



RE: Lagoon Ridge Special Permit Decision
Off Barnes Road
Map 35, Parcel 3

Town of Oak Bluffs, Massachusetts
Office of the Planning Board
P.O. Box 1327
Oak Bluffs, MA 02557
508-693-3554 x 154
PLANNING BOARD

NOTICE OF DECISION – April 3, 2018

RE: David A. Danielson, Manager, Lagoon Ridge, LLC
126 Nash Hill Road, Haydenville, MA 01039
Land off of Barnes Road, Map 35, Parcel 3
Zoning District - R3

The Oak Bluffs Planning Board held Public Hearings on February 8, 2018, February 15, 2018, February 22, 2018, March 1, 2018, and March 22, 2018 at 56 School Street, Oak Bluffs on the application of the referenced petitioners seeking:

A Special Permit under Section 7.3 of the Oak Bluffs Zoning By-Laws for permission to construct a Flexible Siting Development.

A. Procedural History:

1. The Applicant, through its counsel, filed an application for a Special Permit and various supporting documents on December 4, 2017, seeking a Flexible Siting Permit to create 23 lots to support 25 Dwelling Units of housing on an approximately 32.5 acre tract of land located off Barnes Road in the R-3 zoning district (the "Site"). The Applicant filed the application in conjunction with a Form C application for an approval to subdivide the Site, which is addressed separately.

2. The Board did not refer the application to the Martha's Vineyard Commission ("MVC") as a development of regional impact ("DRI") under the standards and criteria governing DRI's because the MVC advised its administrator that the MVC's 2016 decision approving a Form C plan for a subdivision of the Site in DRI No. 464-M3, with conditions (the "MVC Decision"), recorded in the Dukes County Registry of Deeds (the "Registry") in Book 1408, Page 839, constituted authority for local boards to proceed with permitting.

3. The Board distributed the application to the Oak Bluffs Historical Commission, Board of Health, Conservation Commission, Building Inspector, Director of Public Works, Police Chief, Fire Chief, Sewer Commissioner and Water District.

4. The Board scheduled a public hearing for February 8, 2018, and notified abutters (and abutters of abutters) within 300 feet, the applicant and abutting planning boards under G. L. c. 40A, § 11; published notices in the Martha's Vineyard Times, and posted the hearing in accordance with the open meeting law.

5. The Board held a site visit on January 25, 2018.

6. The Board opened the public hearing on February 8, 2018; continued hearing to February 15, 2018; and closed the record on that date to public comment but allowed the applicant to provide a written response to address information the Board had received from its counsel regarding the definition of open space under the Zoning By-laws.

7. On February 15, 2018, the Board received various written responses from the Applicant; closed the record; and voted to have the Chair, with assistance from counsel and the Board Administrator, draft a proposed special permit decision on the application.

8. On February 22, 2018, the Board reviewed and voted on the proposed draft special permit decision, where one board member attended via phone but dropped off the conference call during the final vote. In order to carry, the vote required a supermajority of four (4) votes and the special permit was denied based on the 3-1 votes that were recorded. Board Chairperson said he would consult with Town Counsel on how to proceed.

9. The Board met on March 1, 2018, to discuss legal guidance from Town Counsel's office. Based on the motion of Chairperson Hopkins – who had voted against granting the Special Permit – the Board voted 5-0 to reconsider its vote taken on February 22, 2018, and to re-notice interested parties for further deliberations on the application.

10. The Board met on March 22, 2018, pursuant to notice issued under G. L. c. 40A, s. 11, and voted, 4-1, to grant the special permit.

11. The Board took 14 days to review for clarity its draft decision with Town Counsel and instructed the Chair to finalize it for filing with the Town Clerk.

B. Findings:

1. The application is governed by Section 7.3 (Flexible Development) and Section 10.3 (general special permit criteria), among other provisions of the Zoning By-laws.

2. The Site is located off of Barnes Road in the R-3 Zoning District, is shown on Assessors Map 35, as Parcel 3, and consists of approximately 32.5 acres of undeveloped land. The Site is generally zoned for residential uses, and the applicable dimensional criteria for the district is 60,000 square feet of land area, frontage of 150 feet, height limitations of 32 feet, and front/side/year setbacks of 50 feet.

3. The Applicant seeks authority to create 23 lots with 25 dwelling units as shown on its Plan of Land, dated April 13, 2017 (the “Plan”), in three “cluster” sections. The open space is created by parcels of common land, located primarily between Clusters A and C, and multiple areas of deed restricted open space within the confines of certain building lots. Four of the lots would have individual septic systems (with de-nitrification elements) and nineteen lots with twenty-one dwelling units would be served by an on-site sewage treatment plant.

4. The Planning Board finds that the Applicant’s project, as proposed and as conditioned herein and in the MVC Decision, meets the following purposes of Section 7.3 as set out in Section 7.3.1:

- a. encourages the preservation of open land for its scenic beauty and to enhance open space and recreational use;
- b. promotes overall site planning;
- c. facilitates the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner by building less road per house lot than a conventional project;
- d. offers an alternative to standard subdivision development;
- e. promotes the development of housing that is affordable to moderate income families by providing the space/land area to make the ultimate construction of 3 units available to moderate income level families or persons; and
- f. promotes the development of housing that is affordable and available to community members over the age of 55 by providing the space/land area to make the ultimate construction of 4 units available to that group of citizens.;

6. In accordance with **Section 7.3.7 – Basic Maximum Number of Dwelling Units (BMNU)**, the Applicant submitted a yield plan, updated by a memorandum to the Board dated February 15, 2018, identifying that the maximum number of lots which could reasonably be expected to be developed on the Site under a conventional subdivision plan, in full conformance with all zoning, subdivision regulations, health regulations, wetland regulations, and other applicable requirements. The Applicant represents that the number is **twenty (20)** lots. The Board is satisfied with that assessment. Accordingly, **twenty (20)** is the established BMNU for the Site.

7. In accordance with **Section 7.3.8 – Density Bonus**, the maximum density bonus shall not exceed forty (40%) percent of the Basic Maximum Number, or a **total of twenty eight (28) dwelling units**. The required affordable units shall not be counted as density bonus units.

8. The Applicant has offered, as part of this application, a total of **19.85 acres±** of open space area, 11.09 acres of which is “preserved” space in dedicated parcels (the so-called “common land”), and 8.76 acres of which is “deed-restricted” space within the confines of certain lots.

a. In accordance with **Section 7.3.8.1 – Open Space Density Bonus**, the Board has determined that the forty percent (40%) minimum Open Space area is **13 Acres** and the amount proposed to be restricted for Open Space as part of this project is **19.85 Acres**. The Applicant represents, and the Board accepts, that its plan shows 62% of open space area. Accordingly, since each 10% over the minimum required for the project yields an additional 5% of the BMNU, then the calculated number of bonus units is **2 bonus units** and **2 Bonus Units** are awarded under this Section (for a subtotal of 22 Dwelling Units).

b. In accordance with **Section 7.3.8.2 – Over 55 Density Bonus**, the Board has determined that the Applicant has proposed to dedicate 5 lots to the ultimate creation of 6 units (5 lots plus one lot with a duplex) of over fifty-five housing units (“Over 55 Units”). According to this subsection, every two units of over fifty-five housing may add an additional one dwelling unit as a density bonus. Accordingly, **2 Bonus Units** are awarded under this Section (for a total of 23 Lots).

c. In accordance with **Section 7.3.8.3 – Transfer Lot Bonus**, the Board has determined that the Applicant has offered no transfer lots. Accordingly, **0 Bonus Units** are awarded under this Section.

d. Thus, the Board finds that the total number of allowable Dwelling Units is twenty-four (24), on twenty-three (23) lots, as shown on the Plan. However, under 7.3.8 – Density Bonus – “Affordable Units shall not be counted in the computation.” **Thus, the Applicant may proceed with twenty-five (25) units (three of which are affordable) on twenty-three (23) lots.**

9. In accordance with **Section 7.3.9 – Affordable Component**, the Applicant states that its plan meets the criteria imposed by this subsection by offering that fifteen percent (15%) of the units shall be affordable to persons or families qualifying as moderate income under Section 7.3.1.2 (the “Affordable Units”). Fifteen percent (15%) of 25 units yields 3.75 units; however, the provision states that “[n]umbers shall be rounded down in the computation of this requirement.” Thus, by offering three (3) deed-restricted dwelling units on two lots – one home as a duplex – the Board finds that the Applicant has met this requirement.

10. The Applicant did not explicitly address **Section 7.3.6 – Modification of Lot Requirements** in its Application, which gives the Board authority to modify the dimensional requirements of lots otherwise imposed by the Zoning By-law in a Flexible Development. However, in various sections of the Applicant’s “Declaration of Protective Covenants and Agreement for Lagoon Ridge” (the “Declaration”), it sets out what the Applicant seeks for setback areas, which are set out below. (See Section III(l)(1) & (6) of the Declaration). The Applicant does not address frontage. Accordingly, the Board modifies and/or imposes the following are minimum acceptable dimensional standards for this flexible development project as follows

- a. Lots 1-4 (Cluster “B”): Area as shown; 25’ foot Setbacks; R-2 Frontage.
- b. Lots 5-19 (Cluster “C”): Area as shown; 5’ Setbacks; R-1 Frontage.

- c. Lots 20-22 (Cluster "A"): Area as shown; 25' Setbacks; R-3 Frontage.
- d. Lot 23 (Cluster "A"): Area as shown; 5' Setbacks, R-1 Frontage.
- e. No exception to or variation from the height limitation.

11. The Planning Board finds that the Applicant must establish a buffer zone along the perimeter of Cluster C of 50 feet to accomplish the objectives of Section 7.3, as otherwise found and conditioned.

12. Findings under Section 10.3.2 of the Zoning By-law. Considering and weighing all of the six (6) criteria outlined in this Section, the Board found, as a whole, that that the adverse effects of the proposed uses, as conditioned herein and as conditioned by the MVC Decision, do not outweigh the beneficial impacts on the Town or the neighborhood. The Board considered the following:

1. Social, economic, or community needs which are served by the proposal.

Beneficial. As noted, the Plan provides for 3 additional affordable housing units and 6 units of housing dedicated to fifty-five and over persons.

2. Traffic flow and safety, including parking and loading.

Neutral. The modest likely increase in traffic over a traditional subdivision is not significant.

3. Adequacy of utilities and other public services.

Beneficial. Adequate utilities and other public services can be provided through the demonstrated routes of access, and Site is on an established public transportation route.

4. Neighborhood character and social structures.

Neutral. The increased density is balanced by the addition of open space even though the open space is not located to provide an enhanced buffer to abutters.

5. Impacts on the natural environment.

Neutral. The requirement of de-nitrifying septic systems and the transfer plan are likely to offer a zero-sum impact over traditional development.

6. Potential fiscal impact, including impact on town services, tax base, and employment.

Neutral. The smaller lots and provision of affordable and fifty-five and over units will likely decreased the overall tax base in contrast to a traditional subdivision; however, the increased housing stock for these groups will help to attract and to retain workers who otherwise might not be able to afford to live in Town, and are likely to add positively to employment.

C. Conditions.

The Board finds that the following conditions are necessary to effectuate its decision and findings that the Plan and application satisfy both Section 7.3 and Section 10.3 of the Zoning By-law. Accordingly, the Board conditions its approval as follows:

1. The Applicant must record the Special Permit with the Registry and provide proof to the Board of the recording.
2. The infrastructure proposed on the Plan shall comply with the subdivision control law, G. L. c. 41, §§ 81U et seq., and the Rules and Regulations Governing the Subdivision of Land in Oak Bluffs, and the final approval of the Applicant's Form C application, as set forth in that approval and/or decision and the related covenants.
3. All wastewater disposal systems, individual or shared, shall comply with the approvals, decisions, or conditions issued or imposed by the Board of Health. In addition, applicant has agreed to add the enhanced component ("Amphidrome Plus Relator") to the Amphidrome system.
4. The Applicant must comply with all conditions imposed by the MVC Decision.
5. Each dwelling unit shall be served by two off-street parking spaces under as required by Section 7.3.12.
6. **The issuance of this Special Permit is conditioned upon the submission of a revised Plan within ninety (90) days of this Decision -- or representations by the Applicant sufficient to satisfy the Board and susceptible to be reduced to additional conditions which satisfy the waiver language contained in Section 7.3.15(3) -- showing that the Buffer Area required by Finding No. 11 is 50 feet around the perimeter of Cluster C.**
7. All open space shown on the Plan as "preserved open space" shall be conveyed by deed, approved as to its form by the Board and its counsel, to a duly created homeowners' association for the development, as provided for by Section 7.3.14.3, including that ownership of the open space passes with conveyance of the lots in perpetuity. As provided for in Section 7.3.14.3, the Declaration and any Declaration of Restrictions regarding open space shall explicitly state that the Town or its employees shall have the right to enforce the open space requirements in perpetuity, regardless of the expiration of any declarations, as this condition is being imposed in part as a necessary prerequisite to the issuance of this Special Permit. The Board and its counsel shall review the final version of the Applicant's Declaration and any Declaration of Restrictions regarding Open Space before endorsement or recording. This condition must be satisfied before any lots shown on the Plan are released for transfer or sale in order to ensure that the purposes of Section 7.3 are fulfilled.
8. All open space shown on the Plan as "open space with deed restriction" – that is, the area outside of the roving development envelopes shown on Lots 1-4 and Lots 20-23 – is to be

restricted under Section 7.3.14.4, which states that “a conservation restriction pursuant to G. L. c. 184, ss. 31-33 shall be placed on the land.” As provided for in Section 7.3.14.2, the Declaration of Covenants and the Declaration regarding open space with deed restriction shall explicitly state that the Town or its employees shall have the right to enforce the open space requirements in perpetuity, regardless of the expiration of any declarations, as this condition is being imposed in part as a necessary prerequisite to the issuance of this Special Permit. The Board and its counsel shall review the final version of the Applicant’s Declaration of Covenants and any Declaration of Restrictions regarding Open Space before endorsement or recording. This condition must be satisfied before any lots shown on the Plan are released for transfer or sale. Section 32 of G. L. c. 184 requires that conservation restrictions must be approved by the Secretary of Energy and Environmental Affairs of the Commonwealth for the restriction to be perpetual. This condition must be satisfied before any lots shown on the Plan in either Cluster A (Lots 20-23) or Cluster B (Lots 1-4) are released for transfer or sale in order to ensure that the purposes of Section 7.3 are fulfilled.

9. The open space with deed restriction shown on Lots 1-4 and Lots 20-23 must be maintained in its natural state. The Declaration and any Declaration of Restrictions regarding open space with deed restriction shall reflect this condition, which is also required by the MVC Decision.

10. Prior to the issuance of any building permit for any dwelling unit created by this Special Permit, an application shall be submitted to, and approved by, the Department of Housing and Community Development (DHCD) for approval of the project under the Local Action Unit Program ("LAU") under the Local Initiative Program ("LIP"). It shall be the Applicant's duty to prepare any and all applications and supporting materials for such application. All such materials are subject to the Town's and its Counsel's review, and the Applicant shall be responsible for any fees and costs associated with that review. The purpose of this condition is so that the Affordable Units created under this Special Permit shall be entered into DHCD’s subsidized housing inventory and credited toward the Town’s affordable housing stock for purposes of Massachusetts Law.

a. Three (3) Moderate Income Units – the Affordable Units - shall be sold to a person or family earning more than 50% and less than 80% of the area median income, as published by HUD as it applies to Dukes County, at the lesser of (a) a price that will result in a total monthly housing cost to the buyer of a fully developed lot and/or Dwelling Unit, including principal, interest, taxes, homeowner's association fees, mortgage insurance premium and hazard insurance not to exceed 33% of the gross household monthly income of a family that earns 80% of the area median income as published by HUD, or (b) the maximum price pursuant to the LIP Guidelines, published by DHCD ("LIP Guidelines").

b. The Applicant or its designee shall market the three (3) Affordable Units required for this project (collectively, the "Affordable Units") in accordance with an affirmative marketing plan pursuant to LIP Guidelines, and qualified purchasers of the Affordable Units shall be selected by a lottery process that complies with LIP Guidelines. Right of first refusal upon the transfer of

such restricted units shall be granted to the Dukes County Housing Authority for a period of 120 days from the date of issuance of the Certificate of Occupancy.

c. The deed to each Affordable Unit shall be conveyed with and subject to the provisions of an affordable housing restriction (the "Deed Rider") in a form substantially the same as the form used by DHCD under the LIP, and shall provide that the restrictions on affordability are permanent or are for the longest period allowed by law from the recording of the Deed Rider, was granted in part as a basis or condition to obtain the special permit leading to the creation of the lot and/or dwelling unit, and shall not terminate upon foreclosure by a mortgagee. The form of said Deed Rider shall be approved by the Town and its Counsel prior to the sale or transfer of the Affordable Unit, and the Deed Riders are to be recorded in the Registry with the deeds to the purchasers of the Affordable Units at the time of closing on the sale of the Affordable Units. The Deed Rider shall additionally provide that the Town may assign its rights under the Deed Rider to a non-profit organization with a mission to create/oversee affordable housing or to the Dukes County Regional Housing Authority.

d. Prior to the issuance of any building permits for the project, the Applicant and the Town shall execute a Regulatory Agreement in a form substantially the same as the form used by DHCD under the LIP, and in any event, approved by the Town and its Counsel. Upon receipt of DHCD approval, the Applicant shall record the same at the Registry, and submit recorded copies of the same to the Planning Board.

e. The Applicant shall be responsible for the Town's fees (including counsel) incurred in reviewing and assisting with compliance with these conditions.

11. Prior to the release of any of the five 55 and Over lots, the Applicant shall submit to the Planning Board and its counsel for review and approval documents which demonstrate that the occupancy and use of each such lot is deed restricted to persons 55 years of age or older, or to a person 55 years of age or older and their spouse and/or live-in aid. These documents shall indicate that the restriction is permanent, or for the longest period of time allowable by law, and was granted in part as a basis or condition to obtain the special permit leading to the creation of the lot and/or dwelling unit, and that, once approved, shall be recorded with the Registry. The documents shall also provide that the Town, through its Building Department, must be contacted prior to any transfer of one of these lots or Dwelling Units, which is to be provided with sufficient information, in its sole discretion, to confirm and to approve, in writing, that any proposed transfer complies with this condition. The Town shall be given the right to enforce this condition in the documents identified herein. The Applicant shall be responsible for the fees and costs associated with the Town's review.

12. The Applicant shall comply with the following phased development or "build out" schedule, which the Board decides is necessary to ensure that development of the Site does not have an undue adverse impact on surrounding and abutting parcels, on Town infrastructure and services, on the integrity of the Site itself, on nearby natural resources, and to ensure that the Flexible Development, as ultimately developed, satisfies the purposes of Section 7.3 and the conditions of this Special Permit.

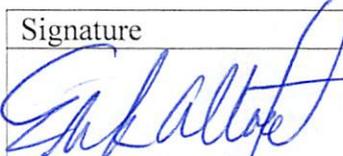
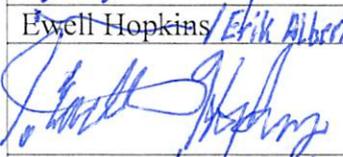
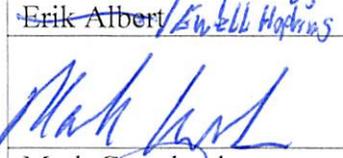
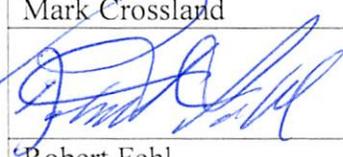
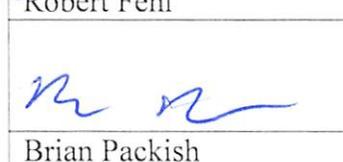
a. Once the Special Permit is final and the Applicant has complied with Conditions 1-11, the Applicant may proceed to market and to sell or transfer: i) the 3 lots dedicated to the Affordable Units; ii) the 5 lots/6 units dedicated to the Over 55 Dwelling Units (one lot being a duplex); and iii) 6 additional lots, two from each of the three clusters. Under this condition, fifteen (15) dwelling units are released immediately (after Conditions 1-11 are satisfied) for sale or transfer and development.

b. Once occupancy permits are issued for the development of the lots dedicated to Affordable Units— measured from the date of the latest issued permit. The Applicant may then proceed to develop the remaining 10 lots over a period of five years, at a rate of two lots per year. The Applicant may sell or transfer any of these remaining 10 lots (regardless of the Cluster) during the period governed by this condition; however, only two building permits shall be issued for lots governed by this condition during each twelve (12) month period after Condition 12(a) is satisfied, as determined by the Building Department on a first-come, first-serve basis.

13. The Applicant must pay all fees imposed by this Decision before release of any of the lots for sale or transfer is permitted.

D. Record of Board Vote.

The members of the Planning Board voted as follows to grant a Special Permit subject to the above-stated terms and conditions:

| Signature | In Favor | Against | Abstain | Recuse |
|---|----------|---------|---------|--------|
|  Erik Albert | ✓ | | | |
|  Erik Albert | | ✓ | | |
|  Mark Crossland | ✓ | | | |
|  Robert Fehl | ✓ | | | |
|  Brian Packish | ✓ | | | |

Filed with the Town Clerk on: April 5 2018

Laura B. Johnston

Laura B. Johnston, Town Clerk

, Assistant Town Clerk

Copy of Special Permit Mailed to:

David A. Danielson, Manager, Lagoon Ridge, LLC
126 Nash Hill Road, Haydenville, MA 01039

Eric L. Peters, Esq.
Box 1117
Edgartown, MA 02539

All Noticed Parties (see abutter list)

The Planning Board of the Town of Oak Bluffs hereby certifies that a Special Permit has been granted to Lagoon Ridge, LLC 126 Nash Hill Road, Haydenville, MA 01039 affecting the rights of the owner with respect to land or buildings at Double Ox Road, Map 35, Parcel 3 said Planning Board further certifies that the decision attached hereto is a true and correct copy of its decision granting said special permit, and that copies of said decision, and of all plans referred to in its decision, have been filed with the town clerk.

The Planning Board also calls to the attention of the Owner or Application that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town clerk that twenty days have elapsed after the decision has been filed in the office of the town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the Owner or Applicant.

Ewell Hopkins

Ewell Hopkins, Chair

Dated: April 3, 2018