the visual, but we need to look more at not what we see, but what would be happening there. She expressed concerns about cars hitting the gas pumps and causing a fire with people living there. Need to address the overall picture, not just what we can see with our eyes.
- h. **Written Comments Received**: Two written comments received:
- Peter Slovak, President of the Yarmouth Professional Condominium Association: The Association is located to the east of the property. Mr. Slovak had questions about the easterly lot line and buffer area and inquired as to whether a survey was done. He noted that there are at least five 10-foot to 12-foot tall arborvitae shrubs on the Association's property and he like those retained or new plantings of the same size and style. He inquired as to whether one of the other Dunkin' Donuts locations would be closing and directing more traffic to this location. He expressed concerns about people parking on his property and walking to the Dunkin' Donuts and convenience store and suggested fencing to discourage people from parking on his property. Mr. Slovak also questioned the estimated \$4 million assessment, and how much real estate taxes would be received. Ms. Williams noted that the property will not be assessed based on

construction costs and that the property will likely be valued at a lower amount. She did note that increasing value to property through improvements, will generate "new growth revenue" to the town.

- **Michael Kelly (abutter):** Mr. Kelly is opposed to the additional feature of a drive-thru which only increases traffic and car engines idling which increases noise and air pollution. The close proximity of the drive-thru lane to the immediate abutters appears to be a code violation and increasing the number of vehicles using Nauhaught Road as a cut-through. He also noted that he has never seen a line for gas at this location, and questioned the need for additional pumps. He stated that he has friends and family who travel 3,000 miles and the attraction is the charm of Old Cape Cod, not gas pumps, drive-thrus, and obnoxious bright canopies. This project should in no way be seen as in line with ROAD principles.

- i. **Applicant responses to questions raised:** The applicant confirmed that the footprint of the revised design is approximately 4,000 sq ft on the first floor and approximately 4,000 sq ft on the second floor for a total of about 8,000 sq ft, which is larger than the original proposal. It was further noted that the proposed building is 12.5% of the lot coverage; whereas the existing is 22%; allowable is 25%. Mr. Vincent noted that the building has increased, but the overall lot coverage has decreased. Attorney Tardif indicated the proposal meets the requirements of the bylaw with regard to the architecture and siting standards and the Design Review Committee concurred. Attorney Tardif noted this is an opportunity to improve a section of Route 28, which is stale, with run-down, dated buildings and sites in a business zone. He noted a building that was burned out 6 years ago that still has blue tarps on it, and an old sandwich shop across the street that has trees growing out of the chimney and no occupant. Attorney Tardif noted that Mr. Imad runs gas stations and he's in a better position to know whether the proposed business is worth the \$4 million investment. Attorney Tardif requested that the board look through the emotion, look into the bylaw, and move the project onto the ZBA.

- j. **Planning Board Discussion:**

- **Chair Crowley:** Ms. Crowley noted that the Planning Board is the Design Review Authority for ROAD projects and the Board needs to determine if this project 1) substantially adheres to the Yarmouth Architectural and Site Design Standards, meaning the building & siting strategies; and 2) the general criteria which Attorney Tardif reviewed in detail. Ms. Crowley started with reviewing the substantial adherence question first.
- **Mr. Goodwin:** Mr. Goodwin noted the history of the ROAD Bylaw and other business such as the Shield MRI which may not be very cape caddy; and the Cumberland Farms in West Yarmouth with a big fence up against the neighborhood without complaints. Ultimately, Mr. Goodwin felt the project would improve a tired property and felt they met the substantial adherence threshold.
- **Mr. Vincent:** Mr. Vincent felt the project substantially adheres to the architectural design standards.
- **Ms. Brita:** Ms. Brita felt the project did not substantially adhere and felt the term encompasses the spirit of the law and what the ROAD Bylaw was intended to do. The applicant indicates the project is good for the Town, but the neighbors and abutters in the audience are the Town and she didn't hear a lot of people say it's a good idea. She cited the negative impacts on the neighbors and felt that 8-9 waivers doesn't meet the spirit of the law.
- **Mr. Smith:** Mr. Smith felt the project does meet the substantial criteria.
- **Mr. Saben:** Mr. Saben felt that aesthetically, the project does not substantially adhere and felt the building could be anywhere and is not old Cape Cod. Mr. Saben also sat

on the Planning Board with Mr. Goodwin years ago, and noted the back and forth with Shields MRI about shingles and windows. The indicated the purpose of the ROAD bylaw is to change the image of Route 28.

- Chair Crowley: Ms. Crowley noted the need to cite which building & siting strategies it doesn't meet.
- Mr. Rubenstein: Mr. Rubenstein noted his personal opinion was that it doesn't feel "Cape Cuddy" and would say it doesn't adhere. He felt the project does not preserve or enhance the historic ambiance.
- Chair Crowley: Ms. Crowley indicated she felt that the project satisfies "village" and to some degree, "Cape Cod" and that the project substantially adheres to the design review authority standards. Ms. Crowley noted that the majority of the Board (4 members) believes the project substantially adheres. Ms. Crowley then moved on to the general criteria related to the ROAD requirements. She noted receipt of some comments in writing with some deficiencies identified. The Board could place some conditions, including more variety of trees; reduce the foot candles under the gas pump; no fencing, vegetation removal, grading or ground disturbance within the eastern property triangle in question; and add any other conditions where the Board feels the general criteria has not been met.
- Kathy Williams: Ms. Williams noted that if the Board is approving the project, then conditions would be applied, but if the Board is denying the project, then need to be clear as to the reasons and the sections of the ROAD bylaw the project does not meet, so as to document the reasons for the denial.
- Mr. Goodwin: Mr. Goodwin mildly questioned why there was a need to increase from 2 gas pumps to 4 pumps. He noted how the project had gone through other boards and staff.
- Mr. Vincent: Mr. Vincent felt the project met the general criteria.
- Ms. Brita: Ms. Brita noted she felt the project did not meet the general criteria.
- Mr. Smith: Mr. Smith felt the project met the general criteria.
- Mr. Saben: Mr. Saben noted that the Fire Department did provide comment on the project and the Planning Board does their homework. He noted his concern for the quality of life for the abutters with dumpsters and drive-up window. Mr. Saben, as real estate appraiser, noted that the investment cost to build is not the same as the assessed property value. As far as creating jobs, he questioned whether the project would just shift Dunkin' Donuts employees from one location to another. He indicated that Route 28 needs a facelift and are heading in the right direction, but there are things the applicant can do to be better neighbors. He expressed concern with 4 gas pumps vs. 2 gas pumps. Ultimately he felt they needed to keep working at it, but as presented he did not feel the project met the general criteria.
- Mr. Rubenstein: Mr. Rubenstein also expressed conflict and felt for all parties. He noted that he was really stuck on the drive-thru, the hours, the noise, the pollution, the smell, and the lights. He felt this was not a win-win and at this point was not in favor of the project.
- Chair Crowley: Ms. Crowley noted she was in favor and it appears the majority of the Board is in favor and inquired as to whether any of the Board Members had any additional conditions noting four (4) conditions in the Planner Report.
- Mr. Vincent: Mr. Vincent noted he was on the Design Review Committee and would suggest to the applicants, in the interest of being good neighbors, an acoustic fence that reduces the noise level.
- Joanne Crowley: Ms. Crowley summarized the voices of the majority to support and justify the project noting. She noted the project results in economic benefit, the building will be mixed use making use of second story, several committees including Design Review Committee have reviewed this project, the aesthetics of the building substantially adhere

and uses traditional building materials is satisfactory, it is an improvement in the commercial district, the plan includes improved buffering and additional landscaping, and the overall benefits outweigh the detriments resulting from the requested relief.

- k. **VOTE:** On a motion by Joanne Crowley, and seconded by Chris Vincent, the Planning Board voted (4-3) to approve ROAD Application #2022-2 submitted for 1272, 1276 & 1282 Route 28, South Yarmouth with Brad Goodwin, Chris Vincent, Ken Smith and Joanne Crowley voting in favor, and Susan Brita, Jim Saben and Will Rubenstein voting against, with the following conditions:
1. Include more variety in tree species with fewer red maples.
  2. Reduce footcandles under the gas pump canopy to industry standards of no more than 30 footcandles and reduce footcandles to 0.05 footcandles at the property line abutting residentially zoned properties.
  3. No fencing, vegetation removal, grading or ground disturbance shall occur within the triangular area along the eastern property boundary where there appears to be conflicting property boundary records.
  4. Install a six (6) foot fence within the buffer area along the eastern property boundary to within 20' of the Route 28 layout.
  5. Install an eight (8) foot acoustic fence along the entirety of the northern property line abutting the residential zoning district.

During discussion, Mr. Rubenstein confirmed that the discussion on the drive-thru could continue with the abutters at the Zoning Board of Appeals, and there would be another forum/opportunity to talk about these issues and the hours of operation.

The Planning Board took a short break before returning. At this time Ken Smith left the meeting as he is recusing himself from the next Public Hearing Agenda item.

l. **Hearing Closed:**

**VOTE:** On a motion by Chris Vincent, and seconded by Will Rubenstein, the Planning Board voted (6-0) to close the Public Hearing for ROAD application 2022-2 at 8:31 PM, with Brad Goodwin, Jim Saben, Will Rubenstein, Chris Vincent, Susan Brita, and Joanne Crowley voting in favor.

3. **PUBLIC HEARING - DEFINITIVE SUBDIVISION NO. 2936C AND SPECIAL PERMIT #117:**  
**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 with revised layout 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", dated October 19, 2022 with requested waivers; and a Special Permit for the 14-lot single-family cluster subdivision with revised layout under the provisions of Yarmouth Zoning Bylaw Section 402.
- a. **Hearing Opening:** Joanne Crowley, Planning Board Chair, opened the public hearing at 8:32 PM, noting that Ken Smith has recused himself due to his connection with The Davenport Companies.
  - b. **Public Hearing Notice:** The attached public hearing notice was published in the Cape Cod Times on January 3, 2023 and January 10, 2023, and was read into the record.
  - c. **Presentation:** Attorney Paul Tardif; and Bob Reedy and John O'Reilly from J.M. O'Reilly & Associates; and Randy Hart from VHB (remote), represented the applicant along with



23FEB16PM1:50 REC

Christian Davenport. Attorney Tardif emphasized the changes to the subdivision plan including relocating the entrance further east to meet the required 400' separation, reconfigured the lots and septic locations to get 10 of the 14 systems outside the impaired Bass River watershed, and addition of a good deal more landscaping. He reviewed the open space, lots sizes, roadway layouts, sight distances along the Route 6a intersection, fire truck apparatus turning movements, hydrants, and two affordable units required which they are planning to make a payment in lieu of construction as allowed. John O'Reilly further denoted the rearrangement of the lots to accommodate septic system locations, the large number of plants being installed, and the reduction in road and driveway slopes. Bob Reedy noted the redline review of the Preliminary Subdivision 2936B comments from staff, and the filing of the stormwater permit with the Conservation Commission to meet the 100-year storm and is currently under peer review. Randy Hart briefly reviewed the Traffic Analysis (which did not change from the Preliminary Subdivision submission) noting the improved sight distances of the relocated access, few crashes and small amount of anticipated traffic generation. Attorney Tardif reviewed the five waivers from the Subdivision Regulations and noted the Special Permit review criteria section 103.2 for the cluster subdivision.

Kathy Williams noted that Section 402 had additional review criteria for cluster subdivisions as denoted in her attached January 13, 2023 Memo, and further noted that the special permit is related to a cluster style subdivision versus a traditional subdivision. Ms. Williams noted that the applicant provided a full set of revised plans dated 1/11/23 which addressed most of the staff comments and staff is satisfied with the modified plans with the proposed conditions listed in updated Memo dated January 18<sup>th</sup>.

d. **Planning Board Initial Comments:**

- **Susan Brita:** Ms. Brita noted that previous comments were related to the Route 6a safety issue which was addressed in the revised plans, but also the other environmental concerns regarding drainage and Title V septic systems and how the new plans address these. John O'Reilly reviewed the watershed plan which shows the two estuaries (Chase Garden and impaired Bass River) and the new design reconfigures the septic systems to decrease the number of septic systems in the Bass River watershed from 7 to 4 to reduce nitrogen. John O'Reilly noted that the drainage was always at the 100-year storm but this design enhances smaller swales on the individual lot. Bob Reedy noted that the stormwater permit application has been filed. Ms. Brita asked if the applicant reached out further with the neighbors and that few people were in attendance at this Public Hearing. Attorney Tardif noted that many of the neighbors came out for the Preliminary Subdivision and that relocating the entrance may have addressed their concerns.
- **Brad Goodwin:** Mr. Goodwin inquired as to why the Health Dept Memo is not updated. Kathy Williams noted that Mr. Murphy had indicated his original Memo stands and he had no further input.
- **Will Rubenstein:** Mr. Rubenstein thanked the applicant for relocating the entrance and it improved the project. He inquired about how the 14 4-bedroom houses will address our housing crisis and who the target audience is for these homes. He questioned whether these were for working families who need housing the most and we are losing the fastest.
- **Jim Saben:** Mr. Saben confirmed that the grades in the sight easement will be cut down. He noted some other Davenport Company projects that are all well maintained and good members of the community. Mr. Saben felt a 4 bedroom house would allow for a full family. He appreciated the changes by listening to the planning board and the neighbors.

- Joanne Crowley: Ms. Crowley noted the five waivers whereas the planner member references four. Kathy Williams noted that two waivers were combined as they reference the same issue in two sections of the Subdivision regulations and are reworded to specify the specific amount of relief being granted.

e. **Public Comments:**

- Nora McCrae (16 Kencomsett Circle): Ms. McCrae noted that she just bought the property 5 months ago, is new to this proposal located behind their property and thought the property was conservation land and could not be built upon. The property will ultimately be a retirement home in 14 months. She reviewed a list of questions on behalf of her husband who could not attend.
  - **Has a geographic information study been done?** Bob Reedy noted that a topographic survey of the entire property has been completed. Kathy Williams noted that she had some correspondence with Mr. McCrae who inquired about any environmental studies. She had mentioned that designers typically look at the State GIS to see if there are any environmental resources on a particular property to identify any additional permitting needs. Bob Reedy noted the small vegetated wetland that was mapped on the southern border of the property but the entire development is on the other side of the electric easement. Ms. McCrae noted that her husband has seen coyotes and turkeys. Kathy Williams confirmed with the applicant that there were no natural heritage issues.
  - **Ms. McCrae inquired as to why their property is the closest abutter with only 25' of open space before it turns into someone's property and whether Lot 14's septic system would run downhill towards their property and whether it could be relocated.** Bob Reedy noted that the distance of the house on Lot 14 house from the septic system is to keep it outside the Bass River Watershed and noted the closest portion of the septic system is 35 feet from the outer property line of the development. Title 5 requires 10 feet from the inner property line. The existing natural low point is the location of the swale and included runoff that flows off the neighboring properties onto our land and was included in the stormwater calculations. The low point will be maintained for stormwater collection and the stormwater system is designed to retain stormwater on-site for the 100-year storm event.
  - **Ms. McCrae inquired whether they were planning to keep any of the existing trees which are very nice screening, and will the open space be left in its current natural state.** Bob Reedy indicated that the open space will remain as they currently are outside of the limits of work which he identified, noting the use of straw wattles for the entire construction period. Any erosion from construction would be contained within that area (the limit of work line). Small areas of open space, in the short term, would be disturbed and then returned to existing conditions.
  - **Ms. McCrae inquired as to why the development is so close to 16 Kencomsett Circle with most lots having more than 25'.** Bob Reedy noted that they moved to the 25-foot minimum because that's where the natural low point is. To include that as part of the stormwater management system, they need to control what's going on at that low point. The low point is 25 feet off the setback and can be used as a dry water quality swale, and prevent any stormwater getting off the site. In terms of building setbacks, we're required to hold 50 feet from any buildings to the exterior property line; we're more than exceeding that here. It's a drainage easement in perpetuity, so it's not an area that can be built upon. Kathy Williams requested that the applicant show the proposed landscaping in that area. Bob Reedy reviewed the landscape in this area noting that they are re-vegetating the areas in and around the

'23FEB16PM1:50 REC

swales; a wildflower/meadow seed mix within the swale itself, and surrounding the swale with native shrubs that are well-suited to wet soil conditions. In the operations and maintenance manual, there is a report with detailed instructions as to how this would be maintained after construction is done.

- o Ms. McCrae noted that the project would have substantial harm to the character of the neighborhood as Route 6A has always been a quaint road that does not have the traffic of Route 6 or Route 28. She further noted the benefits of having open parcels of land as people travel from Sandwich to the Orleans rotary. She felt the project would really change the character of that 2-3 mile section of road and cause substantial harm to the character of Yarmouth Port. It will become another Route 28 that they left because it was wall-to-wall cars, people, and houses.
  - Philip Henderson (183 Eileen Street): Mr. Henderson noted that he abuts the southern edge of Lot 3. He confirmed that the open space will be left natural; that the watermain easement south of Lot 5 along the electrical easement was for an existing watermain; that new dwellings will be 50 feet off their exterior property line; and the building on Lot 4 is shown closer to 100 feet from his property.
- f. **Written Comments Received**: None.
- g. **Planning Board Discussion**:
- o Mr. Saben: Mr. Saben noted that Kencomsett (the abutting neighborhood) has 18 houses and that doesn't affect the aesthetics of the neighborhood or the community, not sure how 14 houses will have an aesthetic impact. He also inquired about the Homeowners Association. Attorney Tardif confirmed the bylaws are in place although all lots are anticipated to be held by The Davenport Companies initially as they are proposed to all be rental units.
- h. **VOTE – DEFINITIVE SUBDIVISION PLAN 2936C**: On a motion by Jim Saben, and seconded by Chris Vincent, the Planning Board voted 6-0 to approve **Definitive Subdivision Plan 2936C** for The Davenport Companies with revised plans dated January 11, 2023, prepared by J.M. O'Reilly & Associations, to include the granting of all requested waivers from the Rules & Regulations Governing the Subdivision of Land; and all the conditions as outlined in the Town Planner Kathy Williams' Memo dated January 18, 2023; and that all the conditions must be met prior to requesting any lot releases, with Brad Goodwin, Jim Saben, Will Rubenstein, Chris Vincent, Susan Brita, and Joanne Crowley voting in favor.
- A. **Granted Waivers from the Rules & Regulations Governing the Subdivision of Land**:
1. Waiver granted from the provision in Section 4.3.1 – Easements, that all utility and drainage easements be a minimum of 20' wide, to allow for a 15' wide proposed water easement along the property line between Lots 5 and 6.
  2. Waiver granted from the provision in Section 5.4.2(a) – Drainage Piping, that all drainage piping be concrete or corrugated aluminum, to allow for High-Density Polyethylene ADS piping to be used.
  3. Waiver granted from the provision in Section 5.4.2(b) – Drainage Structures, that requires a minimum of 5.5' inside diameter drainage structures and requires drainage component chimney heights to be less than 2.0', to allow for 4.0' inside diameter catch basins and drain manholes and chimney heights of approximately 7'.
  4. Waiver granted from the provision in Section 5.4.4, Utility Locations and Section 4.2.5 – Roadway Cross Section, that requires water and gas mains to be located on the same side of the right-of-way, to allow for the water main to be located on the

opposite side of the right-of-way from the gas main and telephone, electricity and other communications cables.

B. Conditions: The following conditions must be met prior to requesting any lot releases:

1. The applicant must record the Miracle Way Homeowners Association, Open Space Restriction and Easement, and Operation & Maintenance Covenants with the Barnstable County Registry of Deeds. Allowed uses and activities in the Open Space Lot shall generally be limited to vegetation maintenance, planting of native trees and shrubs, passive recreation on unpaved walking paths, or conservation purposes, unless otherwise approved by the Planning Board through an amendment to the Cluster Subdivision Special Permit. Final language to be coordinated through the Planning Division prior to recording. A copy of the recorded documents shall be provided to the Planning Board.
  2. The applicant shall grant any necessary easements to the Yarmouth Water Department.
  3. Sewage systems must meet all state and local health codes with no variances.
  4. Stormwater and erosion control to be reviewed by a third-party during the review of the Stormwater Management Permit Application in accordance with the Yarmouth Stormwater Management Regulations. A copy of the Stormwater Management Permit from the Conservation Commission shall be provided to the Planning Division. Any substantial changes resulting from this permit may require further review by the Planning Board.
  5. The project is required to provide for two (2) affordable units in accordance with the provisions of Zoning Bylaw Section 412.
  6. The applicant shall provide documentation to the Planning Board from a Registered Professional Engineer or Professional Land Surveyor that the Intersection Site Distances as measured in the field, generally meet those reflected on C6 – Curb Cut Plan.
  7. In addition to notification to the Dept of Public Works and the Water Department prior to the start of construction, the Applicant shall hire a Registered Professional Engineer to conduct periodic inspections and provide certification that the roadway and utilities were installed in general conformance with the approved plans and for preparation of accurate As-Built Drawings.
  8. The Definitive Subdivision Plan must be altered to show the waivers and conditions imposed by the Planning Board.
- i. **VOTE – SPECIAL PERMIT #117**: On a motion by Susan Brita, and seconded by Jim Saben, the Planning Board voted 6-0 to approve Special Permit #117 for The Davenport Companies, with revised plans dated January 11, 2023, prepared by J.M. O'Reilly & Associates, to include all of the conditions as outlined in the Town Planner Memo dated January 18, 2023 Memo, with Brad Goodwin, Jim Saben, Will Rubenstein, Chris Vincent, Susan Brita, and Joanne Crowley voting in favor.
1. The applicant must record the Miracle Way Homeowners Association, Open Space Restriction and Easement, and Operation & Maintenance Covenants with the Barnstable County Registry of Deeds. Allowed uses and activities in the Open Space Lot shall generally be limited to vegetation maintenance, planting of native trees and shrubs, passive recreation on unpaved walking paths, or conservation purposes, unless otherwise approved by the Planning Board through an amendment to the Cluster Subdivision Special Permit. Final language to be coordinated through the Planning Division prior to recording. A copy of the recorded documents shall be provided to the Planning Board.
  2. Sewage systems must meet all state and local health codes with no variances.

'23FEB16PM1:50 REC

3. Stormwater and erosion control to be reviewed by a third-party during the review of the Stormwater Management Permit Application in accordance with the Yarmouth Stormwater Management Regulations. A copy of the Stormwater Management Permit from the Conservation Commission shall be provided to the Planning Division. Any substantial changes resulting from this permit may require further review by the Planning Board.
4. The project is required to provide for two (2) affordable units in accordance with the provisions of Zoning Bylaw Section 412.
5. The applicant shall provide documentation to the Planning Board from a Registered Professional Engineer or Professional Land Surveyor that the Intersection Site Distances as measured in the field, generally meet those reflected on C6 – Curb Cut Plan.

j. **Hearing Closed:**

**VOTE: On a motion by Jim Saben, and seconded by Chris Vincent, the Planning Board voted (6-0) to close the Public Hearing at 9:30 PM, with Brad Goodwin, Jim Saben, Will Rubenstein, Chris Vincent, Susan Brita, and Joanne Crowley voting in favor.**

4. **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.

Ms. Crowley noted that this hearing was still open from our September 7, 2022 Planning Board meeting and requested that the applicant indicate how they wished to proceed with these applications. As Definitive Subdivision 2936C and Special Permit #117 were approved by the Planning Board, Attorney Tardif requested to withdraw Definitive Subdivision 2936B and Special Permit #116 without prejudice.

**VOTE: On a motion by Susan Brita, and seconded by Chris Vincent, the Planning Board voted (6-0) to approve the withdraw without prejudice of Definitive Subdivision 2936A and Special Permit #116, with Brad Goodwin, Jim Saben, Will Rubenstein, Chris Vincent, Susan Brita, and Joanne Crowley voting in favor.**

**VOTE: On a motion by Susan Brita, and seconded by Will Rubenstein, the Planning Board voted (6-0) to close the Public Hearing at 9:33 PM, with Brad Goodwin, Jim Saben, Will Rubenstein, Chris Vincent, Susan Brita, and Joanne Crowley voting in favor.**

5. **Release from Agreement & Covenant Request - Definitive Subdivision No. 2427B – Easy Street, Yarmouth Port (located off Summer Street):** Request to release Lots 1, 2 & 3 from the Agreement in addition to the Covenant for the Easy Street Subdivision.

Kathy Williams informed the Board that all three lots had previously been released from the Covenant and the subdivision has been completed, but the lots need to be released from the Agreement with the Planning Board now that all conditions have been met.

**VOTE: On a motion by Susan Brita, and seconded by Chris Vincent, the Planning Board voted (6-0) to release lots 1, 2 & 3 from the Covenant and the Agreement for Definitive Subdivision 2427B – Easy Street located off Summer Street, with Brad Goodwin, Jim Saben, Will Rubenstein, Chris Vincent, Susan Brita, and Joanne Crowley voting in favor.**

6. **Meeting Minutes:** None.
7. **Board of Appeals Agenda & Decisions:** The attached ZBA Agenda was sent to the Planning Board via e-mail.
8. **Committee Updates from Board Members:**
  - a. **Open Space & Recreation Plan (OSRP) Ad-Hoc Committee:** Will Rubenstein indicated that the OSRP committee has been meeting and will be coming out with a survey soon along with a public meeting scheduled for February 8<sup>th</sup>. The committee will also be conducting site visits to various open space/recreation facilities.
  - b. **Capital Budget Committee (CBC):** Will Rubenstein noted the CBC has made their final recommendations.
  - c. **Community & Economic Development Committee (CEDC):** Jim Saben noted the CEDC reviewed tourism grant applications, budget for next year and continued looking into a vacant store front grant program.
  - d. **Drive-In Site Utilization Committee (DISUC):** Jim Saben noted that the Riverwalk project will be going to the conservation commission on 1/19 for a continuation of the hearings. Kathy Williams noted that the VCOD SPR application has been submitted for the project and the Planning Board will be reviewing it at their February 1<sup>st</sup> meeting.
  - e. **Design Review Committee (DRC):** Kathy Williams also noted that the Riverwalk project will be going before the DRC on January 24<sup>th</sup>.
  - f. **Water Resources Advisory Committee (WRAC):** Joanne Crowley noted that Ken Smith had expressed some interest in taking over committee duties for the WRAC which will be discussed at the February 1<sup>st</sup> meeting.
  - g. **Affordable Housing Trust (AHT):** Brad Goodwin noted that his term on the AHT was coming to an extend but that he had agreed to a two-year extension.
9. **Board Member Items:** Susan Brita brought up the Zoning Board of Appeals request for the planning board to look into solar canopy regulations. Kathy Williams indicated this would be something to look into after annual town meeting.
10. **Correspondence:** The attached correspondence was sent to the Planning Board via e-mail.
11. **Staff Updates:** Kathy Williams noted the upcoming Station Avenue Corridor Study public meeting to be held on January 25<sup>th</sup> at 6 PM in the Hearing Room as well as via remote access.
12. **Upcoming Meetings:**
  - a. February 1, 2023: VCOD SPR for the Riverwalk Park project and continued discussion on the Accessory Apartment Bylaw amendments.
  - b. February 15, 2023
13. **Adjournment:** **VOTE: On a motion by Jim Saben, seconded by Chris Vincent, the Planning Board voted unanimously (6-0) to adjourn at 9:45 PM.**

**ATTACHMENTS:**

- January 18, 2023 Agenda
- Sign-In Sheet and List of Remote Participants

'23FEB16PM1:50 REC

- **ROAD Application 2022-2:** January 10, 2023 Planner Report; January 18, 2023 revised excerpts from Planner Report; Public Hearing Notice and Aerial Map; October 12, 2022 CEDC Memo; October 18, 2022 DRC Comment Sheet; ROAD Application form, Narrative, September 20, 2022 SPR Comment Sheet; 2 e-mail comments; materials submitted by Attorney David Reid at the meeting; January 18, 2023 Letter from Borderland Engineering; and Plans.
- **Definitive Subdivision No. 2936C & Special Permit #117:** January 13, 2023 Planner Report with Table 1 of Staff Comments, January 13, 2023 Engineering Memo, May 10, 2022 Health Dept Memo and revised C2; January 16, 2023 Supplemental Planner Memo; January 18, 2023 Redline Edits to Planner Memo of 1/16/23 and January 17, 2023 Revised Engineering Memo; Form C Def Subdivision Application form; Special Permit Application; Hearing Notice; October 24, 2022 Letter from J.M. O'Reilly & Associations; Redline edits of Table 1 from Preliminary Subdivision Plan 2936B; October 19, 2023 Waiver Request Memo; VHB Traffic Assessment; Draft Open Space Restriction & Easement; Draft Protective Covenants; Draft SWPPP without Appendices; Stormwater Management Report and Operation & Maintenance Manual; Subdivision Plan and Definitive Site Plan Set, dated 10/19/22 and revised plans dated 1/11/23.
- **Release from Agreement & Covenant Request - Definitive Subdivision No. 2427B – Easy Street, Yarmouth Port (located off Summer Street):** Draft Release
- **Miscellaneous Correspondence:**
  - January 12, 2023 ZBA Agenda
  - January 19, 2023 Conservation Commission Agenda
  - Station Avenue Corrido Study Public Input Meeting Flyer

***Approved on February 15, 2023:***

**On a motion by Susan Brita, and seconded by Will Rubenstein, the Planning Board voted (5-0-1) to approve the meeting minutes of January 18, 2023, with Jim Saben, Susan Brita, Joanne Crowley, Brad Goodwin, and Will Rubenstein voting in favor, and Ken Smith abstaining.**