

**Zoning Board of Appeals**  
**Minutes of May 4, 2023 at 6:30PM**  
**Zoning Administrator: Noreen Stockman**  
**Present: Morse, Potamis, Finneran, Murphy, Duffy**  
**Absent: Peterson**

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TOWN CLERK

**#061-20M Eco Land Development, 0 Percival Road, Teaticket** – requesting the Board to review revised plans for the Comprehensive Permit following mediation

Voting Members: Morse, Murphy, Finneran, Duffy, Potamis

**Correspondence** – 3 letters in opposition; letters from N. Swain and J. Scala were read into the record

Frank Duffy – I was not a member when you came before this Board, but I was serving as Town Counsel at the time. I was asked questions by the Board, and I gave them legal advice, but I did not participate with the Board. One of the abutters is Pat Harris, who was associate Town Counsel, and with whom I worked for 10 years. I believe I can sit and be objective.

Freeman – We are fine with it; and I do believe you will be objective.

Finneran – I'm not a direct abutter, but I do own a house across the street. I haven't lived there for years.

Freeman – We are fine with it.

Peter Freeman, counsel for Applicant – The initial application for 16 houses was denied approximately 1 year ago. I was not involved at that time, but I was retained to help Mr. Monterio, on appeal to the Housing Appeals Committee. There was mediation, which was tentatively agreed to by the Board for 12 units. We did submit revised site and civil engineering plans for your review, and a narrative as to the changes. There is a landscaping sheet in with the new plans, but it may not be as detailed as some folks expect. We are willing to come up with a more robust landscaping plan; we just haven't done it yet. I've also submitted a waiver request list, with some explanation as to why we think the waiver is appropriate, or not applicable. The reason that we believe this site is appropriate for this development is because it is not located within any estimated or priority habitats, it does not contain certified or potential vernal pools, it does not contain streams, the property is not subject to flooding and it's not located within an area of critical environmental concern. The septic system is designed to comply with Title 5, and it is not a nitrogen sensitive area. It's fully compliant, and I don't believe that there are any waivers that need to be requested from the Board of Health regulations. We do disagree with Attorney Wall's statement in his letter regarding traffic; we don't think that the traffic impact for the number of trips per day is going to be serious. We have retained Jeffrey Dirk from Vannesse Associates, who will hopefully be present at the next meeting. His report will show, that with moving some vegetation and a couple of mailboxes, the site distances will be fine. The other issue in Mr. Wall's letter is that he says the subdivision control law is a state law, which cannot be waived; that is incorrect. You have the power to review and approve the subdivision plan, as

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well as grant waivers from the local subdivision rules. The road has been moved about 50' lower, and that congestion and site distance has been addressed. The road that is on our property is a good 20' away from our road, and it will be vegetated with plantings.

Ed Monterio, Developer – The development consists of 12 single family homes, that will be ranch style with 3-bedrooms, 2 full baths, and the lots range in size from 11,000 s/f – 14, 000 s/f. There will be Town water on the property, and private septic systems. There is a buffer zone in the common area for the stormwater management system and for the neighbors. There is now less impervious surface; not many changes have been made. The homes that are near the common area will be about 75' from the abutters. We did a T turn around that was requested for the fire trucks or ambulance to turn around. Where there is now less impervious surface, not many changes have been made.

**Board Discussion**

Potamis – Title 5 will be individually owned, or part of the association?

Freeman – That's correct.

Duffy – I went out to take a look, and didn't find the staking there to be particularly helpful. I would like to see where the common driveway intersects with Percival Road be better staked.

Monterio – If you walked the lot, you would have seen the stakes and the individual lots.

Duffy – I drove up and down Percival Road, and I walked it, and still wasn't sure what I was looking at.

Freeman – I'm sure that we can make it clearer. If you would like to schedule a site visit, we can do that.

Duffy – You said there's a 20' separation between the common driveway and Percival. Will that remain natural, or are you going to put plantings in it?

Monterio – There is a drainage system there. You will have the pitch of the road going towards the drainage. Lot 9, 10 & 11 is where the other drainage is for the 100' storm, and the final drainage is at the turn-around also for the 100 year storm.

Freeman – We do intend to take a look, to see if we can add more robust landscape. We know the concerns that have been expressed by neighbors.

Duffy – I saw comments somewhere that all drainage be contained on the site.

Monterio – It will be.

Finneran – The trees that are on the corner lot, is actually part of your property? Will they be removed?

Monterio – Yes, they were removed about a year ago, and the Town straightened out the fence and the sidewalk.

Finneran – Where the sidewalk ends, will that area remain?

Monterio – Yes.

Murphy – I have a concern about the common area; who will maintain that?

Monterio – The HOA.

Finneran - The neighbors have requested a fence, is that being considered?

Monterio – I'm not going to put up a fence because you have the natural vegetation.

Morse – Would you be opposed to fencing of screening where the drainage area is?

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Freeman – We will see what we can do to satisfy you folks.

Monterio – When the engineering gives you drainage designs they have certain specs that they follow. We can do more plantings, but we always have to run it by the engineer, to make sure it won't clog the drains.

Finneran – What's the issue with the Harness Drive boundaries?

Monterio – We found the original bounds dating back to 1933. There are no encroachments where Harness Drive comes in.

**Public Comment**

Brian Wall, attorney for abutters – My clients are opposed to the revised plans, and they were opposed to the previous plans. As you all know, there was a mediation that took place, and my understanding was that there was an agreement that the Board would allow this remand hearing, and that the Applicant could have new plans considered. I don't believe that there is an agreement that the Board is not free to review these plans, and vote on these new plans. The second point that I want to make is that these plans were stamped by Richard Hood, a PLS, however, there is a note saying that the instrument survey was by Stephen Doyle, who is deceased. I'm not saying that it would comply, or doesn't, but I wanted to bring that to your attention. If this were an as-of-right development, there would only be 2 houses allowed, because of the Agricultural zoning district, and because it's within a Watershed and Coastal Pond Overlay District. It should not be forgotten that the prior Board held 12 hearings over a 16-month period, and the Board voted unanimously to deny the project, because the Board had serious concerns with the health and safety issues; that is apparent in reviewing the findings. The new project does reduce the number of housing units by 4, but we believe that the new plan is substantially similar to the project that was denied, and does not address those concerns that were raised. The Applicant proposed 16 houses, when he first started this process. He believed he thought he had rights to Percival Road. My clients knew that that section was a private easement, that relates to their properties alone, and we brought that to the attention of the Board. The Applicant had to rethink his design, which is why he drew a road in, parallel to Percival Road. If you look at the layout of the houses, it's hardly different than before; he redrew the road, but nothing else. He connected the road to Percival, where it was convenient for him, but lost the 2<sup>nd</sup> egress, and created a new intersection, and a 1,200' dead end road. He now has funneled all of the traffic to a means of ingress and egress. The Planning Board said it was dangerous, and would not support the project. The Town Engineering Department did not recommend the design and the Peer Engineer said that waivers would be required in order for the design to go forward. The developer did not make changes to make the road any safer, or change the layout of the houses; instead of fixing these concerns, the developer asked for more waivers. The last plan had 16 houses, which would have added 160 trips, because the subdivision regulations anticipate 10 trips per day, per house. There are already 7 existing houses on Percival Road, which add 70 trips per day totaling 230 (old proposal). The site triangles have to be of a certain size; that relates to the speeds on nearby roads, so you can see the cars. There was a conclusion that the site triangles were substandard. Mr. Monterio talked about cutting down trees and mailboxes, but he doesn't own that land, and doesn't have control. This will increase traffic, increase congestion

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and wait time. The revised plan does change this a bit because the road would be moved down 50'. This is still an unusual design, and has conflicts with the people that are using it. This development is being shoehorned to make it work. There should be a traffic engineer that looks at this, and I suggest that the ZBA have their own. The Cape Cod Commission provides technical assistance, when the Town doesn't have it available. Chapter 40B allows a developer to come before the Board, and ask for waivers to override zoning, however, waivers, are not a right or entitlement. The developer had to provide a list of waivers which they have done, but now it's a balancing test for local concern. This Board decided the last time that it didn't demonstrate meeting certain things. I would submit that the waivers that are being requested are beyond what should be granted, because of the local concerns. The Board made the right decision last time. I would submit that the Planning Board and the Engineering Department should review these plans, and I would urge you to contact the Cape Cod Commission.

Ron Garcia, no address provided – I am a local resident, and support this local developer. We hear a lot about the need for affordable housing. We have someone who is looking to do only 12 single-family units, on a 5.5 acre parcel. Most 40b projects that we see have had more density. He could have technically asked for a lot more. I would like to see the Board favorably consider the request with requirements that you see fit. We see many projects being approved, and the majority of those are being done by nonlocal people. This property was in the same family for over 100 years.

Peter Freeman – Some of the history from Attorney Wall was accurate, but some doesn't apply; there are significant changes that were made with these revised plans. The traffic engineer will be able to address Mr. Wall's comments about the vehicle trips are throughout the day. I wouldn't have a problem with you getting your own traffic peer review. We are open to working with the neighbors, and anything that you have. The house plans fit in, and I think that they are attractive.

Potamis - When will you have your traffic engineer report?

Freeman – Very soon.

Potamis – Mr. Wall referenced an agreement; could you submit that for our review?

Wall – I think there were 2 separate points. My understanding is that this was just an agreement that the application could come back; but there's not a final agreement. The point I was making about the Cape Cod Commission is that you can call them, and they have people in specific areas, and they are available to the Town.

Finneran – A reduction from 16-12 units is 25%, not 30%. I have seen many accidents there. I wouldn't be adverse to the Cape Cod Commission looking at that intersection of Percival and Trotting Park. Are there some concerns with the recharge area, or the wetlands?

Freeman – I don't think that that was expressed as a real concern, but there are no wetlands, and it's not within a recharge area.

Finneran – Would you be adverse to confirming that?

Freeman – Beals and Thomas, I would assume, would confirm that.

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Monterio – There is no wetland. During the original hearing, it went before the ConCom, and they had no comments. There are no wetlands, or any type of vegetation that would be violated, and it's not in a Zone II, or area of critical concern. You've already had two new houses built up Percival Road, and they have regular Title 5 septic systems

Finneran – 10 trips a day per dwelling, the changes are 20% or 25 % of those people would turn right, just for convenience. It would only lessen the concern on Trotting Park.

Murphy– I'm glad that you are working with the neighbors, and I do like the idea of having the Cape Cod Commission review the plans.

Stockman – For the Board's information, we were able to arrange for Beals and Thomas to represent the Town, and the developer has paid that fee. The contract has been approved, they have received all plans. I would anticipate them being at your next meeting.

Morse – Do they have a traffic engineer on staff?

Stockman – I can check, and I can also check with the Cape Cod Commission.

Duffy – I would like to have a site visit with Mr. Monterio before the next meeting.

Wall – Attorney Freeman and I get along. We are talking about things, but we aren't talking about the same things. I would disagree that the developer is making sincere efforts.

Morse – May 20<sup>th</sup> for site visit at 10AM.

Stockman – I would assume abutters are able to attend, but there would not being any discussion.

Morse - I will not be able to be here for the 6/8 meeting, I have a conflict.

Duffy made a motion to continue to June 8, 2023. Finneran seconded the motion. Motion carried 5-0.

All in favor.

Application #	Applicant Name:	Address:
061-20M	ECO Land Dev.	0 Percival Road
Document (s) Submitted:	Date Submitted:	Submitted By:
Letter of request	3/22/23	Ⓟ
Revised plans	3/22/23	Ⓟ
Site review memo	}	}
letter from JECally		
list of waivers		
Request ADULTS	3/22/23	Ⓟ
Request referrals	3/22/23	Ⓟ
Rec'd cert. ADULTS list	3/29/23	Ⓟ
Email opp. Scalla	5/3/23	Ⓟ
Email opp. Swain	5/4/23	Ⓟ
Letter opp. B. Wale	5/4/23	Ⓟ
Mullin Rule - SP	5/11/23	Ⓟ
Site distance assessment	5/17/23	Ⓟ
Site distance letter	}	}
Site distance plan		
Trip generation plan		
letter - support	5/23/23	Ⓟ
Peer Engineer Review	6/8/23	Ⓟ
Email - S. Brunette	6/19/23	Ⓟ
Applicants response <sup>heads</sup> <sub>minutes</sub>	6/22/23	Ⓟ

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**Open Meeting:**

- 1) Vote Minutes: April 27, 2023 - tabled
- 2) Review Draft Decision, #075-22 Blue Moon Sea Grille, Inc., 159 Main Street, Falmouth  
– vote anticipated  
Morse – One of the voting members on this application is absent, due to a medical issue. Because of that, there has been a request from Counsel to continue to May 11, 2023. Potamis made a motion to continue to May 11, 2023. Finneran seconded the motion. Motion carried 5-0. All in favor.
- 3) Vote Staking Policy - tabled
- 4) Board Discussion - none
- 5) Board Updates - none
- 6) Future Agenda Items - next meeting May 11, 2023

Meeting adjourned 7:45 PM

Respectfully submitted,

Ashley E. DeMello, Office Assistant  
Board of Appeals