



RE: Modifications to Lagoon Ridge
Special Permit Decision Dated April 3, 2018
Lagoon Ridge Subdivision
Off Barnes Road and Double Ox Road

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 MODIFICATION DECISION
February 25, 2021

RE: CapeBuilt Partners, LLC
6 Chestnut St., Suite 103
Amesbury, MA 01913

Lagoon Ridge Subdivision
Land off Barnes Road and Double Ox Road

The Oak Bluffs Planning Board held virtual Public Hearings on
February 11, 2021 and February 25, 2021 on
The application of the referenced petitioners seeking:

Modifications to the Lagoon Ridge Special Permit dated April 3, 2018

DECISION: The Board voted unanimously (5-0) to approve the **MODIFICATIONS**
to Conditions 10, 11 and 12 of the original Lagoon Ridge **SPECIAL**
PERMIT granted on April 3, 2018.

A. Procedural History:

- 04/03/18 Planning Board Decision, approval valid for two (2) years
- 03/10/20 Covid-19 emergency order: the Acts of 2020, Chapter 53 tolls existing special permit timelines
- 03/23/20 Special Permit Extension Request filed by attorney Eric Peters on behalf of Lagoon Ridge LLC
- 11/05/20 Martha's Vineyard Commission voted to extend the DRI approval for the Lagoon Ridge Form C Subdivision (DRI 464-M3) for another four (4) years, extending the deadline to record subdivision plan and covenants

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- 01/25/21 Special Permit Extension Hearing requested and filed with the Town Clerk and received by the Planning Board (See separate decision)
- 01/25/21 Special Permit Modification Hearing requested and filed with the Town Clerk and received by the Planning Board
- 01/27/21 Notice of Planning Board Public Hearing posted at Town Hall
- 01/27/21 Notice of Planning Board Public Hearing mailed to abutters (and abutters of abutters) within 300 feet, the applicant and abutting planning boards
- 01/28/21 First Notice of Hearing published in Martha's Vineyard Times
- 02/01/21 Special Permit and Site Plan Review application distributed via e-mail to the Board of Health, Conservation Commission, Building Inspector, Director of Public Works, Police Chief, Fire Chief, Sewer Commissioner and Water District. Posted on web site in a project folder.
- 02/07/21 Second Notice of Hearing published in Martha's Vineyard Times
- 02/11/21 Planning Board Opens Public Hearing; continues
- 02/25/21 Planning Board Closes Public Hearing

B. Findings:

1. The original **Special Permit dated April 3, 2018** (the "Special Permit") was granted by the Oak Bluffs Planning Board (the "Board") under Section 7.3 of the Oak Bluffs Zoning Bylaws (the "Bylaws") for a Flexible Development (the "Lagoon Ridge Subdivision Plan") and was signed and filed with the Oak Bluffs Town Clerk on April 5, 2018. The Appeal Period for the Special Permit expired April 25, 2018. The Special Permit is recorded with Dukes County Registry of Deeds in Book 1475, Page 788 (the "Lagoon Ridge Special Permit"). A copy of the Lagoon Ridge Special Permit as recorded is attached to this decision.

2. **Lagoon Ridge LLC** is the owner of the property by virtue of a deed from David A. Danielson, Trustee of Danielson Nominee Trust, to Lagoon Ridge LLC dated September 23, 2014 recorded with Dukes County Registry of Deeds in Book 1361, Page 397.

3. Lagoon Ridge LLC has authorized **CapeBuilt Partners LLC** ("CapeBuilt") to file this Application for Amendment of the Special Permit by letter dated January 23, 2021 a copy of which is attached. This Application for Modification of the Lagoon Ridge Special Permit was made pursuant to the provisions of M.G.L. c. 40A, §11 and Section 10.3 of the Bylaws.

4. CapeBuilt seeks **modification of Conditions 10, 11 and 12** of the Special Permit in order:

- 1. To INCREASE the number of Affordable Units constructed under the Special Permit from three (3) to four (4), to be located on two (2) lots in Cluster C as duplex units;
- 2. To FURTHER RESTRICT the additional Affordable Unit by its designation as one

- of the five (5) Units restricted for occupancy by persons 55 years of age or older; and
3. To provide for the ORDERLY RELEASE AND DEVELOPMENT of lots and Units, beginning first with Cluster C, proceeding next to Cluster B, and concluding with Cluster A, so as to further minimize any impact of the "build out."

C. Amended Conditions

The following Conditions hereby **replace Conditions 10, 11, and 12 of the Special Permit. All other conditions contained in the Special Permit remain in place.**

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 be credited toward the Town's affordable housing stock for purposes of Massachusetts Law.

a. Four (4) 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"). In addition to these provisions, one (1) of the Affordable Units shall be further restricted to occupancy by individuals 55 years of age and over as provided in Condition 11, below.

b. The Applicant or its designee shall market the four (4) 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, were imposed in part as a basis or condition to obtain the special permit leading to the creation of

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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 fifty-five (55) and Over units/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 unit 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 imposed 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 ensures that the 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 sell, transfer, and/or develop:

- i) the two (2) lots (four (4) units) dedicated to the Affordable Units (all four (4) units being in the two (2) duplexes and one (1) of the four (4) units being further restricted as an Over 55 Dwelling Unit);

- ii) the remaining five (5) lots dedicated to the Over 55 Dwelling Units; and
- iii) the eight (8) additional lots in Cluster C.

Under this condition, the fifteen (15) lots (seventeen (17) Dwelling Units) comprising Cluster C are released immediately for sale, transfer, and/or development after Conditions 1-11 are satisfied.

b. Once occupancy permits are issued for fifteen (15) Dwelling Units within Cluster C (which must include the four (4) Affordable Units) – but in no event before twelve (12) months have passed after the date on which the first building permit is issued for a Dwelling Unit in Cluster C – the Applicant may then proceed to develop the four (4) lots comprising Cluster B. The Applicant may sell or transfer any of the four (4) lots comprising Cluster B and/or any of the four (4) lots comprising Cluster A during the 12-month period referenced in the preceding sentence; however, no building permits shall be issued for Dwelling Units on lots within Cluster B until occupancy permits are issued for at least fifteen (15) Dwelling Units within Cluster C (which must include the four (4) Affordable Units).

c. Once occupancy permits are issued for three (3) Dwelling Units within Cluster B – but in no event before twelve (12) months have passed after the date on which the first building permit is issued for a Dwelling Unit in Cluster B – the Applicant may then proceed to develop the four (4) lots comprising Cluster A. The Applicant may sell or transfer any of the four (4) lots comprising Cluster A during the 12-month period referenced in the preceding sentence; however, no building permits shall be issued for Dwelling Units on lots within Cluster A until occupancy permits are issued for at least three (3) Dwelling Units within Cluster B.

D. Specific Findings

1. 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 modifications and 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 increases the affordable housing units from 3 to 4 and 6 units of housing are dedicated to fifty-five and over persons.

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

Beneficial. 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.

Beneficial. 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.

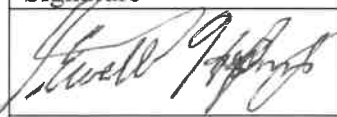

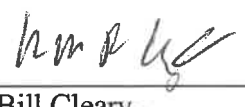

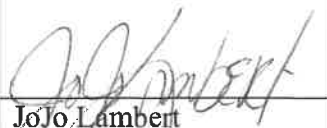
Neutral. The smaller lots and provision of affordable and fifty-five and over units will likely decrease the overall tax base in contrast to a traditional subdivision; however, the increased housing stock for these groups will help to attract and to retain workers who otherwise might not be able to afford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

E. Conditions of the Modification Decision

The Board further finds that the following condition is necessary to effectuate its decision: **There will be no clearing for the exclusive purpose of construction staging.**

F. Record of Board Vote.

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

Signature	In Favor	Against	Abstain	Recuse
 Ewell Hopkins	X			
 Erik Albert	X			
 Bill Cleary	X			
 Mark Crossland	X			
 JoJo Lambert	X			

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Filed with the Town Clerk on: March 9, 2021

Colleen Morris, Town Clerk

Copy of Special Permit Mailed to:

CapeBuilt Partners LLC
6 Chestnut St., Suite 103
Amesbury, MA 01913

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 CapeBuilt Partners LLC, 6 Chestnut Street, Suite 103, Amesbury, MA 01913 affecting the rights of the owner with respect to land or buildings in the "Lagoon Ridge Subdivision", land off of Barnes Road and Double Ox Road. 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.



T. Ewell Hopkins, Chair

Dated: February 25, 2021

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This decision was filed in the office of the Town Clerk, on March 9, 2021. Appeals, if any, should be made pursuant to Section 17, of Chapter 40A of the Massachusetts General Laws and should be filed within 20 days of the filing of this decision in the office of the Town Clerk.

Date Appeal Period Expired

I hereby certify that no appeal has been filed within the twenty-day period following the date of the filing of this decision.

Attest: _____
Colleen Morris, Town Clerk