

LAGOON RIDGE SPECIAL PERMIT FILING
OAK BLUFFS FLEXIBLE ZONING BYLAW SECTION 7.3

1. Special Permit Application
2. Definitive Plan for Lagoon Ridge, April 13, 2017, 2 pages.
3. Yield Plan by Kristen Reimann, undated, 1 page.
4. Basic Maximum Number Memo, December 1, 2017, 3 pages.
5. Building Inspector Mark Barbadoro Letter to Oak Bluffs Planning Board – December 14, 2015
6. Lagoon Ridge Affordable Housing, January 20, 2015, revised December 1, 2017, 4 pages.
7. Deed to Lagoon Ridge LLC Book 1361, Page 397 – 2014.

Received 12/4/17
Planning Board

COPY

LAW OFFICES
ERIC L. PETERS
(508) 693-8830
Telecopier (508) 693-8830

Street Address:
53 LEONARD CIRCLE
VINEYARD HAVEN, MA 02568

Mailing Address:
POST OFFICE BOX 1117
EDGARTOWN, MA 02539

December 4, 2017

Mr. Ewell Hopkins, Chair
Oak Bluffs Planning Board
Oak Bluffs Town Hall
Oak Bluffs, MA 02557

By Hand

Re: **Lagoon Ridge Subdivision Special Permit Filing**

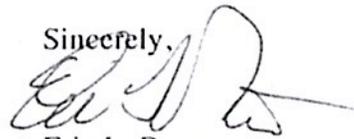
Dear Mr. Hopkins:

I am pleased to submit for filing a Special Permit Application under Oak Bluffs Zoning Bylaw Section 7.3 (Flexible Development) for the "Lagoon Ridge" subdivision on behalf of Lagoon Ridge LLC and the Danielson family. Also enclosed is the required \$350.00 fee.

The following additional documents are enclosed as part of the Special Permit application:

1. Definitive Plan for Lagoon Ridge, April 13, 2017, 2 pages.
2. Yield Plan by Kristen Reimann, undated, 1 page.
3. Basic Maximum Number Memo, December 1, 2017, 3 pages.
4. Building Inspector Mark Barbadoro Letter to Oak Bluffs Planning Board – December 14, 2015.
5. Lagoon Ridge Affordable Housing, January 20, 2015, revised December 1, 2017, 4 pages.
6. Deed to Lagoon Ridge LLC Book 1361, Page 397 – 2014.

A copy of the abutters list filed today with the Form C plan is enclosed. The applicant requests that there be a joint public hearing for the Form C plan filing and the Special Permit filing. Accordingly, joint notice should be sent to abutters.

Sincerely,

Eric L. Peters

Enclosures

cc: Davio Danielson, Manager, Lagoon Ridge LLC
Danielson Family members
Oak Bluffs Town Clerk
Oak Bluffs Building Inspector

RECEIVED
DEC 04 2017

O. B. BUILDING DEPT.

Oak Bluffs, MA
Town Clerk's Office
December 4 20 17
Rec'd for Record
AT H M M
2:55 PM



Received
Planning Board
12/4/17
MA

PLANNING BOARD TOWN OF OAK BLUFFS

P.O. Box 1327
Oak Bluffs, MA 02557
Ph. 508-693-3554

COPY

Oak Bluffs, MA
Town Clerk's Office

December 4 20 17

Rec'd for Record

AT H M M

2:55 PM

SPECIAL PERMIT APPLICATION

Applicant's Name: David A. Danielson, Manager, Lagoon Ridge LLC
Mailing Address: 126 Nash Hill Road, Haydenville, MA 01039
Telephone: (413) 320-2395 (cell)
Owner's Name: Lagoon Ridge LLC

Applicant is: owner agent tenant licensee prospective purchaser
(Circle one and if not owner, include letter from owner giving right to apply on owner's behalf.)

Application is submitted under section(s) 7.3 Flexible Development of the Zoning-By-Laws

Location of Property: Street Name and Address: off Barnes Road and Sage's Way
Map/Parcel No.: Map 35, Parcel 3 Zoning District R-3

Description of Project: Residential subdivision of 23 lots with 25 dwelling units.

Nature of Relief Requested: Special Permit under Section 7.3 Flexible Development

(Attachments): Map ___ Site Plan ___ Building Plan ___ Filing Fee ___ Other ___
(See applicable section of the Zoning Bylaws & Rules & Regulations for Special Permits for particular requirements.)

I hereby request a special permit as described above:

Signed: David A. Danielson
Title: Manager, Lagoon Ridge LLC
Date: December 4, 2017

APPLICANT MUST HAVE THE BUILDING/ZONING INSPECTOR REVIEW AND SIGN THIS APPLICATION PRIOR TO SUBMITTING IT TO THE PLANNING BOARD

Reviewed by the Building/Zoning Inspector _____
Applicable Section of the Zoning Bylaw(s) _____
Date: _____

Commonwealth of Massachusetts
Town of Oak Bluffs
Office of the Planning Board

REQUEST FOR SPECIAL PERMIT APPLICATION

December 4, 2017

PLEASE PRINT

Map 35 Lot 3

Street Address off Barnes Road and Sage's Way

Applicant David A. Danielson, Manager

Property Owner Lagoon Ridge LLC

Applying for a Special Permit under Sect(s) 7.3 of the O.B. Zoning Bylaw. I have included in this application all relevant plans and materials required by the attached instructions.

To The Planning Board:

The undersigned hereby petitions the Planning Board grant a Special Permit or take any action pertaining thereto of the current Zoning Bylaws of Oak Bluffs at the address located at off Barnes Road and Sage's Way

In the following respect(s): Applicant seeks approval for 23 lots and 25 dwelling units under Section 7.3 of the Oak Bluffs Zoning Bylaw and Rules and Regulations Governing the Subdivision of land in the Town of Oak Bluffs.

State briefly the reasons for this application. Applicant desires to preserve open space and promote elder and affordable housing utilizing cluster zoning and Flexible Development as provided by Section 7.3.

Petitioner David A. Danielson, Manager

Agent Lagoon Ridge LLC

Mailing Address 126 Nash Hill Road
Haydenville, MA 01039

Email ddanielson40@gmail.com

Phone (413) 320-2395 (cell)



Plan of Land in
 Oak Bluffs, Massachusetts
 Surveyed for
Lagoon Ridge
 April 13, 2017 Scale 1in. = 100ft.

Designed by
 Kristen Reimann
 Landscape Architect
 P.O. Box 2091
 Vineyard Haven, MA 02568
 508-696-4590

Gregory Marcella P.L.S.
 P.O. Box 6
 Oak Bluffs, Massachusetts
 774-521-5400
 mvsurveyors@gmail.com

Deed Reference Book 1361 Page 397

Plan References

- Oak Bluffs Case File 8
- Oak Bluffs Case File 119
- Oak Bluffs Case File 136
- Oak Bluffs Case File 174
- Oak Bluffs Case File 177
- Oak Bluffs Case File 197
- Oak Bluffs Case File 349

Being a subdivision of Assessors Parcel 35-3

x = concrete bound to be set

NOTE

Lots in Cluster C are subject to possible betterments for street improvements if the street is accepted by the town

This survey and plan were prepared in accordance with the Procedural and Technical Standards for the Practice of Land Surveying in the Commonwealth of Mass.

I certify that the preparation of this plan conforms with the rules and regulations of the Registers of Deeds of the Commonwealth of Massachusetts

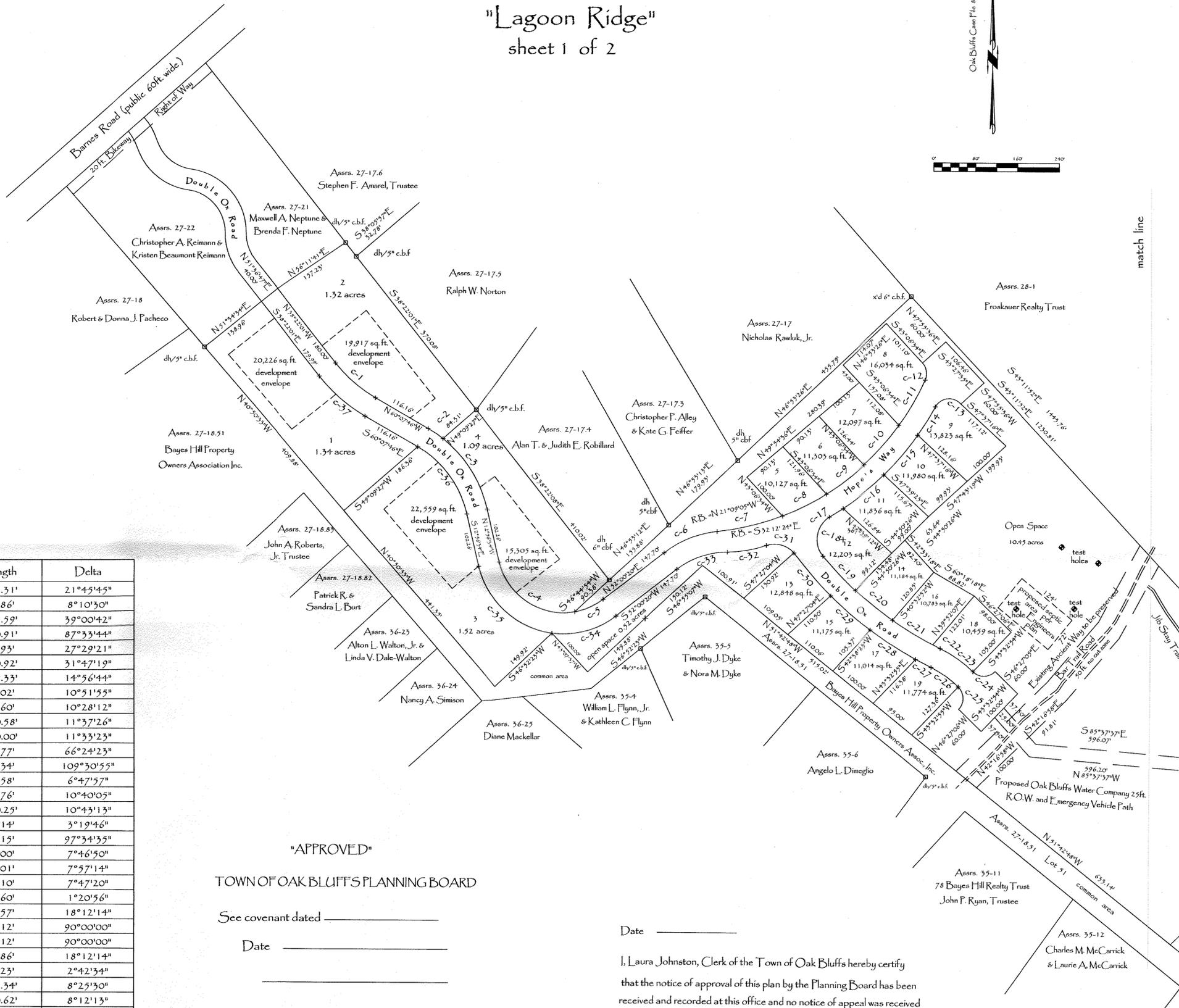
Professional Land Surveyor

Date

Lot Areas

Lot 5 = 10,127 sq. ft.
Lot 6 = 11,303 sq. ft.
Lot 7 = 12,097 sq. ft.
Lot 8 = 16,034 sq. ft.
Lot 9 = 13,823 sq. ft.
Lot 10 = 11,980 sq. ft.
Lot 11 = 11,836 sq. ft.
Lot 12 = 12,203 sq. ft.
Lot 13 = 12,848 sq. ft.
Lot 14 = 11,184 sq. ft.
Lot 15 = 11,175 sq. ft.
Lot 16 = 10,783 sq. ft.
Lot 17 = 11,014 sq. ft.
Lot 18 = 10,459 sq. ft.
Lot 19 = 11,774 sq. ft.

Curve	Radius	Length	Delta
C1	266.72'	101.31'	21°45'45"
C2	237.33'	33.86'	8°10'30"
C3	237.33'	161.59'	39°00'42"
C4	124.92'	190.91'	87°53'44"
C5	124.92'	59.93'	27°29'21"
C6	199.92'	110.92'	31°47'19"
C7	495.79'	129.33'	14°56'44"
C8	495.79'	94.02'	10°51'55"
C9	495.79'	90.60'	10°28'12"
C10	495.79'	100.58'	11°37'26"
C11	495.79'	100.00'	11°33'23"
C12	30.00'	34.77'	66°24'23"
C13	30.00'	37.34'	109°30'55"
C14	535.79'	63.58'	6°47'57"
C15	535.79'	99.76'	10°40'05"
C16	535.79'	100.25'	10°43'13"
C17	535.79'	31.14'	3°19'46"
C18	50.00'	85.15'	97°34'35"
C19	662.77'	90.00'	7°46'50"
C20	662.77'	92.01'	7°57'14"
C21	662.77'	90.10'	7°47'20"
C22	662.77'	15.60'	1°20'56"
C23	241.01'	76.57'	18°12'14"
C24	30.00'	47.12'	90°00'00"
C25	30.00'	47.12'	90°00'00"
C26	201.01'	63.86'	18°12'14"
C27	702.77'	33.23'	2°42'34"
C28	702.77'	103.34'	8°25'30"
C29	702.77'	100.62'	8°12'13"
C30	702.77'	107.82'	8°47'24"
C31	50.00'	58.00'	66°27'42"
C32	239.07'	76.38'	18°18'18"
C33	159.92'	104.08'	37°17'19"
C34	164.92'	130.02'	45°10'15"
C35	164.92'	201.15'	69°52'50"
C36	197.33'	162.51'	47°11'12"
C37	306.72'	116.50'	21°45'45"



"APPROVED"
 TOWN OF OAK BLUFFS PLANNING BOARD

See covenant dated _____

Date _____

Date _____

I, Laura Johnston, Clerk of the Town of Oak Bluffs hereby certify that the notice of approval of this plan by the Planning Board has been received and recorded at this office and no notice of appeal was received during the twenty days next after such receipt and recording of said notice.

Town Clerk

Lagoon Ridge

sheet 2 of 2

Oak Bluffs Case File #



Area Summary

Total Acreage = 32.07 Acres 100%

Open Space

preserved open space = 11.09 acres

open space with deed restriction = 8.76 acres

Open Space Total = 19.85 acres 62%

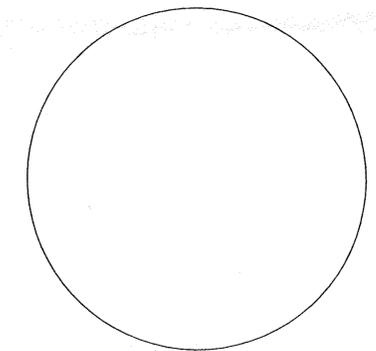
Developed Acreage

Road = 3.17 acres

Lots = 9.05 acres

Total Developed Acreage = 12.22 acre 38%

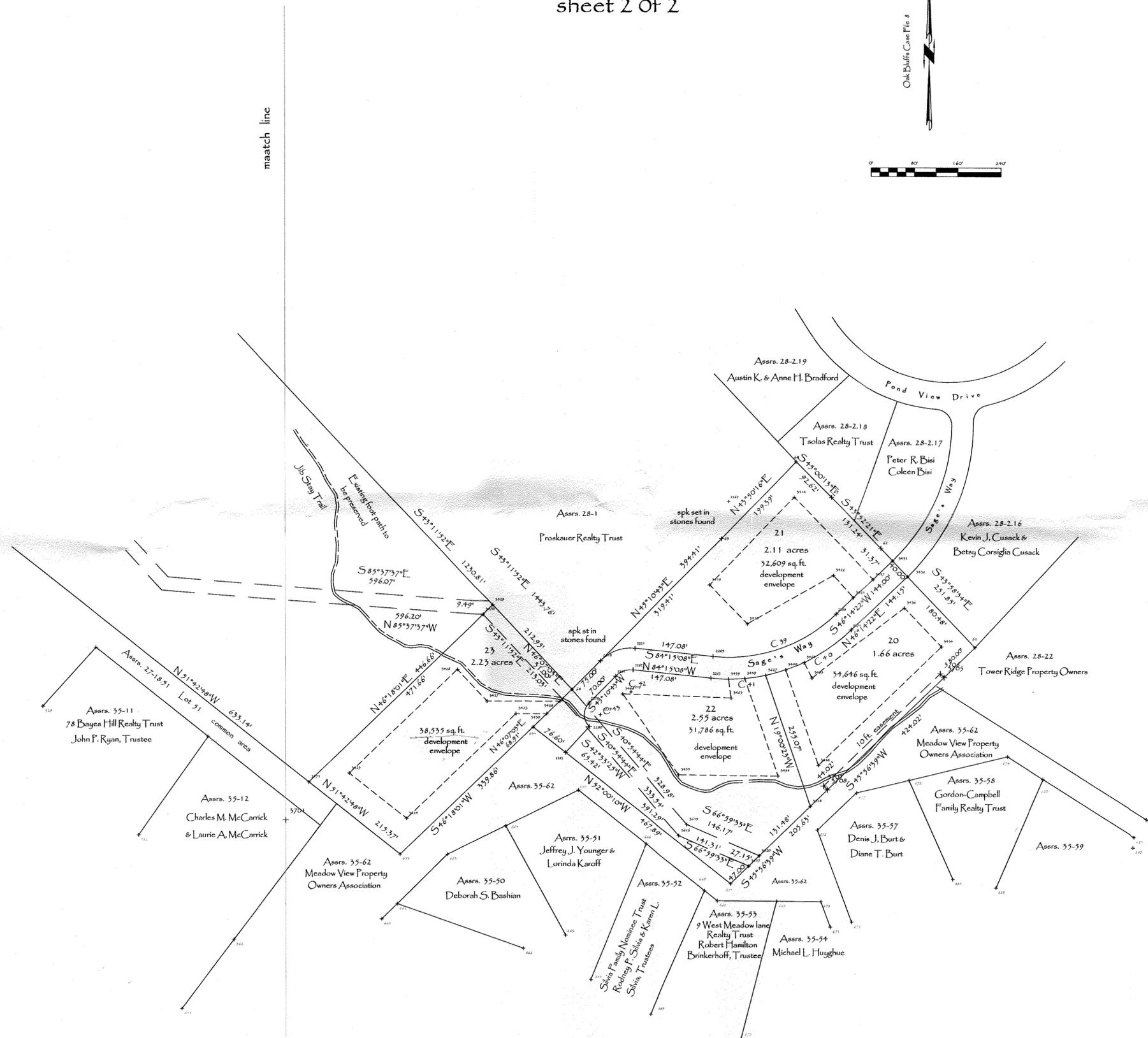
Curve	Radius	Length	Delta
C-38	80.38'	70.94'	50°34'09"
C-39	287.77'	248.65'	49°50'25"
C-40	327.77'	181.49'	31°43'29"
C-41	327.77'	101.73'	17°46'57"
C-42	40.38'	35.64'	50°34'09"
C-43	30.00'	48.50'	22°37'18"

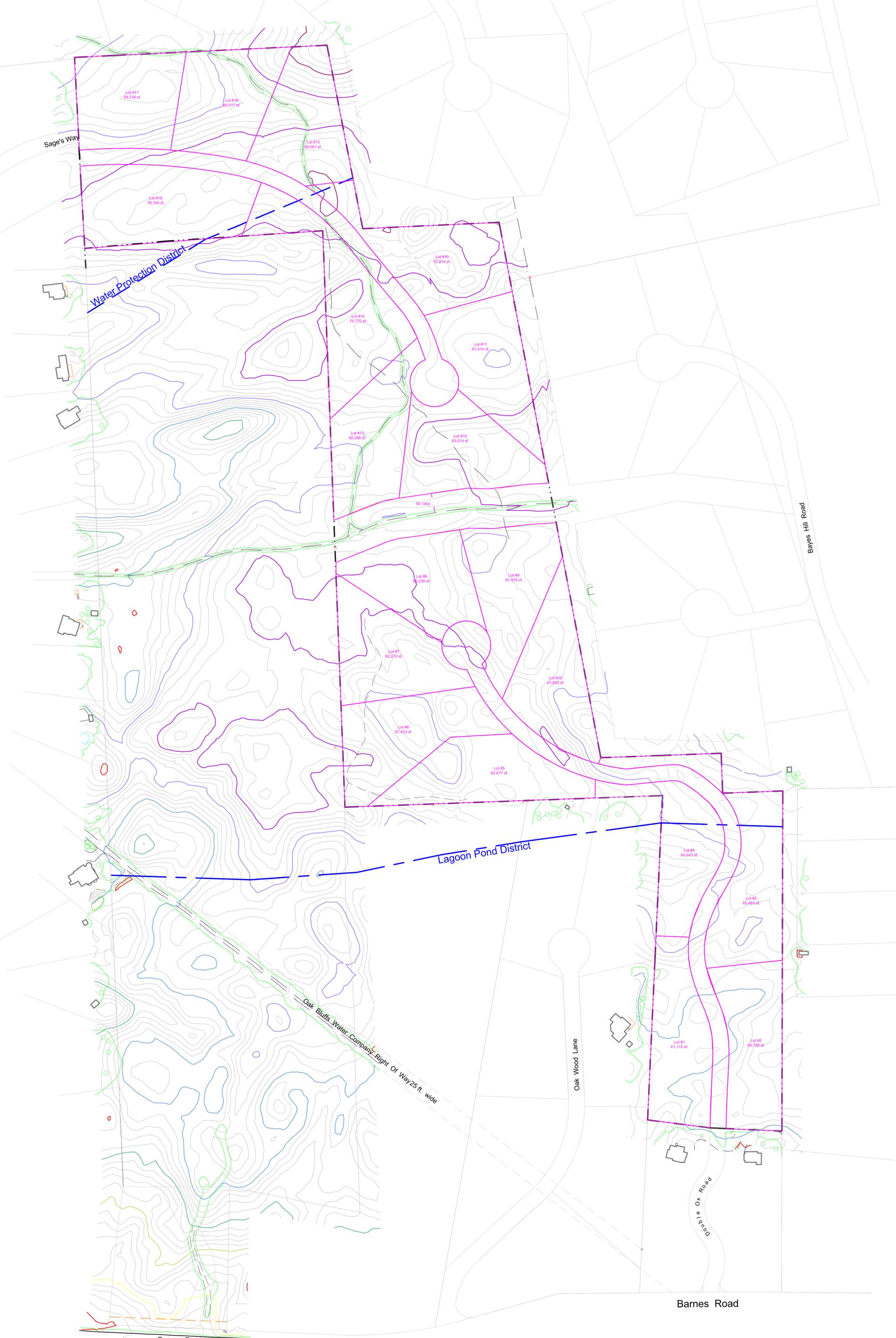


Location Map

Scale 1: 25,000

NOTE: On lots 1-4 and 20-23 precise location of development envelopes must be determined prior to any construction





Sage's Way

Water Protection District

Lagoon Pond District

Oak Bluffs Water Company Right Of Way 25 ft. wide

Oak Wood Lane

Bayes Hill Road

Barnes Road

Barnes Road

To: Oak Bluffs Planning Board
From: Davio Danielson, Manager, Lagoon Ridge
Eric Peters, Attorney for Lagoon Ridge
Date: December 1, 2017
Subject: Basic Maximum Number (BMN) Calculation for Lagoon Ridge

The Basic Maximum Number is an essential element of the Definitive Plan under Section 7.3, the Flexible Zoning provisions. Our initial Lagoon Ridge proposals submitted to the Town and MVC in 2011 were flawed. As the first applicant to use the Oak Bluffs' Flexible Zoning provisions we struggled somewhat to understand what was required and made two basic mistakes that need to be corrected.

In December 2015, Mark Barbadoro, the Oak Bluffs Building Inspector, spotted error number one and questioned the BMN methodology we had been using through four years of reviews. In response, the Planning Board requested a Yield Plan, defined as a "standard zoning plan based on 60,000 SF lots" prepared by an architect. The Yield Plan was drawn by Landscape Architect Kristen B. Reimann and is attached. It would reduce the BMN at Lagoon Ridge to eighteen (18) lots, three less than our previously calculated number of twenty-one (21) lots.

However, Mr. Barbadero's memo on Lagoon Ridge also pointed out a second error we had committed that could have the effect of restoring the three missing lots to the BMN. Flexible Zoning, Section 7.3.7, states that: "the required affordable units for developments of more than ten units shall not count towards the Basic Maximum Number." Lagoon Ridge has more than ten units. We are required and have agreed to provide three (3) "required affordable dwelling units" for people earning 80% or less of the Area Median Income.

Since the stated purpose of Flexible Zoning, as adopted by the Town, was to promote affordable housing it seems clear that the affordable units should be added to the BMN, although the language in 7.3.7 is subject to interpretation. Adding the three (3) "required affordable units" to the new BMN of eighteen (18) would bring the BMN back to the original twenty-one (21). Then adding the four (4) bonus units (as explained below) would bring the total back to twenty-five (25) units, allowing the Lagoon Ridge Definitive Plan to stand in its current form as it was reviewed in the past by the Oak Bluffs Planning Board and approved by the MVC.

The Planning Board also asked for a description of how the BMN and number of bonus lots and dwelling units was calculated in the past. A standard "rule of thumb" for developments was employed.

1. The original Lagoon Ridge plan submitted in 2011 was for a 66.8-acre subdivision with 60-dwelling units. It was reviewed by the Oak Bluffs Planning Board, a public hearing was held, and it was forwarded to the MVC as a Development of Regional Impact (DRI) on June 24, 2011. A set-aside of 10% of the acreage for roads was used to calculate the BMN.

2. In 2013, a revised plan covering only the 32.5-acre Danielson family acreage shown on assessors map #35-3 was submitted to the Planning Board. At that time, the BMN was computed again following our mistaken understanding of the requirements in Section 7.3.8 of the Flexible Zoning code. We believed, in error, that a standard “rule-of-thumb” method was acceptable for calculating the yield plan, and since the method was not questioned by either the OBPB or the MVC in 2011 we used it again. The method was:

a. Convert acres to Square Feet:

$32.47 \text{ acres} \times 43,560 \text{ square feet (SF)} = 1,414,393 \text{ SF.}$

b. Allocate 10% of the acreage for roads

$10\% = 141,439 \text{ SF} / 60,000 \text{ SF} = \text{the equivalent of } 2.4 \text{ lots}$

c. Calculate the remaining number of lots using Zone 3 residential zoning standards:

$1,414,393 \text{ SF} / 60,000 \text{ SF (Zone 3 minimum building lot size)} = 23.6 \text{ lots.}$

d. Subtract b. from c. to obtain the Basic Maximum Number (BMN) of lots = 21.2 lots and round down. This calculation yielded twenty-one (21) lots as the BMN.

3. Bonuses are provided by the Flexible Development By-law above the BMN that reflect the priorities set when the Town Meeting adopted the policy. The following incentives were requested by the applicant and provisionally granted by the Planning Board:

(1) The “open space incentive” grants a five percent (5%) bonus of the BMN for each 10% increase in open space above 40% that is required. With over 60% open space, the project was eligible for and was awarded (2 X 5%) = a 10% bonus of the BMN, adding two lots to the BMN for a subtotal of 23 lots.

(2) An incentive is also provided for “over-55 housing” in Section 7.3.8.2 granting a bonus of one dwelling unit for every two elderly units provided. We agreed that 4 (four) elderly units would be built and were granted 2 (two) bonus elderly dwelling units, bringing the total number of dwelling units allowed at Lagoon Ridge to twenty-five (25).

During the long review period, Lagoon Ridge was improved in many ways, with dwelling units that are clustered, thus preserving over sixty-percent (60%) of the woodlands and the existing network of trails. The method used for calculating density and the BMN was never questioned until the issue was raised in December 2015.

As one option, the Planning Board might remain consistent, grant a waiver, and simply allow the applicant to utilize the same BMN methodology that was passed by the MVC and Planning Board twice before. We note that the Planning Board has the power under Section 7.3.7 to waive requirements for a Yield Plan.

However, if Mr. Barbadero's method for calculating the BMN is accepted, the applicant asks the Planning Board or Town Counsel for an interpretation of Section 7.3.7 that would enable the required affordable building units to be added to the BMN. Either approach will allow the existing Form C Plan for Lagoon Ridge with 25-dwelling units as it was conditionally approved by the MVC to stand and proceed to final Form C review by the Town of Oak Bluffs.



DEPARTMENT OF BUILDING & ZONING
Mark Barbadoro Building Inspector/Zoning Enforcement Officer
P.O. Box 1327
Oak Bluffs, MA 02557
Ph. 508-693-3554 X122 Cell 774-563-9657 Fax 508-693-5375

December 14, 2015

Oak Bluffs Planning Board

Re: Lagoon Ridge Flexible Development

Dear Planning Board,

I have reviewed the Flexible Development Definitive Plan for Lagoon Ridge. At the last meeting two questions were raised; 7.3.7 what is the relationship between **Basic Maximum Number of Dwelling Units** vs number of lots and the developer's responsibility to ensure that all affordable units are created. In response I have the following comments.

Under **7.3.7 Basic Maximum Number of Dwelling Units** the applicant creates a yield plan to determine how many buildable lots can be created under standard zoning. In addition the applicant also must prove that the lots will also meet the health rules, wetlands Rules, and rules of subdivision MGL 41. Once this plan is created the total number of buildable lots on the plan equals the Basic Maximum Number of Dwelling Units. The Basic Maximum Number of Dwelling Units *is* a dwelling unit amount and is NOT a lot amount however 7.3.6 allows for the increase of buildable lots in order to create the increased dwelling units.

The second question raised was how is the affordable and the over 55 dwelling units should be enforced. **Section 7.3.17** states "The Planning Board may approve, approve with conditions, or deny an application for a Flexible Development after determining whether the Flexible Development better promotes the purposes of the Flexible Development By-Law than would a conventional subdivision development of the same locus." This empowers the Board to create conditions to ensure that flexible development requirements are satisfied. Examples of requirements include conditions for when lots may be sold, performance bonds and other legal instruments as needed.

I was not employed by OB when the special permit process began but I did have concerns which are outlined below. If these concerns have been addressed please disregard them.

- §7.3.6 PB encourages modifications to Lot size, shape, and other dimensional requirements. Please make certain that the new requirements are recorded in the decision as these requirements will continue in perpetuity.
- §7.3.7 Basic Maximum Number of Dwelling Units. A yield plan is typically created that showed buildable lots in conformance with the bylaw, health and Conservation rules. I have not seen this was it created?
- §7.3.8 two bedroom affordable units are allowed to be created. In this case they do not count towards the Basic Maximum Number of Dwelling Units. They should be located on the site plan. A calculation should be provided outlining exactly how the Density Bonus was figured.

- §.3.9.2 15% to moderate income in “Total Number” round down. This should be reflected in the calculation previously mentioned
- §7.3.10 the site plan should indicate the location of SFD, duplexes and multifamily dwellings.
- §7.3.11 standard roads need to be built Subdivision Standards the plan show a 15 wide road and a 30 ROW. Is this to the OB road standards?
- §7.3.12 Two Parking Spaces per dwelling parking spaces should be shown on the plan.
- §7.3.13 open space min 40% to be given to town or other party approved by the board, of which 50% can be wet. A calculation should be provided by the surveyor that indicates compliance and a legal instrument should be created by the applicant and approved by Town Council.
- §7.3.14 50’ buffer around the property this should be shown on the definitive site plan and recorded.
- §7.3.16 storm water management per rules of subdivision.
- §7.3.18 form C subdivision rules apply.

Subdivision rules:

31 all plans whether subdivision or ANR must be submitted to the town clerk within the appropriate timelines.

321 plans must be filed with the town clerk applicant must send the plan, 2 prints, form A and \$100 fee must be sent to the planning board. The applicant must send a copy of form A to the clerk to be date stamped.

361 filing requirements:

362 subdivision application. (briefly covered)

- a) Four plans
 - b) Two form C applications
 - c) \$100 Fee per lot in the subdivision \$2,600
 - d) File by mail the application to the clerk stating the date of the application (Four plans)
 - e) File by mail the application to the clerk stating the date of the application
-
- a) Subdivision name, boundaries, north point, legend date and scale
 - b) Name address of owner of record, subdivider, surveyor, and other design professionals
 - c) A 300’ abutters list
 - d) Names and lines of streets and ways
 - e) Surveying information on all streets and lot lines.
 - f) Road centerlines
 - g) Lot number
 - h) Monument locations
 - i) Widths of roads
 - j) Existing watercourses and wetlands
 - k) Space for board and clerk action and certification
 - l) Certify for floodplain

Subdivision rules

361 filing requirements:

- f) Four plans
- g) Two form C applications
- h) \$100 Fee per lot in the subdivision
- i) File by mail the application to the clerk stating the date of the application

362 plan contents

- m) Subdivision name, boundaries, north point, legend date and scale
- n) Name address of owner of record, subdivider, surveyor, and other design professionals
- o) A 300' abutters list
- p) Names and lines of streets and ways
- q) Surveying information on all streets and lot lines.
- r) Road centerlines
- s) Lot number
- t) Monument locations
- u) Widths of roads
- v) Existing watercourses and wetlands
- w) Space for board and clerk action and certification
- x) Certify for floodplain

363 street plans drainage etc

364 environmental

- d) Contour plans and drainage analysis
- e) Narrative impact statement on wildlife environment etc.
- f) Landscape identification see appendix a

367

422 Width

- a) The right of way = 18' + plus the street width "minor way" with houses within 75' = 20' + 18' = 38' ROW or farther than 75' = 16' + 18' = 34' ROW
- C) performance bond?

363 street plans drainage etc

364 environmental

- a) Contour plans and drainage analysis
- b) Narrative impact statement on wildlife environment etc.
- c) Landscape identification see appendix a

Recommendations:

Please call or email if you have questions PH 774-563-9657 or mbarbadoro@oakbluffsma.gov

Make certain that process was followed has Davio
Sincerely,

Mark Barbadoro
Building Inspector

To: Oak Bluffs Planning Board
From: Davio Danielson, Manager
Lagoon Ridge LLC
Re: Affordable Component of Definitive Plan
Date: January 20, 2015, updated December 1, 2017

The Definitive Plan for Lagoon Ridge, a new subdivision with 23 lots, was first referred to the MVC on December 10, 2015. The final Form C Plan was delayed by the Applicant, but a completed application is now before the Planning Board. At the Town level there is one major issue unresolved and still under review -- the affordable component is still in need of resolution.

The OB Flexible Zoning By-law at Section 7.3.9 requires that either ten percent of the lots be set aside for housing affordable to people with incomes below 50% of the Area Median Income or 15% of the lots for those below 80% AMI, rounding down. With 25 dwelling units on 23 lots in Lagoon Ridge that translates into 2 (10%) or 3 (15%) units of affordable housing.

Lagoon Ridge applied for approval under the Oak Bluffs Flexible Zoning provisions a portion of which is quoted below. Since Section 7.3 has never before been invoked it is understandable that there are differing interpretations of the By-law. A staff member at the MVC and others trying to solve the affordable housing shortage in Oak Bluffs have asserted that giving ready-to-build lots for affordable homes is inadequate and that "dwelling units" must be built and donated by Lagoon Ridge in order to meet the 7.3 requirements.

The Danielson family, on the other hand, has been insistent since 2014 that Lagoon Ridge will be selling lots and not getting into the construction business. Accordingly, our initial offer to the MVC to meet the affordable requirement was to provide "monetary mitigation". When that approach was rejected, we offered two lots for Habitat for Humanity or others to build affordable houses upon. Our interpretation of the By-law is based on historic practice on the Vineyard and a close reading of Section 7.3.

Giving away land for two dwelling units on one of our two larger lots in Cluster C is the best option from our perspective. A duplex to meet the needs of folks having difficulty keeping a roof over their heads also is consistent with the OB By-law. Neal Sullivan, former Habitat for Humanity director, has already designed a 2-bedroom per side duplex for Habitat that meets their requirements for easy construction, high energy efficiency, and a near-universal-design layout. It also features the design requirements in the OB By-law by being shingled and Cape-like with an "articulated layout." All homes in this Cluster will be served by town water, a highly efficient package treatment plan to reduce nitrogen in the Pond, and will have cable, electricity, and a tarred road. A duplex, because of a shared wall and foundation, is less expensive to build per unit, and is specifically allowed under §7.3. The owners would be income-qualified in perpetuity.

Does the Planning Board agree that this would satisfy the affordable housing requirement?

However, as stated above, requiring the Danielson family to build a duplex seems to us to violate the intent of Section 7.3 in the following ways:

In Section 7.3 under “Purpose” (below) three elements are underlined. The first is to protect the value of real property. We feel that requiring us to incur risk to build and gift houses is in conflict with this purpose. A more reasonable interpretation would require us to simply gift lots where homes can go up for low or moderate income families and individuals as has been traditional on the Vineyard. The alternative does not protect the value of our real property.

The second Purpose is to promote the development of housing affordable to low, moderate and median income families. 1) This provision also conflicts with the interpretation that “dwelling units” are required to be built by an Applicant. In Lagoon Ridge, all of Cluster C is geared to selling smaller lots for year-round occupancy by low and moderate income families; lot prices will be driven up if we are required to build dwellings. In addition 2) forcing landowners in our position to build houses creates an incentive to serve people earning under 50% AMI by building two units rather than the three units required for occupants under 80% AMI, skewing the balance of occupants sought in the Flexible Zoning By-law—what we see as an unintended and negative consequence of this misinterpretation of Flexible Zoning. This stated purpose also argues strongly for interpreting Section 7.3.7 as adding affordable lots or units to the Basic Maximum Number rather than subtracting them.

The third purpose of note is to promote the development of housing for persons over the age of fifty-five. Lagoon Ridge has agreed to respond to this need with six such homes. We gained two incentive or “bonus dwelling units” for pledging to have four universal-design homes built on the Danielson property, but we have no plans to build them ourselves. We will use deed restrictions, contracts and community covenants to assure that all conditions set by the Planning Board and MVC are fully met by others who build them. But if we can be required to build affordable housing, we ask, might that interpretation of “dwelling units” also be applied to the elderly component?

The task of determining the meaning of the By-law is assigned directly to the Planning Board in the definitions section of 7.3.2: “The affordable restriction shall be approved as to form by legal counsel to the Planning Board.”

We would ask Town Counsel and the Planning Board to interpret the By-law. We would ask further that it be interpreted in a way that is not onerous to landowners like us who set out to have a positive impact on the Island by following the Island Plan, preserving open space, providing housing for elders and attempting to bring lots to the market that working families can afford.

7.3 FLEXIBLE DEVELOPMENT. *(Section replaced 12.2.03 STM Art 18, AG Approved 3.26.04, Published 4.9.04)*

7.3.1 Purpose: The purposes of this section, Flexible Development, are

1. to encourage the preservation of open land for its scenic beauty and to enhance agricultural, open space, forestry and recreational use;
2. to preserve historical and archeological resources; to protect this natural environment, including varied landscapes and water resources.
3. to protect the value of real property;
4. to promote more sensitive siting of buildings and better overall site planning;
5. to perpetuate the appearance of the Town's traditional New England landscape;
6. to facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
7. to offer an alternative to standard subdivision development;
8. to promote the development of housing affordable to low, moderate and median income families, and;
9. to promote the development of housing for persons over the age of fifty-five.

7.3.2 Definitions. The following terms shall have the following definition for the purpose of this section:

1. "Affordable to persons or families qualifying as low income" shall mean affordable to persons in the Dukes County metropolitan statistical area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning less than 50% of the median income.
2. "Affordable to persons or families qualifying as moderate income" shall mean affordable to persons in the Dukes County metropolitan statistical area under the applicable guidelines of the Commonwealth's Department of Housing and Community Development earning more than 50% but less than 80% of the median income.
3. "Affordable units" shall mean any combination of dwelling units restricted in perpetuity as affordable to persons or families qualifying as low or moderate median income. The affordable restriction shall be approved as to form by legal counsel to the Planning Board, and a right of first refusal upon the transfer of such restricted units shall be granted to the Town or its designee for a period not less than 120 days after notice thereof;

4. "Contiguous open space" shall mean open space suitable, in the opinion of the Planning Board, for the purposes set forth herein. Such open space may be separated by the road(s) constructed within the Flexible Development. Contiguous open space shall not include required yards, if any.



Bk: 1361 Pg: 397 Doc: DEED
Page: 1 of 3 11/07/2014 03:45 PM

MARTHA'S VINEYARD LAND BANK FEE

PAID \$ _____
EXEMPT \$ _____
53619 11/3/14 [Signature]
NO. DATE CERTIFICATION

QUITCLAIM DEED

DAVID A. DANIELSON, TRUSTEE of DANIELSON NOMINEE TRUST, under Declaration of Trust dated October 25, 2006 recorded with Dukes County Registry of Deeds in Book 1113, Page 426, of 9 Mountain Street, Plainfield, MA 01070-9757,

in consideration of a distribution to the beneficiaries of the trust, and for no monetary consideration,

grants to LAGOON RIDGE LLC, a Massachusetts Limited Liability Company with a principal place of business at 37 Stetson Avenue, Plainfield, MA 01070,

with *Quitclaim Covenants*,

the land in Oak Bluffs, County of Dukes County, Commonwealth of Massachusetts, bounded and described as follows:

- NORTHWESTERLY by Barnes Road, Three Hundred Fifty (350) feet;
- NORTHEASTERLY by land now or formerly of Bardwell and Fordham, One Thousand Two Hundred and Fifty (1250) feet;
- NORTHWESTERLY by land now or formerly of Bardwell and Fordham, Eight Hundred (800) feet;
- NORTHEASTERLY by land now or formerly of Edward P. Worth, One Thousand Four Hundred Forty (1440) feet;
- NORTHWESTERLY by land now or formerly of Edward P. Worth, Five Hundred Sixty (560) feet;
- NORTHEASTERLY by land now or formerly of Edward P. Worth, Four Hundred Seventy (470) feet, more or less;
- SOUTHEASTERLY by land now or formerly of Tower Ridge Realty Trust, One Hundred (100) feet, more or less;
- SOUTHEASTERLY by land now or formerly of the Heirs of Leavitt T. Norton and Eugenia N. Kidder (being numbered 2. on the plan hereinafter mentioned), Five Hundred Thirty (530) feet;
- SOUTHEASTERLY by said land now or formerly of the Heirs of Leavitt T. Norton and Eugenia N. Kidder, Five Hundred (500) feet;

Barnes Road, Oak Bluffs, MA 02557

- SOUTHEASTERLY by said land now or formerly of the Heirs of Leavitt T. Norton and Eugenia N. Kidder, Three Hundred Twenty (320) feet;
- SOUTHWESTERLY by said land now or formerly of the Heirs of Leavitt T. Norton and Eugenia N. Kidder, One Thousand Three Hundred Fifty (1350) feet;
- SOUTHEASTERLY by said land now or formerly of the Heirs of Leavitt T. Norton and Eugenia N. Kidder, Three Hundred (300) feet;
- SOUTHWESTERLY by said land now or formerly of the Heirs of Leavitt T. Norton and Eugenia N. Kidder, One Hundred (100) feet;
- SOUTHEASTERLY by said land now or formerly of the Heirs of Leavitt T. Norton and Eugenia N. Kidder, One Hundred Fifty (150) feet; and
- SOUTHWESTERLY by said land now or formerly of the Heirs of Leavitt T. Norton and Eugenia N. Kidder, One Thousand Two Hundred (1200) feet.

Being those three (3) lots or pieces numbered 1. as shown on a plan made by Wm. S. Swift & Son dated July 18, 1927, recorded in Dukes County Registry of Deeds, Plan Book 1, Page 7 (now Plan Book 9, Page 93) lying immediately southeasterly of Barnes Road, as shown on said plan.

EXCEPTING and EXCLUDING therefrom the following described land: Being Lots 1 and 2 as shown on a plan entitled: "Plan of Land in Oak Bluffs, Mass. Prepared for Lagoon Ridge Associates Limited Partnership Scale: 1" = 40' March 13, 1998 Revised: May 8, 1998 Schofield, Barbini & Hoehn, Inc. Civil Engineers & Land Surveyors 97 State Road, P.O. Box 339, Vineyard Haven, MA 02568", which plan is recorded with said registry as Oak Bluffs Case File No. 349 and to which plan reference is hereby made for a more particular description thereof; said Lot 1 containing 1.40 acres, more or less, and said Lot 2 containing 1.47 acres, more or less, all according to said plan.

The premises are conveyed together with any and all rights of way which the grantor may have over adjoining properties. The premises are further conveyed subject to a Decision of the Martha's Vineyard Commission dated July 16, 1998 recorded with said registry in Book 736, Page 590.

For title see deeds of Hope F. Bailiff and David A. Danielson, Trustees of The Bailiff Realty Trust, dated December 23, 1991 recorded with said registry in Book 570, Page 805 and dated January 22, 1992 recorded with said registry in Book 573, Page 822.

Witness my hand and seal this 23 day of September 2014

David A. Danielson

David A. Danielson, Trustee as aforesaid,
and not individually

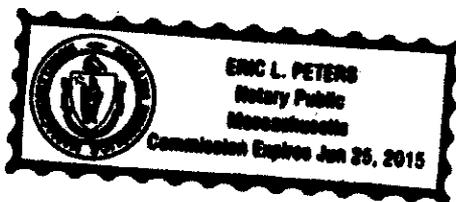
COMMONWEALTH OF MASSACHUSETTS

Dutus, ss. On this 23rd day of September, 2014, before me, the undersigned notary public, personally appeared David A. Danielson, proved to me through satisfactory evidence of identification, which were personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Trustee of Danielson Nominee Trust.

Eric L. Peters

Notary Public - Eric L. Peters

My commission expires: 6/25/2015



[seal]

Attest:

Deanne C. Powers Register