



# The Town of Barnstable

## Planning and Development

[www.town.barnstable.ma.us/planninganddevelopment](http://www.town.barnstable.ma.us/planninganddevelopment)

Elizabeth Jenkins, Director

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### TOWN OF BARNSTABLE ACCESSORY AFFORDABLE APARTMENT PROGRAM

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#### MINUTES

May 26, 2021 – 6:30 pm Zoom

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**Present:** Jacob Dewey, Hearing Officer - ZBA, Anna Brigham, Principal Planner – Planning & Development. Also present were Ranu Mehta, Jian Barcelo, Mr. & Mrs. McLardy.

The Chair read:

The Zoning Board of Appeals Public Hearing will be held by remote participation methods as a result of the COVID-19 state of emergency in the Commonwealth of Massachusetts.

Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be viewed via the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/>
2. Real-time access to the Zoning Board of Appeals meeting is available utilizing the Zoom link or telephone number and Meeting ID provided below. Public comment can be addressed to the Zoning Board of Appeals by utilizing the Zoom link or telephone number and Meeting ID provided below:

Join Zoom Meeting

<https://zoom.us/j/92648405618>

Meeting ID: 926 4840 5618

US Toll-free 888 475 4499

3. Applicants, their representatives and individuals required or entitled to appear before the Zoning Board of Appeals may appear remotely and are not permitted to be physically present at the meeting, and may participate through accessing the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to [anna.brigham@town.barnstable.ma.us](mailto:anna.brigham@town.barnstable.ma.us), so that they may be displayed for remote public access viewing.

Copies of the applications are available for review by calling (508) 862-4682 or emailing [anna.brigham@town.barnstable.ma.us](mailto:anna.brigham@town.barnstable.ma.us).

#### Call to Order

Introduction

#### Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

## Minutes

May 12, 2021 were approved.

## Old Business

6:30 PM Appeal No. 2021-021

Mehta

The Chair read:

Raghib Mehta has applied for a Comprehensive Permit to legalize an existing 500 square foot one-bedroom apartment attached to the principal dwelling to an accessory affordable apartment. The subject property is addressed 221 Sea Street, Hyannis, MA as shown on Assessor's Map 307 as Parcel 025. It is zoned Residence B (RB). [Continued from May 12, 2021](#)

Ranu Mehta represented his father, Raghib Mehta, at the hearing. He described the apartment and that it is vacant at the moment. He did not know the process for legalizing the apartment when he bought the dwelling.

The Chair read:

The Applicant, Raghib Mehta, is the owner of property addressed as 221 Sea Street, Hyannis, MA. The Applicant has been the owner of the property since March 23, 2011, as evidenced by a deed recorded at the Barnstable County Registry of Deeds on Book : 25335 Page: 0022 recorded on March 23, 2011. A signed Affidavit dated May 13, 2021 declares that 221 Sea Street, Hyannis, MA, is owned by Raghib Mehta.

Raghib Mehta submitted an application for a Site Approval Letter as prescribed in the Code of Massachusetts Regulations 760 Section 56.00 and provided for within the Accessory Affordable Apartment Program of the Town of Barnstable. The application was submitted as a local initiated Chapter 40B. Notification of the application was submitted to the Department of Housing and Community Development. A Site Approval Letter was issued to the Applicant for the subject property by Town Manager, Mark Ells, on February 12, 2021. Notice of the Site Approval Letter was sent to the Department of Housing and Community Development in accordance with the requirements of CMR 760 56.00.

An application for a Comprehensive Permit was submitted on March 30, 2021 and filed at the Town Clerk's Office on March 30, 2021. A public hearing before the Zoning Board of Appeals Hearing Officer was duly advertised in the Barnstable Patriot on April 23, 2021 and April 30, 2021 and notices were sent to all abutters in accordance with Section 11 of MGL Chapter 40A.

### Findings of Fact

Concerning *standing*, the right of the applicant to seek a comprehensive permit, the Hearing Officer found:

The Applicant, Raghib Mehta, is the owner of the property located at 221 Sea Street, Hyannis, MA, as evidenced by deed recorded at the Barnstable County Registry of Deeds on Book 25335 Page 22 recorded March 23, 2011. A signed Affidavit dated May 13, 2021, declares that 221 Sea Street, Hyannis, MA, is owned by Raghib Mehta.

1. The application for a comprehensive permit was made in accordance with the Town of Barnstable's Accessory Affordable Apartment Program, Chapter 9 Article II of the Code of the Town of Barnstable. That program is structured as a self-regulating income-limiting local initiated housing program, a qualified funding program accepted under the Code of Massachusetts Regulations 760 Section 56.00 that governs grant of comprehensive permits.
2. In accordance with MGL Chapter 40B and 760 CMR 56.04 (4), a Site Approval Letter was issued to the Applicant for the subject property by Town Manager, Mark Ells, on June 26, 2020. Notice of the Site Approval Letter was sent to the Department of Housing and Community Development, in

accordance with the requirements of 760 CMR 56.04 (2), and no issues were communicated from the Department on this application.

3. The Applicant is proposing to utilize an area to an Accessory Affordable Apartment. The apartment will be 500 square feet, one bedroom, and located within the principal structure at 221 Sea Street, Hyannis, MA. To permit the apartment as an accessory affordable unit under Chapter 9 Article II of the Code would represent no perceivable change in the neighborhood.
4. The Building Commissioner performed an initial review of the property and determined that an accessory apartment unit can be created in conformance with applicable state building codes. Prior to occupancy, a building permit shall be required and hardwired smoke detectors and carbon monoxide detectors shall be upgraded/installed and the unit shall meet all requirements of the Building Code.
5. The property is served by town sewer adequate to accommodate the one-bedroom unit on the property with a restriction from the Health Department if required.
6. The Applicant has been informed that building and occupancy permits shall be obtained prior to occupancy of the accessory apartment. This step is required to assure final approval that the apartment unit conforms fully to all applicable building, fire, and health codes and this decision.
7. The Applicant has been informed that upon certification of this Comprehensive Permit by the Town Clerk, a Regulatory Agreement and Declaration of Restrictive Covenants, restricting the accessory apartment unit in perpetuity as an affordable rental unit shall be executed. Thereafter both the Comprehensive Permit and the Agreement shall be recorded at the Registry of Deeds as binding covenants on the property. The documents limit the apartment to that of an affordable unit rented to a person or family whose income is 80% or less of the Area Median Income (AMI) of the Barnstable Metropolitan Statistical Area (MSA) and cap the monthly rental income (including utilities) to not exceed 30% of the monthly household income of a household earning 80% of the median income, adjusted by household size. In the event that utilities are separately metered, the utility allowance established by the Town of Barnstable shall be deducted from rent level so calculated.
8. According to the Massachusetts Department of Housing and Community Development, Subsidized Housing Inventory, the Town of Barnstable has 7.14% of its year round housing stock qualified as affordable housing units. The town has not reached the 10% statutory minimum affordable housing required in MGL Chapter 40B or met any of the Statutory Minima provided for in 760 CMR 56.03(3).
9. The Town of Barnstable's Comprehensive Plan encourages the adaptive use of existing housing stock to create affordable units and the dispersal of these units throughout Barnstable. This application and the location of the unit conform to that objective.

Based upon the findings, the Hearing Officer ruled that the application of Raghbir Mehta is deemed consistent with local needs because it adequately promotes the objective of providing affordable housing for the Town of Barnstable without jeopardizing the health and safety of the occupants provided certain conditions are imposed.

The **Hearing Officer** ruled to grant Comprehensive Permit No. 2021-021 to Raghbir Mehta for 221 Sea Street, Hyannis, MA to allow the creation of an Accessory Affordable Apartment. The apartment is a one-bedroom affordable apartment unit located within the principal structure at 221 Sea Street, Hyannis, MA as provided for in Chapter 9, Article II of the Code of the Town of Barnstable and in conformity to the following conditions and restrictions:

1. Occupancy of the affordable unit shall not exceed two (2) persons.

2. The number of bedrooms in the Accessory Affordable Apartment shall be limited to one (1).
3. Family members of the applicant/owner shall not at any time occupy the accessory unit.
4. All leases shall have a minimum term of one year and have provisions that require the tenant to provide any and all information necessary to verify eligibility with the Accessory Affordable Apartment Program including income information of the tenant and rent and utility payments.
5. All parking for the accessory apartment and the principal structure shall be on-site. Overnight on-street parking is expressly prohibited.
6. Accessory lodging or renting of rooms is prohibited for the duration of this Comprehensive Permit.
7. The applicants shall, after certification of this Comprehensive Permit by the Town Clerk:
  - a. execute a Regulatory Agreement and Declaration of Restrictive Covenants, as approved by the Town Attorney's Office, and
  - b. make application for a building permit with the Building Division for the accessory apartment. Work required to bring the unit into compliance with present day code standards shall be completed prior to issuance of a Certificate of Occupancy for the accessory apartment, as necessary.
8. It is the explicit intent that the applicant secure an occupancy permit and the unit be occupied by qualified tenant(s) as restricted by this comprehensive permit within one-year of the certification of the permit, if the Applicant has not done so already. The Building Commissioner and/or monitoring agent may extend this time for good cause.
9. To meet affordability requirements, the rent charged (including utilities) shall not exceed 30% of 80% of the median income for the Barnstable MSA, adjusted for family size, as calculated and published annually by the Town of Barnstable. In the event that utilities are separately metered, the utility allowance established by the town of Barnstable shall be deducted from rent level so calculated.
10. The applicant shall engage in open and fair marketing of the unit and provide documentation of the activity to the Housing Coordinator/Monitoring Agent.
11. Information regarding the income level of any prospective tenant shall first be submitted to and approved by the Housing Coordinator/Monitoring Agent before any lease is signed.
12. Annually, the applicant shall work with the Housing Coordinator/Monitoring Agent to provide necessary information and documentation of tenant income eligibility and conformance with the Accessory Affordable Apartment Program.
13. The Applicant must register the unit with the Regulatory Services Department at 200 Main Street, Hyannis.
14. Whenever a vacancy occurs, notice shall be given to the Housing Coordinator/Monitoring Agent before reengaging the tenant selection process previously cited.
15. Annual Income, to determine program eligibility, will be calculated per 24 CFR Part 5.
16. The Housing Coordinator of the Planning and Development Department shall be the monitoring agent for the accessory apartment. Annual monitoring shall include verification of tenancy, affordability, and compliance with Comprehensive Permit. The homeowner shall be responsible for the fee for Housing Quality Standards (HQS) inspections.
17. Every twelve months the applicant shall review the income eligibility of the tenant of the Accessory Affordable Apartment unit. No later than a year from the date of issuance of this Comprehensive

Permit, the applicant shall file with the Housing Coordinator/Monitoring Agent an annual affidavit stating the rent charged and income of the unit tenant along with all required supporting documentation. The property owners and/or tenant shall provide any additional information deemed necessary to verify the information provided in the affidavit and annual monitoring documents.

18. Upon any report from the Housing Coordinator/Monitoring Agent that the terms and conditions of this permit are not being upheld, the Hearing Officer of the Zoning Board of Appeals may hold a hearing to revoke this permit or cause enforcement action to be taken for compliance.
19. This Decision, the Regulatory Agreement and Declaration of Restrictive Covenants and all other necessary documents shall be recorded at the Barnstable County Registry of Deeds prior to application for a building permit.
20. Should ownership of the subject property transfer, the permit holder identified herein shall notify the Housing Coordinator/Monitoring Agent and provide, within 60 days of the date of transfer, the name and current contact information for the new owner of the subject property.
21. This Comprehensive Permit shall be exercised as conditioned herein or it shall expire.

### **The Chair Ordered**

Comprehensive Permit No. 2021-021 is granted with conditions to Raghbir Mehta for property addressed as 221 Sea Street, Hyannis, MA. This permit is not transferable without prior permission of the Hearing Officer. The zoning relief issued in this Comprehensive Permit is that of a variance to Section 240-11 (A) Principal Permitted Uses in the RB Zoning Districts to permit a one-bedroom accessory affordable apartment unit within the principal structure.

A written copy of this decision will be forwarded to the Zoning Board of Appeals as required by the Town of Barnstable Administrative Code Chapter 241, Section 11. If after fourteen (14) days from that transmittal and provided that the members of the Zoning Board of Appeals take no action to reverse the decision, this decision shall be filed with the Town Clerk's Office. It shall then become final only after 20 days has expired and certified by the Town Clerk that no appeal was filed on the decision.

Appeals of this decision, if any, shall be made to the Barnstable Superior Court pursuant to MGL Chapter 40A, Section 17, within twenty (20) days after the date of the filing of this decision in the office of the Town Clerk. The applicant has the right to appeal this decision as outlined in MGL Chapter 40B, Section 22.

### **New Business**

**6:31 PM Appeal No. 2021-025**

**Barcelo**

The Chair read:

Jian Barcelo has applied for a Comprehensive Permit to transfer a previously permitted 600 square foot 1-bedroom Accessory Apartment into new ownership. The subject property is addressed 97 Old Town Road, Hyannis, MA as shown on Assessor's Map 268 as Parcel 072. It is zoned Residence B (RB).

Jian Barcelo appeared at the hearing. Mr. Barcelo explained that he is the new owner of the property and would like to continue with the Program under his ownership.

The Chair read:

The Applicant, Jian Barcelo, is the owner and occupant of property addressed as 97 Old Town Road, Hyannis, MA. The Applicant has been the owner of the property since April 22, 2019, as evidenced by a deed recorded at the Barnstable County Registry of Deeds on Book 31966 Page 316 recorded on April 22,

2019. A signed Affidavit dated January 26, 2021 declares that 97 Old Town Road, Hyannis, MA, is the primary residence of Jian Barcelo.

The lot is served by public water and on-site septic, and is located within a Wellhead Protection Overlay District. The town of Barnstable's Public Health Division reviewed the application, and on April 27, 2021, approved the structure for a total of three (3) bedrooms with the existing on-site septic system.

Jian Barcelo submitted an application for a Site Approval as prescribed in the Code of Massachusetts Regulations 760 Section 56.00 and provided for within the Accessory Affordable Apartment Program of the Town of Barnstable. The application was submitted as a local initiated Chapter 40B. Notification of the application was submitted to the Department of Housing and Community Development. A Site Approval Letter was issued to the Applicant for the subject property by Town Manager, Mark Ells, on February 12, 2021. Notice of the Site Approval Letter was sent to the Department of Housing and Community Development in accordance with the requirements of CMR 760 56.00.

An application for a Comprehensive Permit was submitted and filed at the Town Clerk's Office on April 26, 2021. A public hearing before the Zoning Board of Appeals Hearing Officer was duly advertised in the Barnstable Patriot on May 7, 2021 and May 14, 2021 and notices were sent to all abutters in accordance with Section 11 of MGL Chapter 40A.

### **Findings of Fact**

At the hearing on May 26, 2021, the Hearing Officer made the following findings of fact:

Concerning *standing*, the right of the applicant to seek a comprehensive permit, the Hearing Officer found:

The Applicant, Jian Barcelo, is the owner and occupant of the property located at 97 Old Town Road, Hyannis, MA, as evidenced by deed recorded at the Barnstable County Registry of Deeds on Book 31966 Page 316 recorded April 22, 2019. A signed Affidavit dated January 26, 2021, declares that 97 Old Town Road, Hyannis, MA, is the primary residence of Jian Barcelo.

1. The application for a comprehensive permit was made in accordance with the Town of Barnstable's Accessory Affordable Apartment Program, Chapter 9 Article II of the Code of the Town of Barnstable. That program is structured as a self-regulating income-limiting local initiated housing program, a qualified funding program accepted under the Code of Massachusetts Regulations 760 Section 56.00 that governs grant of comprehensive permits.
2. In accordance with MGL Chapter 40B and 760 CMR 56.04 (4), a Site Approval Letter was issued to the Applicant for the subject property by Town Manager, Mark Ells, on February 12, 2021. Notice of the Site Approval Letter was sent to the Department of Housing and Community Development, in accordance with the requirements of 760 CMR 56.04 (2), and no issues were communicated from the Department on this application.
3. The Applicant is proposing to utilize an area to an Accessory Affordable Apartment. The apartment will be 600 square feet, one bedroom, and located within the detached structure at 97 Old Town Road, Hyannis, MA. To permit the apartment as an accessory affordable unit under Chapter 9 Article II of the Code would represent no perceivable change in the neighborhood.
4. The Building Commissioner performed an initial review of the property and determined that an accessory apartment unit can be created in conformance with applicable state building codes. Prior to occupancy, a building permit shall be required and hardwired smoke detectors and carbon monoxide detectors shall be upgraded/installed and the unit shall meet all requirements of the Building Code.
5. The property is served by an on-site septic system adequate to accommodate the one-bedroom unit on the property with a restriction from the Health Department if required.

6. The Applicant has been informed that building and occupancy permits shall be obtained prior to occupancy of the accessory apartment. This step is required to assure final approval that the apartment unit conforms fully to all applicable building, fire, and health codes and this decision.
7. The Applicant has been informed that upon certification of this Comprehensive Permit by the Town Clerk, a Regulatory Agreement and Declaration of Restrictive Covenants, restricting the accessory apartment unit in perpetuity as an affordable rental unit shall be executed. Thereafter both the Comprehensive Permit and the Agreement shall be recorded at the Registry of Deeds as binding covenants on the property. The documents limit the apartment to that of an affordable unit rented to a person or family whose income is 80% or less of the Area Median Income (AMI) of the Barnstable Metropolitan Statistical Area (MSA) and cap the monthly rental income (including utilities) to not exceed 30% of the monthly household income of a household earning 80% of the median income, adjusted by household size. In the event that utilities are separately metered, the utility allowance established by the Town of Barnstable shall be deducted from rent level so calculated.
8. According to the Massachusetts Department of Housing and Community Development, Subsidized Housing Inventory, the Town of Barnstable has 7.14% of its year round housing stock qualified as affordable housing units. The town has not reached the 10% statutory minimum affordable housing required in MGL Chapter 40B or met any of the Statutory Minima provided for in 760 CMR 56.03(3).
9. The Town of Barnstable's Comprehensive Plan encourages the adaptive use of existing housing stock to create affordable units and the dispersal of these units throughout Barnstable. This application and the location of the unit conform to that objective.

Based upon the findings, the Hearing Officer ruled that the application of Jian Barcelo is deemed consistent with local needs because it adequately promotes the objective of providing affordable housing for the Town of Barnstable without jeopardizing the health and safety of the occupants provided certain conditions are imposed.

**Decision & Conditions:**

The **Hearing Officer** ruled to grant Comprehensive Permit No. 2021-025 to Jian Barcelo for 97 Old Town Road, Hyannis, MA to allow the creation of an Accessory Affordable Apartment. The apartment is a one-bedroom affordable apartment unit located within the detached structure at 97 Old Town Road, Hyannis, MA as provided for in Chapter 9, Article II of the Code of the Town of Barnstable and in conformity to the following conditions and restrictions:

1. Occupancy of the affordable unit shall not exceed two (2) persons.
2. The number of bedrooms in the Accessory Affordable Apartment shall be limited to one (1).
3. Family members of the applicant/owner shall not at any time occupy the accessory unit.
4. All leases shall have a minimum term of one year and have provisions that require the tenant to provide any and all information necessary to verify eligibility with the Accessory Affordable Apartment Program including income information of the tenant and rent and utility payments.
5. All parking for the accessory apartment and the principal dwelling shall be on-site. Overnight on-street parking is expressly prohibited.
6. Accessory lodging or renting of rooms is prohibited for the duration of this Comprehensive Permit.
7. The applicants shall, after certification of this Comprehensive Permit by the Town Clerk:

- c. execute a Regulatory Agreement and Declaration of Restrictive Covenants, as approved by the Town Attorney's Office, and
  - d. make application for a building permit with the Building Division for the accessory apartment. Work required to bring the unit into compliance with present day code standards shall be completed prior to issuance of a Certificate of Occupancy for the accessory apartment, as necessary.
8. It is the explicit intent that the applicant secure an occupancy permit and the unit be occupied by qualified tenant(s) as restricted by this comprehensive permit within one-year of the certification of the permit, if the Applicant has not done so already. The Building Commissioner and/or monitoring agent may extend this time for good cause.
9. To meet affordability requirements, the rent charged (including utilities) shall not exceed 30% of 80% of the median income for the Barnstable MSA, adjusted for family size, as calculated and published annually by the Town of Barnstable. In the event that utilities are separately metered, the utility allowance established by the town of Barnstable shall be deducted from rent level so calculated.
10. The applicant shall engage in open and fair marketing of the unit and provide documentation of the activity to the Housing Coordinator/Monitoring Agent.
11. Information regarding the income level of any prospective tenant shall first be submitted to and approved by the Housing Coordinator/Monitoring Agent before any lease is signed.
12. Annually, the applicant shall work with the Housing Coordinator/Monitoring Agent to provide necessary information and documentation of tenant income eligibility and conformance with the Accessory Affordable Apartment Program.
13. The Applicant must register the unit with the Regulatory Services Department at 200 Main Street, Hyannis.
14. Whenever a vacancy occurs, notice shall be given to the Housing Coordinator/Monitoring Agent before reengaging the tenant selection process previously cited.
15. Annual Income, to determine program eligibility, will be calculated per 24 CFR Part 5.
16. The Housing Coordinator of the Planning and Development Department shall be the monitoring agent for the accessory apartment. Annual monitoring shall include verification of tenancy, affordability, and compliance with Comprehensive Permit. The homeowner shall be responsible for the fee for Housing Quality Standards (HQS) inspections.
17. Every twelve months the applicant shall review the income eligibility of the tenant of the Accessory Affordable Apartment unit. No later than a year from the date of issuance of this Comprehensive Permit, the applicant shall file with the Housing Coordinator/Monitoring Agent an annual affidavit stating the rent charged and income of the unit tenant along with all required supporting documentation. The property owners and/or tenant shall provide any additional information deemed necessary to verify the information provided in the affidavit and annual monitoring documents.
18. Upon any report from the Housing Coordinator/Monitoring Agent that the terms and conditions of this permit are not being upheld, the Hearing Officer of the Zoning Board of Appeals may hold a hearing to revoke this permit or cause enforcement action to be taken for compliance.
19. This Decision, the Regulatory Agreement and Declaration of Restrictive Covenants and all other necessary documents shall be recorded at the Barnstable County Registry of Deeds prior to application for a building permit.



20. Should ownership of the subject property transfer, the permit holder identified herein shall notify the Housing Coordinator/Monitoring Agent and provide, within 60 days of the date of transfer, the name and current contact information for the new owner of the subject property.

21. This Comprehensive Permit shall be exercised as conditioned herein or it shall expire.

### **Ordered**

Comprehensive Permit No. 2021-025 is granted with conditions to Jian Barcelo for property addressed as 97 Old Town Road, Hyannis, MA. This permit is not transferable without prior permission of the Hearing Officer. The zoning relief issued in this Comprehensive Permit is that of a variance to Section 240-11 (A) Principal Permitted Uses in the RB Zoning Districts to permit a one-bedroom accessory affordable apartment unit within the principal dwelling.

A written copy of this decision will be forwarded to the Zoning Board of Appeals as required by the Town of Barnstable Administrative Code Chapter 241, Section 11. If after fourteen (14) days from that transmittal and provided that the members of the Zoning Board of Appeals take no action to reverse the decision, this decision shall be filed with the Town Clerk's Office. It shall then become final only after 20 days has expired and certified by the Town Clerk that no appeal was filed on the decision.

Appeals of this decision, if any, shall be made to the Barnstable Superior Court pursuant to MGL Chapter 40A, Section 17, within twenty (20) days after the date of the filing of this decision in the office of the Town Clerk. The applicant has the right to appeal this decision as outlined in MGL Chapter 40B, Section 22.

**6:32 PM Appeal No. 2021-026**

**McLardy**

The Chair read:

Paloma McLardy has applied for a Comprehensive Permit to create a studio apartment attached to the principal dwelling as an accessory affordable apartment. The subject property is addressed 3 Franbill Road, Hyannis, MA as shown on Assessor's Map 292 as Parcel 047. It is zoned Residence B (RB).

David and Paloma McLardy appeared at the Hearing. The described their apartment and looking forwards to renting it as the area is in need of housing.

The Chair read:

The Applicants, David and Paloma McLardy, are the owners and occupants of property addressed as 3 Franbill Road, Hyannis, Hyannis, MA. The Applicants have been the owners of the property since April 21, 1999, as evidenced by a deed recorded at the Barnstable County Registry of Deeds on Book : 12214 Page: 0179 recorded on April 21, 1999. A signed Affidavit dated December 8, 2020 declares that 3 Franbill Road, Hyannis, MA, is the primary residence of David and Paloma McLardy.

The lot is served by public water and on-site septic, and is located within an Aquifer Protection Overlay District. The town of Barnstable's Public Health Division reviewed the application, and on January 20, 2021, approved the structure for a total of five (5) bedrooms with the existing on-site septic system.

### **Procedural & Hearing Summary**

David and Paloma McLardy submitted an application for a Site Approval Letter as prescribed in the Code of Massachusetts Regulations 760 Section 56.00 and provided for within the Accessory Affordable Apartment Program of the Town of Barnstable. The application was submitted as a local initiated Chapter 40B. Notification of the application was submitted to the Department of Housing and Community Development. A Site Approval Letter was issued to the Applicant for the subject property by Town Manager, Mark Ells, March 24, 2021. Notice of the Site Approval Letter was sent to the

Department of Housing and Community Development in accordance with the requirements of CMR 760 56.00.

An application for a Comprehensive Permit was submitted on December 8, 2020 and filed at the Town Clerk's Office on April 21, 2021. A public hearing before the Zoning Board of Appeals Hearing Officer was duly advertised in the Barnstable Patriot on May 7, 2021 and May 14, 2021 and notices were sent to all abutters in accordance with Section 11 of MGL Chapter 40A.

### **Findings of Fact**

At the hearing on May 26, the Hearing Officer made the following findings of fact:

Concerning *standing*, the right of the applicant to seek a comprehensive permit, the Hearing Officer found:

The Applicants, David and Paloma McLardy, are the owners and occupants of the property located at 3 Franbill Road, Hyannis, MA, as evidenced by deed recorded at the Barnstable County Registry of Deeds on Book 12214 Page 179 recorded April 21, 1999. A signed Affidavit dated December 8, 2020, declares that 3 Franbill Road, Hyannis, MA, is the primary residence of David and Paloma McLardy.

1. The application for a comprehensive permit was made in accordance with the Town of Barnstable's Accessory Affordable Apartment Program, Chapter 9 Article II of the Code of the Town of Barnstable. That program is structured as a self-regulating income-limiting local initiated housing program, a qualified funding program accepted under the Code of Massachusetts Regulations 760 Section 56.00 that governs grant of comprehensive permits.
2. In accordance with MGL Chapter 40B and 760 CMR 56.04 (4), a Site Approval Letter was issued to the Applicant for the subject property by Town Manager, Mark Ells, on March 24, 2021. Notice of the Site Approval Letter was sent to the Department of Housing and Community Development, in accordance with the requirements of 760 CMR 56.04 (2), and no issues were communicated from the Department on this application.

Regarding *consistency with local needs*, the Hearing Officer found:

3. The Applicants are proposing to utilize an area to an Accessory Affordable Apartment. The apartment will be 288 square feet, one bedroom, and located within the principal dwelling at 3 Franbill Road, Hyannis, MA. To permit the apartment as an accessory affordable unit under Chapter 9 Article II of the Code would represent no perceivable change in the neighborhood.
4. The Building Commissioner performed an initial review of the property and determined that an accessory apartment unit can be created in conformance with applicable state building codes. Prior to occupancy, a building permit shall be required and hardwired smoke detectors and carbon monoxide detectors shall be upgraded/installed and the unit shall meet all requirements of the Building Code.
5. The property is served by an on-site septic system adequate to accommodate the one-bedroom unit on the property with a restriction from the Health Department if required.
6. The Applicant has been informed that building and occupancy permits shall be obtained prior to occupancy of the accessory apartment. This step is required to assure final approval that the apartment unit conforms fully to all applicable building, fire, and health codes and this decision.
7. The Applicant has been informed that upon certification of this Comprehensive Permit by the Town Clerk, a Regulatory Agreement and Declaration of Restrictive Covenants, restricting the accessory apartment unit in perpetuity as an affordable rental unit shall be executed. Thereafter both the Comprehensive Permit and the Agreement shall be recorded

at the Registry of Deeds as binding covenants on the property. The documents limit the apartment to that of an affordable unit rented to a person or family whose income is 80% or less of the Area Median Income (AMI) of the Barnstable Metropolitan Statistical Area (MSA) and cap the monthly rental income (including utilities) to not exceed 30% of the monthly household income of a household earning 80% of the median income, adjusted by household size. In the event that utilities are separately metered, the utility allowance established by the Town of Barnstable shall be deducted from rent level so calculated.

8. According to the Massachusetts Department of Housing and Community Development, Subsidized Housing Inventory, the Town of Barnstable has 7.14% of its year round housing stock qualified as affordable housing units. The town has not reached the 10% statutory minimum affordable housing required in MGL Chapter 40B or met any of the Statutory Minima provided for in 760 CMR 56.03(3).
9. The Town of Barnstable's Comprehensive Plan encourages the adaptive use of existing housing stock to create affordable units and the dispersal of these units throughout Barnstable. This application and the location of the unit conform to that objective.

Based upon the findings, the Hearing Officer ruled that the application of David and Paloma McLardy is deemed consistent with local needs because it adequately promotes the objective of providing affordable housing for the Town of Barnstable without jeopardizing the health and safety of the occupants provided certain conditions are imposed.

**Decision & Conditions:**

The Hearing Officer ruled to grant Comprehensive Permit No. 2021-026 to David and Paloma McLardy for 3 Franbill Road, Hyannis, MA to allow the creation of an Accessory Affordable Apartment. The apartment is a one-bedroom affordable apartment unit located within the principal dwelling at 3 Franbill Road, Hyannis, MA as provided for in Chapter 9, Article II of the Code of the Town of Barnstable and in conformity to the following conditions and restrictions:

1. Occupancy of the affordable unit shall not exceed one (1) person.
2. The number of bedrooms in the Accessory Affordable Apartment shall be limited to one (1).
3. Family members of the applicant/owner shall not at any time occupy the accessory unit.
4. All leases shall have a minimum term of one year and have provisions that require the tenant to provide any and all information necessary to verify eligibility with the Accessory Affordable Apartment Program including income information of the tenant and rent and utility payments.
5. All parking for the accessory apartment and the principal dwelling shall be on-site. Overnight on-street parking is expressly prohibited.
6. Accessory lodging or renting of rooms is prohibited for the duration of this Comprehensive Permit.
7. The applicants shall, after certification of this Comprehensive Permit by the Town Clerk:
  - e. execute a Regulatory Agreement and Declaration of Restrictive Covenants, as approved by the Town Attorney's Office, and
  - f. make application for a building permit with the Building Division for the accessory apartment. Work required to bring the unit into compliance with present day code standards shall be completed prior to issuance of a Certificate of Occupancy for the accessory apartment, as necessary.

8. It is the explicit intent that the applicants secure an occupancy permit and the unit be occupied by a qualified tenant as restricted by this comprehensive permit within one-year of the certification of the permit, if the Applicant has not done so already. The Building Commissioner and/or monitoring agent may extend this time for good cause.
9. To meet affordability requirements, the rent charged (including utilities) shall not exceed 30% of 80% of the median income for the Barnstable MSA, adjusted for family size, as calculated and published annually by the Town of Barnstable. In the event that utilities are separately metered, the utility allowance established by the town of Barnstable shall be deducted from rent level so calculated.
10. The applicant shall engage in open and fair marketing of the unit and provide documentation of the activity to the Housing Coordinator/Monitoring Agent.
11. Information regarding the income level of any prospective tenant shall first be submitted to and approved by the Housing Coordinator/Monitoring Agent before any lease is signed.
12. Annually, the applicant shall work with the Housing Coordinator/Monitoring Agent to provide necessary information and documentation of tenant income eligibility and conformance with the Accessory Affordable Apartment Program.
13. The Applicant must register the unit with the Regulatory Services Department at 200 Main Street, Hyannis.
14. Whenever a vacancy occurs, notice shall be given to the Housing Coordinator/Monitoring Agent before reengaging the tenant selection process previously cited.
15. Annual Income, to determine program eligibility, will be calculated per 24 CFR Part 5.
16. The Housing Coordinator of the Planning and Development Department shall be the monitoring agent for the accessory apartment. Annual monitoring shall include verification of tenancy, affordability, and compliance with Comprehensive Permit. The homeowner shall be responsible for the fee for Housing Quality Standards (HQS) inspections.
17. Every twelve months the applicant shall review the income eligibility of the tenant of the Accessory Affordable Apartment unit. No later than a year from the date of issuance of this Comprehensive Permit, the applicant shall file with the Housing Coordinator/Monitoring Agent an annual affidavit stating the rent charged and income of the unit tenant along with all required supporting documentation. The property owners and/or tenant shall provide any additional information deemed necessary to verify the information provided in the affidavit and annual monitoring documents.
18. Upon any report from the Housing Coordinator/Monitoring Agent that the terms and conditions of this permit are not being upheld, the Hearing Officer of the Zoning Board of Appeals may hold a hearing to revoke this permit or cause enforcement action to be taken for compliance.
19. This Decision, the Regulatory Agreement and Declaration of Restrictive Covenants and all other necessary documents shall be recorded at the Barnstable County Registry of Deeds prior to application for a building permit.
20. Should ownership of the subject property transfer, the permit holder identified herein shall notify the Housing Coordinator/Monitoring Agent and provide, within 60 days of

the date of transfer, the name and current contact information for the new owner of the subject property.

21. This Comprehensive Permit shall be exercised as conditioned herein or it shall expire.

### **Ordered**

Comprehensive Permit No. 2021-026 is granted with conditions to David and Paloma McLardy for property addressed as 3 Franbill Road, Hyannis, MA. This permit is not transferable without prior permission of the Hearing Officer. The zoning relief issued in this Comprehensive Permit is that of a variance to Section 240-11 (A) Principal Permitted Uses in the RB Zoning Districts to permit a one-bedroom accessory affordable apartment unit within the principal dwelling.

A written copy of this decision will be forwarded to the Zoning Board of Appeals as required by the Town of Barnstable Administrative Code Chapter 241, Section 11. If after fourteen (14) days from that transmittal and provided that the members of the Zoning Board of Appeals take no action to reverse the decision, this decision shall be filed with the Town Clerk's Office. It shall then become final only after 20 days has expired and certified by the Town Clerk that no appeal was filed on the decision.

Appeals of this decision, if any, shall be made to the Barnstable Superior Court pursuant to MGL Chapter 40A, Section 17, within twenty (20) days after the date of the filing of this decision in the office of the Town Clerk. The applicant has the right to appeal this decision as outlined in MGL Chapter 40B, Section 22.

### **Correspondence**

None

### **Matters Not Reasonably Anticipated by the Chair**

### **Upcoming Hearings**

None scheduled

### **Adjournment**

6:48 pm