

Town of Yarmouth
MINUTES OF THE PLANNING BOARD MEETING OF
February 1, 2023

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The Yarmouth Planning Board held a Hybrid in-person/remote access Business Meeting at **5:30** p.m. on Wednesday **February 1, 2023** in the Hearing Room at the Yarmouth Town Offices located at 1146 Route 28, South Yarmouth, MA.

Planning Board Present: Susan Brita, Jim Saben, Joanne Crowley, Will Rubenstein, and Ken Smith

Planning Board Absent: Chris Vincent and Brad Goodwin

Staff Present: Kathy Williams, Town Planner

1. **Meeting Opening:** Chair Joanne Crowley opened the hybrid meeting at 5:31. Planning Board members were all in-person. All votes were roll call votes.
2. **Village Centers Overlay District (VCOD) Site Plan Review (SPR) Application 2023-1:**

Applicant/Owner: Town of Yarmouth, 1146 Route 28, South Yarmouth; **Property Location:** 669 Route 28, West Yarmouth, Assessor Map 32.122, Zoning Districts B2/R25, HMOD1, ROAD and VCOD VC1. The Town of Yarmouth is proposing to create a public park at the 23-acre vacant town-owned property at 669 Route 28 utilizing Zoning Bylaw Section 414 – Village Centers Overlay District (VCOD). The entire property is located in VCOD Village Center 1 (VC1).

The proposed public park will include walking trails, native landscaping, children's play area, kayak launch, space for artist shanties and public art, parking, restrooms, and a large open area for periodic special events, along with associated landscaping, utilities, and site improvements. Although being funded and constructed separately, the permit application includes the future municipal wastewater Pump Station #3 located near Route 28. The existing shellfish upweller on the property will remain. All the proposed uses for the park, including the Pump Station and periodic Special Events are allowed by-right uses within the VCOD VC1. These include N9 – Municipal Recreation Use; N3 – Theatrical Productions, including bands, orchestras and entertainers; N11 – Other miscellaneous amusement & recreation services; and P10 – Municipal use (for the pump station).

Arek Galle of BETA Group gave the attached PowerPoint presentation highlighting the information in the application including an overview of the zoning and the various elements within the park. Mr. Galle touched on the elevated boardwalk on the property to the south which is not located in the VCOD VC1. He reviewed in more detail the architectural elements and layout of the restrooms and municipal pump station, as well as the future artist shanty sheds.

No letters related to the project were received and no one from the public spoke in favor or in opposition to the project at the Public Meeting. Planning Board members had some general questions related to the following:

- **Materials for the Boardwalk:** The proposed materials for the 6' wide boardwalk include hardwood decking and pressure treated lumber framing sitting on top of helical anchor foundation supports. The small bridge will be constructed of laminated timber beams.
- **Use of the Office Space:** The office/flex space will not be staffed on a regular basis but will be available for use during special events.

- **Building Siding Materials:** The Board discussed in more detail the recommendation from the Design Review Committee to modify the siding on the Restrooms to be all clapboard style and modify the siding on the Pump Station to be all shingles. After discussion on flexibility and availability of materials, the Planning Board decided to retain the siding materials as presented in the VCOD application.

Kathy Williams, Town Planner, briefly reviewed the attached Planner Memo including suggested conditions for consideration by the Board.

VOTE: On a motion by Jim Saben, and seconded by Susan Brita, the Planning Board voted (5-0) that the Riverwalk Park Project, VCOD 2023-1, in accordance with the plans and materials submitted and presented at the Planning Board meeting of February 1, 2023, is in compliance with the VCOD Design Standards, and subject to the following conditions, with Susan Brita, William Rubenstein, James Saben, Kenneth Smith, and Joanne Crowley voting in favor:

1. Install a new fire hydrant near the Courtland Way emergency access.
 2. Reduce the footcandles at the property line along Route 28 at the main entrance to 0.5 footcandles in accordance with Section 414.8.10.7.
3. **Accessory Apartment Bylaw Amendments:** Continued discussion on possible zoning amendments related to Accessory Dwelling Units (ADUs)/Accessory Apartments.

Joanne Crowley noted the additional information in the packet requested by the Planning Board at the 1/4/23 meeting including a more detailed breakdown of residential lot sizes and residential lots located within the zone 2 contributing area of our drinking water wells. Ms. Crowley indicated she was hoping to lock in those provisions that the Board agrees upon, identify where differences still remain and better understand legal issues that need to be addressed.

Kathy Williams reviewed the attached Draft #4, dated January 25, 2023 which incorporated edits or potential language as directed by the Board at the January 4th meeting. The Board spent a considerable amount of time talking about the allowable minimum lot size for an accessory apartment and reviewing the supplemental information on the number of residential lots of varying sizes. The general consensus was that the current 10,000 sf limit should be the lowest size lot, especially once you take into consideration the need for additional parking, septic and our existing higher density. The Board discussed increasing the minimum lot size from somewhere between the 10,000 sf and 15,000 sf range. Some Board members noted that 62% of the residential lots were 15,000 sf and smaller and setting a 15,000 sf minimum would restrict accessory apartments to only 38% of the residential lots in Town. Setting the limit at 13,000 sf would eliminate 50% of the residential lots. Members also pointed out there were other restrictions that would limit use, such as the Zone 2 which may require the removal of a bedroom in the primary residence to allow a bedroom in an Accessory Apartment which may be undesirable.

The Board discussed setting lot size limits higher to see if there are any adverse impacts, then consider reducing restrictions in the future. As compared to setting the limits lower and needing to enact more restrictions in the future, which would create more complexities with the creation of non-conforming grandfathered accessory apartments. Also discussed setting temporary limits on the allowable annual permits until we get a better handle on potential impacts. Jim Saben suggested developing a GIS Map to highlight the number of lots less than 10,000 through 15,000 and also showing the zone 2. Kathy Williams will work with the IT department to develop this mapping.

Other topics discussed by the Board:

- **Unit Sizes:** The Board increased the minimum unit size to 350 square feet. There was still some discussion on the maximum unit size and how that may relate to minimum lot sizes.
- **Special Permits:** The majority of the Board was in agreement on the three options for by-right use for Accessory Apartments including the minimum 25,000 sf lot size for expansion or new construction. Ms. Brita noted that she felt all Accessory Apartments should be through Special Permit which ensures abutter notification.
- **Transfer upon sale:** Kathy Williams noted that transferring new accessory apartments created under the new bylaw could transfer upon sale with the requirement to provide an affidavit to the Building Commissioner per Section 407.5 and obtain a rental certificate if applicable. Existing Family-Related and Affordable Accessory Apartments currently terminate upon the sale of the property and require a new Special Permit. After discussion, the consensus of the Board was to allow transfer upon sale for new accessory apartments, but to retain the current requirements for existing family related and affordable accessory apartments.
- **Conversion of existing Family Related & Affordable Units:** Kathy Williams noted that the existing accessory apartments have various covenants or restrictions recorded at the registry. Input is needed from Town Counsel on legal means to release these restrictions if a unit is converted to a new accessory apartment, as well as legal review of the proposed amendments in general.

Public Comments: Public comment was received throughout the discussions. Ms. Crowley noted that she has been and will continue to accept and welcome public comment.

- **Stacy Ober:** Ms. Ober noted that viewing this as a pilot program, better to start with more cautious parameters. Ms. Ober appreciated the efforts to work out in advance future circumstances and address them. She did question the legality of not allowing for a transfer of rights upon sale of the property. She also sought confirmation on the three circumstances for which a Special Permit would not be required.
- **Linda Bolliger of the Hyannis Park Civic Association:** Ms. Bolliger felt more public engagement is needed and not everyone is aware of these potential amendments. Ms. Bolliger inquired as to the difference of a home with an accessory apartment and a duplex. There is not a lot of difference except in the size of the units and that a duplex is attached.
- **Tom Nickinello:** Mr. Nickinello felt the maximum unit size should be 1,000 sf rather than 900 sf.

The Board had a further discussion on scheduling and the tight timeframe for the 2023 Annual Town Meeting (ATM). Some Board members were comfortable extending the amendments to the 2023 fall special town meeting but did not want to wait to the 2024 ATM. A fall amendment would give more opportunity for public engagement, although the Board was going to continue to move forward with the Accessory Apartments on their agenda.

4. **Seasonal Employee Housing:** Discussion and possible support letter regarding the Parkers River Resort proposed Zoning Board of Appeals Petition for a second year of 100% seasonal employee housing at the Parkers River Resort at 759 Route 28.

This Agenda item was deferred to the February 15th meeting.

5. **Committee Re-Assignments – Vote:** After a brief discussion on potential reassignment of Committees with the addition of a seventh planning board member, the Board voted as follows:
 - a. **Community & Economic Development Committee (CEDC):** **On a motion by Will Rubenstein, and seconded by Ken Smith, the Planning Board voted (5-0) to replace**

Joanne Crowley with Jim Saben as the Planning Board representative to the CEDC, with Susan Brita, Joanne Crowley, Ken Smith, Jim Saben and Will Rubenstein voting in favor.

- b. Water Resources Advisory Committee (WRAC): On a motion by Jim Saben, and seconded by Will Rubenstein, the Planning Board voted (5-0) to replace Joanne Crowley with Ken Smith as the Planning Board representative to the WRAC, with Susan Brita, Joanne Crowley, Ken Smith, Jim Saben and Will Rubenstein voting in favor.
6. **Meeting Minutes:**
- a. January 4, 2023: On a motion by Jim Saben, and seconded by Will Rubenstein, the Planning Board voted (4-0-1) to approve the meeting minutes of January 4, 2023, with Jim Saben, Susan Brita, Joanne Crowley, and Will Rubenstein voting in favor, and Ken Smith abstaining.
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. **Water Resources Advisory Committee (WRAC)**: Ken Smith indicated he sat in on the WRAC meeting where an 11-point finance plan for phase 1 and betterments were reviewed. He noted the need to keep pushing forward as Yarmouth was identified as a priority plan for funding by the state.
 - b. **Capital Budget Committee (CBC)**: Will Rubenstein noted that the Capital Improvement Plan (CIP) has been finalized and will be presented to the Board of Selectmen (BOS) on February 7th.
 - c. **Open Space & Recreation Plan (OSRP) Ad-Hoc Committee**: Will Rubenstein noted the Ad-Hoc Committee has been meeting and has an Open House scheduled for February 8th at 6PM in the Hearing Room and via remote access. Those in-person attendees will have an opportunity for further discussion at various topic tables. Kathy Williams also noted that there is an OSRP Survey out through February 22nd and available on the Town website.
 - d. **Community Preservation Committee (CPC)**: Joanne Crowley noted that the CPC voted on 10 projects for funding, including the Riverwalk Project, and will be presenting to the BOS on 2/7.
 - e. **Design Review Committee (DRC)**: Kathy Williams stated that the DRC will be meeting on 2/7 on two projects – temporary go-kart project at 228 Route 28 and an ambulance facility off Forsyth behind the Dunkin Donuts on Station Ave.
9. **Board Member Items:** Annual Town Meeting is scheduled for April 25, 2023.
10. **Correspondence:** The attached correspondence was sent to the Planning Board via e-mail.
11. **Staff Updates:** Kathy Williams informed the Planning Board that the ZBA application for the proposed cell tower has been received and will conduct their balloon test on January 4th with January 11th as a “rain” date. Their initial hearing is scheduled for March 9th. The tower has been modified to resemble a clock tower. Application materials are available on the Town website under 1044 Route 28.
12. **Upcoming Meetings:**
- a. February 15, 2023
 - b. March 1, 2023

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13. **Adjournment: VOTE:** On a motion by Jim Saben, seconded by Will Rubenstein, the Planning Board voted unanimously (5-0) to adjourn at 8:22 PM.

ATTACHMENTS:

- **February 1, 2023 Agenda**
- **Village Centers Overlay District (VCOD) Site Plan Review (SPR) Application 2023-1:** January 26, 2023 Planner Report; 11/22/23 SPR Comments; 11/22/22 Police e-mail; 11/24/23 DRC Comments; VCOD Application, Narrative and Plans; and PowerPoint presentation.
- **Accessory Dwelling Units (ADUs):** Draft #4 Section 407 – Accessory Apartments, dated January 25, 2023; Lot size table; and 1/10/23 e-mail regarding lots sizes within the Zone 2.
- **Seasonal Employee Housing:** Parkers River Resort letter to ZBA
- **Committee Assignments:** Table of current assignments
- **Draft Minutes:** January 4, 2023
- **Miscellaneous Correspondence:**
 - Conservation Commission Agenda for 2/2/23
 - ZBA Agenda 1/26/23
 - ZBA Decisions 4982, 4991 & 4997
 - January 24, 2023 Letter to MassDEP from BOS/WRAC on Proposed Title 5/Watershed Regulations
 - Barnstable Legal Notice for village zoning amendments 2/2/23

Approved on February 15, 2023:

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