

Oak Bluffs Planning Board

Meeting Minutes

March 3, 2016 at 5:00 p.m. at the Oak Bluffs Council on Aging

Members in attendance: Brian Packish (Chairman), Robert Fehl (Vice Chair), Kris Chvatal, Ewell Hopkins

Members absent: Erik Albert

Staff in attendance: MacGregor Anderson (Clerical Assistant)

Chairman Brian Packish called the meeting to order at 5:00 p.m.

5:00 P.M. Public Hearing: *on the request of The Preserve at the Woodlands, LLC to modify the Board's decision of November 12, 2004 granting special permits and site plan approval to Corey Kupersmith and Down Island Golf Club for a project known as the Preserve at the Woodlands. The special permits and approvals were issued under the following provisions of the Oak Bluffs Zoning By Law (since renumbered): sections 7.3 (Flexible Development District); sections 9.2.1(F)(3)(a), 9.2.1 (F)(3)(c), 9.2.1 (F)(3)(d), 9.2.1 (F)(3)(e), 9.2.1 (F)(3)(f), 9.2.1 (F)(3)(g), 9.2.1 (F)(3)(i), 9.2.1 (F)(3)(m), 9.2.1 (F)(3)(n), 9.2.1 (F)(6)(c), 9.2.1 (F)(7), 9.2.1 (F)(8), 9.2.1 (F)(9), 9.2.1 (F)(10), 9.2.1 (F)(11), 9.2.1 (F)(12), and 9.2.1 (F)(13) (Southern Woodlands District); section 9.3 (DCPC Standards) and section 10.3 (Special Permits). The original decision authorizes development of a residential subdivision known as The Preserve at the Woodlands, located between Barnes Road and County Road in the Southern Woodlands area of Oak Bluffs. The parcels affected are shown as Lots 79, 80, 81, 82, 83, 84, 85, 86, 87, and 88 on Assessors Map 35, Lots 27, 28 and 29 on Assessors Map 36, Lot 10-1 on Assessors Map 41, and Lots 27-1, 27-2, 27-3, 27-4, 27-5, 27-6, 27-7, 27-8, 27-9, 27-10, 27-11, 27-12, 27-13, and 27-14 on Assessors Map 42. The applicant seeks to amend the decision to change the location of certain special ways in the development shown on the approved plan per condition 5 of the decision, to provide for a donation to the Oak Bluffs Municipal Affordable Housing Trust Fund in lieu of the requirements of conditions 2 and 3 of the decision, and to add new conditions limiting the number of bedrooms in the development, and mandating installation of enhanced septic systems to reduce nitrogen.*

Chairman Packish opened the hearing at 5 p.m. by reading the special permit modification request to the Board. He then read the rules and procedures for the hearing. First to speak was Geoghan Coogan, the attorney representing Southern Woodlands. Mr. Coogan recapped that several months earlier the Board had taken an unofficial vote to approve this modification. The applicant had then gone to the MVC and received an approval. Mr. Coogan read the modifications in full. He explained that the conditioning on the use of the \$700,000 donation to affordable housing was at the request of the MVC.

He explained a minor modification to the relocation of Chase way, and recapped the no cut zone and buffer, and also the bedroom limits that had been agreed prior. Mr. Coogan added that they now had control of all lots except one, lot 26, owned by an original developer who didn't want to sell. This concluded his presentation.

Mr. Anderson then read a letter dated March 1st from the Land Bank offering to manage the trails in the development. This was the only public input he had received.

Richard Toole then spoke in favor of the project. He said they had been put through the wringer, and had been very generous with the trails, which he used quite often. There was nobody to speak in opposition or with questions. Member Hopkins asked for clarification on the Land Bank offer. Mr. Coogan said no homeowners association existed yet, but could work with the Land Bank and would probably appreciate their management of the trails.

An unnamed member of the audience asked if the property went to Barnes Road. It did not. At 5:11 Chairman Packish closed the public hearing and asked for deliberation. He began by saying the affordable housing and nitrogen had been the two big items to work through. He pointed to the MVC's previous decade's decision on Southern Woodlands regarding the land swap and affordable housing and compared it to the present. He wondered if the Board should add to the restrictions on the use of the money.

Member Hopkins said he was encouraged the Affordable Housing Committee had grown with new members recently. He also wondered if they could further limit the use of the funds and noted that the Trust was under control of the Selectmen. Member Fehl said they could make a recommendation. Chairman Packish said Mr. Anderson had worked with attorney Dan Perry to ensure motions were properly worded. He directed the Board to the back of the packet for those materials.

Member Hopkins asked if the development was likely to be built out in stages. Mr. Coogan said he thought his client would keep a couple lots but sell the rest. He didn't expect them to build the project out themselves. Chairman Packish said the project had been sitting there for ten years and the window for full buildout was complete. Member Hopkins wondered about coordination with the Land Bank for community firewood cuts if a lot of lots were being done at once. Mr. Coogan did not think that was likely to happen.

Member Fehl, referencing Mr. Perry's motion, confirmed that the name of the Municipal Housing Trust was accurate. Member Chvatal noticed that a portion of the no cut zone wording in the draft motion was left out. Mr. Coogan said that was not intentionally left out. Chairman Packish asked that if a motion was made, the language be added back. Member Chvatal read the missing language aloud in full, and made a motion to approve the modification request.

A late arrival, Tammy Perry, of 45 Bayes Hill, asked why ancient ways were called special ways in this plan. Chairman Packish re-opened the public hearing. She also asked to look at the map to be sure she

understood which trails were under discussion. She reviewed the relocations of the trails and was updated on the Land Bank offer. She was satisfied with the changes and felt they were an improvement. Chairman Packish offered her a copy of the map and she departed. Chairman Packish closed the public hearing.

Member Hopkins seconded the motion. The vote was 4-0 to approve the modification of the special permit. The Board then recessed at 5:25 until the next hearing.

6:00 P.M. Public Hearing: *Amending the Oak Bluffs Zoning By-laws, section 8.1 FLOOD PLAIN OVERLAY DISTRICT (FPOD). The proposed changes are required by FEMA to maintain eligibility in the National Flood Insurance Program. The changes would include amending subsection 8.1.2: Floodplain Overlay District Boundaries to reference the most recent Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) and the most recent Flood Insurance Study (FIS) report and the addition of two new Zoning Bylaw subsections. The new subsections are 8.1.3.1: Notification of Watercourse Alteration and 8.1.3.2: Other Use Regulations.*

Chairman Packish opened the hearing at 6:05 p.m. by reading the zoning modification proposal to the Board. He then read the rules and procedures for the hearing. First to speak was building inspector Mark Barbadoro as the applicant. He began by explaining what steps the Town had taken in response to the new maps. Members of the Board of Selectmen and the Planning Board determined that adequate information needed to be made available to the public. Mr. Barbadoro created his own map overlay with houses determining that approximately 200 homes would be affected, with roughly 30 homes coming out of the flood plain, and about 170 were coming in, including many historic homes that could be altered without being raised above base flood elevation.

Mr. Barbadoro then went on to say that the building code would recognize the new flood maps even if the town didn't adopt them in zoning. He said if the maps were not adopted, there would be a possibility that people would not be able to obtain flood insurance, and that lenders could call in a note in that case. Any lender using the FHA system, selling loans to Fannie or Freddie, or even just federally insured must require flood insurance.

Next, Mr. Barbadoro spoke of amending the maps with FEMA in cases of errors. He said it could be done parcel by parcel, and that he put the forms and instructions online for that. He had spoken with three homeowners and expected to hear from more when they find out they need insurance.

Mr. Barbadoro introduced Eric Carlson, the State's FEMA liaison employed by the Department of Conservation and Recreation Flood Hazard Management Program and expert on the topic. Mr. Carlson said he works with communities to help them handle technical issues and participate in the flood insurance program. He said FEMA had issued a letter of final determination in January stating the maps were final having gone through the appeals process. They would become effective July 20, 2016. Participating communities were required to update their local regulations to reflect the updated maps. He had been working with Liz Durkee of the Oak Bluffs Conservation Commission to ensure all the

required zoning modifications for Oak Bluffs were put in place. Existing floodplain zoning needed to be updated to use the new maps along with a couple other minor modifications.

Mr. Carlson explained that FEMA required participating communities to enforce standards for construction and other activities within the 100 year flood plain. Most of FEMA regulations exist within state regulations, especially the building code. In addition, odds and ends need to be updated locally. He reiterated that lenders and the building code will use the updated maps regardless of town adoption. Communities that don't participate in the program cannot get new policies in the program, existing policies can't be renewed, and certain types of disaster assistance become unavailable.

The Chairman asked for letters and other public input from Mr. Anderson, who then shared some photos from Bob Gilkes of Farm Pond, noting that Mr. Gilkes was in favor of the flood plain adoption. Next Mr. Toole spoke as an advocate of the proposal. He said he was not directly affected as he didn't own property in the flood plain, but he felt that if the town wouldn't receive assistance for a disaster he was in favor and saw no downside. Chairman Packish then asked if anybody present was opposed to the proposal. None were. He then allowed questions.

Tom Zinno said he was a 30 year resident of Oak Bluffs. He hoped that the community would make some changes that would avoid a coastline like Falmouth's where buildings were ten or twelve feet elevated. He asked Mr. Carlson if the modeling seemed correct for elevations, and Mr. Carlson said there had been some questions when the maps were first proposed but he didn't have problems with them now. Mr. Zinno asked how Chilmark operated without participating. Mr. Carlson said they could not get national flood insurance, that there could be a few private insurers that would write policies. Mr. Carlson then reminded Mr. Zinno that the building code applied to new structures and substantially improved structures, so existing buildings were not required to be elevated. He also explained foundation standards relative to base flood elevations.

Mr. Barbadoro commented on the private insurance option, saying that actuarial based rates would be many times higher than FEMA insurance which operated at a loss.

Mr. Toole asked what downside there could be to adopting the new maps. Mr. Barbadoro said that if you have a current piece of property not in the velocity zone you might not be allowed to build on it. Mr. Barbadoro said there were very few of these parcels because they were usually in the inland zone of the coastal district and/or wetlands, so building would be prevented for those reasons. Mr. Carlson noted that was an Oak Bluffs regulation.

Gail Barmakian said she didn't think there was any upside to not adopting the maps, with backs against the wall. She was concerned about what happened when the maps first came out, that there was a public process for review of the draft maps, and asked Mr. Carlson to describe that process. He said it started with a discovery meeting with town officials, focusing on what areas were going to be studied. He said that happened in 2011 or 2012. Then preliminary maps came out in 2013. There was then a 90 day appeal period advertised in local papers twice. After the 90 day period there was a resolution

period to address any input. He said there were some revised maps in Dukes County as a result of that process. It was because panels in Chilmark and Aquinnah had used the wrong identification number relating to the tribe. He didn't think there were any changes to flood information.

Liz Durkee said she attended at least one and possibly two meetings reviewing the maps along with the building inspector of that time looking for glaring errors and where the flood plain had changed. She said FEMA hadn't redone the maps with technical updates in over 20 years. The map changes seemed consistent with the areas in town that were low lying and wet. Nothing major stood out to them. Mr. Barbadoro said he had a letter from FEMA saying no letters of map revision had been sent out in Dukes County. He said he spoke with FEMA and was told they were looking for input on things like geographic mistakes, the wrong road or town name, things the lay person could spot, as opposed to flood areas which were not determined by what was wet but rather hydrological data. These changes aren't done by eye, but rather firms had to be hired. You could not just say you'd lived there a long time and disagreed with them.

Ms. Barmakian asked if town meeting approval was effective immediately or as of July 20. Did it matter? Mr. Carlson said it could be done for July 20. She then asked Mr. Carlson to explain the process the town could take, saying she understood it was different now, to make amendments. Mr. Carlson said appeals for letters of map amendment or revisions are always possible. Ms. Barmakian asked if towns could take this on in addition to a homeowner. Mr. Carlson said yes. She then asked what assistance Mr. Carlson could provide in the Community Rating System. He said they could provide information in understanding the system and applying. He explained it was a program communities could apply to enter, and if they went above and beyond minimum FEMA requirements, they would get a ranking that led to discounted premiums to the community.

Ms. Barmakian confirmed with Mr. Carlson that there was no higher burden to a homeowner in applying for an amendment after map approval. She asked if there was funding from DCR to assist homeowners or communities in amendments. He said there were not. She said she knew there was funding for things like raising a road, perhaps from another agency. He said there were several hazard mitigation programs funded by FEMA and administered jointly by DCR and Massachusetts Emergency Management. MEMA's website has information on hazard mitigation funding. Typically, communities were applicants, but homeowners could be sub-applicants.

Mr. Toole asked if a house had to be raised, was there consideration for someone who lost a view. Mr. Barbadoro said there was a lower height restriction on the coast. Member Chvatal said the ZBA could issue a special permit for that, but so far only did so for the amount the home had to be raised. Mr. Barbadoro said no special permits were allowed in the inland zone of the coastal district. Ms. Barmakian said a sea level rise report coming out in the next week advised changing those zoning by-laws to allow for mitigation. Tom Zinno said this advice came from the Conservation Commission's consultant on the subject.

Mr. Zinno said he had read that a community appealed a map after the deadline and were granted that option. Mr. Carlson confirmed that a request for revision was always possible.

Mr. Toole said in some cases towns bought out coastal property owners to reduce risk. He said it was in the Town's interest to protect migration of wetlands inland as they were the first line of defense.

Member Fehl asked how many properties in Chilmark, which had opted out of the program, were affected. Mr. Turner said there were 358 homes impacted. He thought they may want to be able to rebuild. Mr. Carlson said building code still applied. Mr. Turner suggested speaking with Chilmark.

Chairman Packish asked about the CRS, saying the Cape Cod Commission had dedicated resources to Barnstable. He asked Mr. Turner of the MVC if they had resources or plans to assist Island towns. Mr. Turner said he had been through that process in other places and they would evaluate it to see if they could help. He warned if you were going to do a map amendment it was an involved process.

Chairman Packish asked Liz Durkee of the Conservation Commission if there had been discussion there regarding CRS. There had not been any discussion yet but she felt it would be a Town decision. Chairman Packish said it seemed like the only genuine form of relief the Town could provide, and was more viable than doing any large map amendment, and asked if anybody could confirm that. Mr. Carlson said the application process took a year and was a slow process, but it would impact everyone. Chairman Packish asked if there was any downside to participating in the CRS. Mr. Carlson said it would require a lot of work for the coordinator.

Ms. Durkee said she thought investigating CRS was a good idea. She thought grant funding would be needed as the Town didn't have the manpower to do it on its own. Chairman Packish said the Town Administrator seemed supportive of the idea.

Ms. Barmakian said the CRS provided a discount but a map amendment could take someone out of the flood plain. An unnamed audience member said that was up to the individual. Ms. Barmakian asked for help interpreting the maps including arrows indicating amendments. Mr. Carlson said the FEMA map service center interactive maps online identified amendments and allowed you to read the details including if it was an elevation change. He also said you could call 1 877 FEMA MAP to speak with a map technician, or contact him directly. Mr. Barbadoro said the Town GIS was a great resource, and that the MVC had updated the new flood map overlays already. He offered to help if people came to his office. He noted GIS was just a guide, and the official maps he used for applications came from surveyors.

Member Hopkins asked if a letter had been sent to all properties affected. Mr. Anderson said it had been suggested at a previous meeting but not decided. Chairman Packish closed the public hearing. He said he felt their backs were against the wall, they had to put insurance in place, and the next discussion focused on CRS and possibly map amendments and funding. That could all be discussed at a future meeting.

At 6:54 Member Fehl made a motion to recommend the zoning by-law amendments to Town Meeting. Member Chvatal seconded. The vote was 4-0 in favor of recommending the amendments to Town Meeting.

7:00 P.M. Public Hearing: *Proposal to amend the Oak Bluffs Zoning By-laws, Appendix A, Use Regulations, by adding "Manufacturing and Light Manufacturing" to the "Commercial Uses" section of the Appendix, with said uses prohibited in R1, R2, R3, R4 and HC and requiring a special permit from the Planning Board in B1 and B2.*

Chairman Packish opened the hearing at 7 p.m. by reading the zoning modification proposal in full to the Board. He then read the rules and procedures for the hearing. First to speak was Sean Murphy, the author of the proposal, on behalf of Eleni Roriz. He presented the requirements for the proposed special permit in detail, emphasizing that the proposed by-law does not allow the manufacturing use, rather it allows the Planning Board to grant a special permit for the use. He said he felt this sufficiently protected the town and the residential neighborhoods abutting B1 and B2.

Mr. Murphy stated that current zoning prohibited these uses, and further that zoning prohibits use variances, making light manufacturing and manufacturing outright prohibited.

Chairman Packish asked for opposition to speak, but there was none. He then requested proponents speak. Building Inspector Mark Barbadoro stated that he was in favor of the zoning modification but recommended that the Board exercise real caution in the future granting special permits. He said that he really liked the bowling alley but had difficulty with noise complaints over the past year, so the SPGA would need to "tighten up its game" in what would be required of applicants. Overall, he said he was in favor, because the part of the B1 most likely to receive the special permits could use some repurposing, and also that there were plenty of light manufacturing businesses that could and probably already do coexist with neighbors in that area without impacting them adversely.

Chairman Packish again asked if there was anybody from the public in opposition or anybody with questions. There were none. He then asked the Board for questions.

Member Chvatal began by saying that he knew there was no requirement to send out abutter notifications but said he was concerned with not having enough public input. He said it was a big deal. Mr. Murphy reminded Member Chvatal that this had to go to Town Meeting still. Member Chvatal acknowledged this, but felt it was preferable to explain the proposal now instead of at Town Meeting. Mr. Murphy countered that this had been advertised, and that abutter notification would be required before issuance of a special permit.

Member Chvatal said he was in favor in general but that without getting the public involved earlier in the process it could blow up in their faces. Mr. Murphy said there was a prior Planning Board meeting with lots of attendance, and there was minimal concern.

Chairman Packish said there had been a certain amount of discussion on the proposal but that he understood what Member Chvatal was saying. He said what softened it for him was that it was not as of right but rather it was a special permit process. He said there would also likely be site plan review and MVC involvement when thresholds were triggered.

Member Fehl confirmed that a special permit required a public hearing with abutter notification and newspaper notification.

Member Chvatal said an additional area of concern he had was with noise. He said the state and the town had poor standards for noise, that the town didn't own a noise measuring device, that the town referenced the state regulations but couldn't enforce them. He said he thought this proposal should have been part of a master plan discussion. He did acknowledge that another option would be to address the noise issues through town ordinance rather than zoning by-laws.

Mr. Murphy said that with a special permit, the Board could set other more restrictive standard than the basic environmental performance standards for noise. He said it would have to be reasonable but that it could differ from the usual standard. Chairman Packish confirmed with Mr. Murphy that any reasonable standard that seemed appropriate could be set.

At 7:12 p.m. Chairman Packish closed the hearing to public input and requested deliberation. Member Hopkins said he was comfortable. Member Fehl said he would rely on the Planning Board and the resident voters of Oak Bluffs to keep it under control, and that he did not have a problem with it. Member Chvatal reiterated that he felt there had not been adequate public comment or outreach. He said he was in favor of it in general but that while the Board had met the legal requirements he felt they had not met the neighborhood requirements to put it to Town Meeting yet. He brought up Dukes County avenue changes and a ballistic neighborhood response in the past. He again stated that he liked the idea but did not think it had been adequately vetted.

Chairman Packish checked to confirm that Member Chvatal supported the idea conceptually but did not feel enough outreach had been done. Chairman Packish then said that he believed the bulk of business owners were not even aware of Appendix A use tables, that they felt "of course it is allowed, it is B1." Mr. Barbadoro confirmed this. Chairman Packish said that as the building inspector applied the use appendix, which obviously was there and had been voted on by the town, there were a lot of people surprised by what was and wasn't allowable in B1. With this, the conversation turned towards a motion and decision.

Member Hopkins made a motion to support the amendment of the zoning by-law as submitted by the applicant. Member Fehl seconded. The vote was 3-1 in favor. Members Hopkins, Fehl, and Packish voted in favor of the motion and Member Chvatal voted against it.

The board then encouraged additional outreach from Mr. Murphy ahead of Town Meeting.

Chairman Packish adjourned the meeting at 7:18 p.m.

Documents used in this meeting:

Agenda

Sign In Sheet

Notices of each public hearing

Public Hearing Procedure and Factors in Making Special Permit Decisions

Letter from the Land Bank dated March 1 offering trail management

Photos By Bob Gilkes

Motion to Endorse Amendment from Coogan

Motion to Approve Amendment dated 3/3/16 from Perry