

Zoning Board of Appeals
Minutes of June 22, 2023 at 6:00PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Murphy, Duffy, Petrucci
Absent:

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TOWN CLERK

Public Comment -none

#061-20M ECO Land Development, LLC., 0 Percival Road, Teaticket - requesting the Board to review revised plans for the Comprehensive Permit pursuant to a mediation assented to by the parties, during the Applicant's appeal

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

Peter Freeman, attorney for Applicant – We have our traffic engineer here tonight, and I would request that Mr. Dirk go first. We did go through the peer review letter and I apologize in just getting that to you today. When we got the letter we emailed it to our engineer and he had been out of the office. I wouldn't anticipate that you had time to review it for tonight's meeting.

Jeffrey Dirk, Vanesse and Associates – Our assignment was to look at the site distances and site lines, coming from Trotting Park Road, and coming out of the development. We submitted a memo that evaluated those parameters, and followed up by another memo in what we recommended for necessary site lines. We also looked at the traffic volumes and assessed the amount of traffic or trips that would be produced from a 12-lot subdivision. To determine that, we use trip generation data published by the ITE. They collect data traffic studies throughout the US, and then publish it using charts and graphs. We can use that information and assess what impacts these developments may have on the Town's roadway system. A 12 single-family home subdivision at commuter peak hours (morning and evening), would produce about 10 trips with most of that traffic going out in the morning, and coming back in the evening. Generally, one additional vehicle every 6 minutes during the peak periods. This would not rise to the level for a formal traffic review, or review by the Cape Cod Commission.

There are 2 types of site distances: intersection site distance, which would be someone that is driving down Trotting Park Road, and approaching the intersection. It would be the distance in which you would need to see a two-foot high object, because you need to either be able stop, or go around it. That is stopping site distance along the roadway approaching the intersection. The second site distance is intersection site distance, coming out of a driveway and looking right and left, I need to see the vehicle coming at me and the vehicles approaching need to see me. We assessed those two site distance measurements at the intersection. There isn't really a site distance limitation.

Approaching the intersection along the main road, we need to have at least 250' of sight distance based on a 35MPH speed limit. The stopping site distances exceeds 250', and exceeds that criteria for us. A vehicle exiting the development at the intersection, looking to the left, there is a benefit achieved because the Town installed sidewalks, which freed up site lines. That site distance (left) exceeded 250'. Looking to the right, we noticed a series of mailboxes; 2-3 of those that are closest to the roadway provide a continuous obstruction, so you wouldn't be able to see given their height. We would recommend they be adjusted or removed. It's not uncommon that

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that occurs; we find the same thing with telephone poles. The last site distance measurement was coming out of the development. Looking to the right or left, currently it is heavily vegetated along the roadway, and we recommend making modifications to that. We suggest they trim the vegetation until they achieve the proper site lines. The majority of that will happen within the property itself.

Board Discussion

Peterson – Moving the mailboxes would also improve the site lines for the existing residents, I would think.

Dirk – Yes, anyone who is exiting.

Murphy – Where are the mailboxes for this project?

Dirk – Internal to the development.

Finneran – You indicate the vegetation to the left, looking down Trotting Park on the curve and there is a large bush there.

Dirk – The difficult thing is that we don't see in a straight line; we have a cone of vision, and the vehicles are moving. The combination of 20 degree cone of vision, and the car moving, is that you would see it as it goes. The time that it would actually be obscured is about 1/10 of a second. It doesn't provide a continuous obstruction like the mailboxes do.

Finneran – It's a considerable obstruction. It would be nice to see it dealt with, and would improve the site distance.

Dirk – Yes, it would be completely clear, in terms of site distance and there would be nothing in that site triangle.

Duffy – I happen to be out there, and going north on Trotting Park Road, you come up on this intersection pretty quickly. I think someone should take a look at that, to see what could be done. Are those mailboxes within the layout of Trotting Park Road?

Dirk – I would suggest that maybe there be a warning sign installed at that intersection. A portion of them, the series of those mailboxes, wrap the corner.

Duffy – They should be moved then, if they're in the ROW.

Morse – Do you have any other recommendations that you would make for safety regarding speed limit?

Dirk – That something that's hard to achieve. You can put a suggested speed limit plaque in but changing the posted speed limit is very difficult.

Morse – This is based on 35MPH?

Dirk – Yes, the line of site that is available, with the relocation of the mailboxes, would be over 400', and that is getting to about 50 MPH,, in terms of the speeds. 360' would be required for a posted speed of 45MPH.

Freeman – There is also a Town Bylaw regarding obstruction at intersections by objects and that they be removed by the Select Board due to safety issues. I did want to point out that it is a subdivision; there was a comment about this in the Peer's review. Attorney Freeman reviewed his responses to the Peer Engineers letter, dated June 8, 2023.

Duffy – As mentioned previously, your response came in at 3:00 PM this afternoon, so I didn't have time to review, but I'm sure I will have further questions.

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Murphy – When we went out on the site visit, I couldn't get a grip on where the retention basins, or the turnaround for the Fire Department was. I would appreciate those areas be staked, so I could go out, and actually locate where they will be.

Freeman – That wouldn't be a problem.

Peterson – Hopefully we can get some of the smaller things cleaned up.

Petrucci – With regard to this being a formal subdivision, or not, are these homes not exclusive use areas, or just contiguous exclusive use areas?

Freeman – It is not a condominium, so there are no exclusive areas. Each owner owns everything on the lot including the septic systems, which will be independent, free standing Title V compliant systems.

Matt Cote, Beals and Thomas [Peer Engineer] – Mr. Cote reviewed his findings with the Board. We were directed that this was supplemental information to the original denial, so when we referenced findings and things of the original denial, we thought those would be of interest to the Board, as they were previous concerns. It wasn't clear to us if this was a subdivision or not; generally there is more information on a site plan. We made several comments that typical rules and regulations hadn't been addressed. We can address those responses as we move forward. We had questions about the waivers, and how they were being framed. We haven't had time to review what was submitted, but we plan to do so. Stormwater information was provided, and it seemed that all concerns and design issues were addressed at that time, and just noted that no revised calculations were submitted.

Duffy – I'm glad we clarified this was a subdivision. It is not suitable to make a determination regarding subdivisions. What can we expect for details in the way of the subdivision issues? They handle a lot of things that are being discussed here with no answers.

Freeman – We can supply more, and I believe it can be satisfied.

Duffy - I think it would be helpful; you need to have correct plans to refer to.

Freeman – There was a 2-page letter provided by Jack Landers-Cauley, explaining how things would still work. We could submit some more detailed plans.

Duffy – There was a comment about a 20' strip, and that it would be used in part for stormwater management. Something should be submitted to show how that will happen.

Ed Monteiro, developer – In regards to the stormwater drainage, it is on the plans that were submitted on sheets 4, 5, and 6. You also have the stormwater pollution plans. There was a 300+page document with this information that has been submitted. We have the reports for proper drainage, and with fewer houses, it exceeds the 100 year stormwater calculations. It shows the type of system and infiltration information. Mr. Monteiro reviewed plans that were submitted regarding stormwater information.

Duffy – As far as a 300 page document, was that submitted with the original filing?

Monterio – Yes.

Murphy – The original plan had a street that went through, correct?

Monterio – The original plan had a T-turn around, which went between houses 15 and 16, and the Fire Department said that wanted it at the end of the road.

Murphy – Did that change anything with the drainage?

Monterio – No.

Public Comment –

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Brian Wall, attorney for abutters – (Harris, Colturi, Overholtz) – The abutters have many concerns, the first being the denial that was issued by the Board, which contained 31 findings. That project is back in front of you with a reduction of 4-units, and the road has been tweaked, but it's essentially the same project. Many of the issues and concerns that the Board stated in their denial, in our opinion, have not been addressed. The Board should remember that there are 2 parts to the waivers; there's properly identifying the waivers, and then the Board has to go through a balancing test, to determine whether or not the request for the waivers are appropriate, or whether they're outweighed by local concerns. Many of the subdivision waiver requests are safety based, so we would submit that there are safety concerns and hazards being presented by the request, and that local needs and concerns are not outweighed. I reviewed the site plans carefully and note that the plan is stamped by Richard Hood, but there is a note on the plan that says that the "on the ground survey" was performed by Stephen Doyle, who has since passed. The way I read that is that the stamp on the plan not actually certifying the property boundaries. That is important because the last engineer pointed out that there are boundary lines that are different than one of the plans recorded at the Registry of Deeds. At the last hearing, you received a letter from an abutter, who stated she had her property surveyed, and she said that there was a discrepancy between bounds that were on her property, and the bounds being claimed by the developer. The plan also lists the property owner as Carl Gonsalves, but back in March of this year, Mr. Gonsalves sold the property to Mr. Monterio's company; technically that plan is not correct. In Mr. Monteiro's pro forma, it lists the land acquisition at 200,000.00, but the deed lists it at 50,000. I would submit that his costs have gone down, so the pro forma probably needs to be revised. At the site visit, Mr. Monterio was asked where the drainage infrastructure was going to be, and he gave 2 different answers. He first said that the abutters would be provided a 20' common area buffer, that would be heavily wooded, so that it would screen the proposed houses. However, he is also putting a subterranean drainage structure in that 20' buffer zone. I did speak with an engineer, and was told for a structure like that, all of the trees would have to be removed out of that area; there can't be both. When the original plan was submitted to the Board, the proposed means of access was each house had a driveway out to Percival Road, and Percival Road had 2 means of access, to Trotting Park Road and Sandwich Road. When the project was submitted to MA Housing for their project eligibility, MA Housing approved the project based on the roadway, but it goes onto say the Town is allowed to comment about its concerns. One of the Towns concerns was that they wanted a third access over Harness Drive. The developer didn't have rights to Percival Road, and lost access to Sandwich Road, so an internal road within the property. Both the Planning Board and Engineering Department reviewed the plans and recommended that the project be denied. There are 4 fewer houses now but I would respectfully submit that this is just tweaked and not a new project. My final point had to do with the site lines, if you read the report, it is very clear the site lines aren't appropriate and require intervention. The obstructions are not controlled by the developer. We agree that the mailboxes are an obstruction. The issue with the sight lines is that the developer doesn't own any of that land. Some of the clearing would take place when the sidewalks are put in, but there is a waiver for the sidewalks. I would request the Planning Department, and the Engineering Department review, and contact the Cape Cod Commission for an independent review.

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Dirk – It's a highly technical methodology, but there are specific heights that we use for measurements. What I have submitted represents the measurements per MA and national standards.

Dirk – It has to do with the moving issues, and moving at 35 mpg means that you don't see it as you're progressing along; it doesn't discount the fact that there is a large bush there.

Finneran – It's the bush and the trees; they are definitely obstructing sight lines. In your opinion, would you say that those be removed?

Dirk – The best outcome is a clear sight line; the longer sight line you can provide, the better.

Finneran – In your opinion does is that bush in the Town's layout?

Monteiro – Yes.

Potamis – I think only the Land Surveyor can certified the lot lines; not an engineer.

Dirk – That's correct, we cannot. Only a Land Surveyor can certify distances.

The civil engineer does all of roads, but when the surveyor originally looks at the plan, he needs to certified what was there. Richard Hood had to do an instrument survey to confirm.

Stockman – I think we need to determine whose property those obstructions are on, and come up with a management plan.

Peterson made a motion to continue to July 27, 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	3/20/23	Ⓟ
Revised plans	3/20/23	Ⓟ
Site review memo	}	}
Letter from JE Cauley		
List of waivers		
Request ADULTS		
Request referrals	3/22/23	Ⓟ
Rec'd cen. ADULTS list	3/29/23	Ⓟ
Email opp. Scalla	5/3/23	Ⓟ
Email opp. Swain	5/4/23	Ⓟ
Letter opp. B. Wale	5/4/23	Ⓟ
Mollin 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. Minette	6/19/23	Ⓟ
Applicants response ^{heads} _{Thomas}	6/22/23	Ⓟ
Revised plans	7/20/23	Ⓟ
Vanasse Report	7/20/23	Ⓟ

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#075-22 Blue Moon Sea Grille, Inc., 159 Main Street, Falmouth – requesting a Special Permit to allow a parking reduction for the proposed restaurant (SP, SM, MF, FD, GP)

Mr. Morse recused from the hearing, and left the room.

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

Murphy – A new plan was submitted, along with a letter from St. Barnabas Church, regarding parking.

Robert Ament, attorney for Applicant – In the last month, La Civetta has expanded its structure with a pergola over the patio, and the Quarterdeck has begun serving outside. For the last 2 weeks I have been driving over to Katharine Lee Bates Road, where the Town has leased the back parking area from Martha's Vineyard Saving Bank for additional parking. The most cars I have ever seen are 6, and 2 of those cars are workman. The average number seems to be about 3. In the last month, we have made arrangements with St. Barnabas church, to use for parking every day of the year, at all times, except overnight parking. We already have an agreement with the Historical Society. We have now arranged for 18 parking spaces, which should be more than sufficient to satisfy those concerns of the Board. Those arrangement are for 5-6 years long, so they meet the Town's standards for a long term arrangement. In response to concerns raised by some Board members, we have submitted a revised floor plan. We reduced the deck plan by 330 square feet, and we reduced the seating by twelve from the deck. Under the Building Code, we could have put those seats inside, but didn't want to crowd the inside of the restaurant. With the reduced deck, we wouldn't require that additional screening from the abutters, that was on the previous plan. We also formalized an agreement with Bogosian Development LLC, who not only owns this building at 159 Main Street, but owns Timber Restaurant and Ax Throwing in Town Hall Square, to use their dumpster, which would mean it would get emptied more frequently. We don't see any problems with bringing the trash down from the restaurant, at the end of the day. It wouldn't go past any residences; that's not to say that we don't have the ability to have trash pick-ups at the rear of the building, which has been done that way for decades. If we didn't, or chose not have trash pick-up from the rear, we have a very good alternative. Questions have been raised about access, and there was an email submitted saying there was no issues from Boyd DeMello at the Fire Department. The Planning Board has fully reviewed the proposal, and issued a Site Plan Review decision, and a Special Permit for the lot coverage to exceed 70%. The revised plans is now under the 70%, and we would be compliant. The Select Board approved the sewer connection. The Historical Commission and Chamber of Commerce have both said they are in favor of the special permit.

Board Discussion -

Finneran – The sewer has nothing to do with the amount of available parking.

Public Comment –

Mary Downey, attorney for abutters – Read her memorandum, dated June 22, 2023, into the record (6 pages).

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Duffy – Attorney Downey has made some representations that you don't have adequate access for deliveries; can you comment on that?

Ament – We submitted a letter, long ago, from Gordon Food Services, that they will do the restaurant deliveries before 8 AM. They would either park on Main Street, or in Town Hall Square. There are a number of restaurants on Main Street that get deliveries, and not a single one has a loading zone that complies with the bylaws. There is no plan that identifies the way on 159 Main Street, and the repeated representations from Attorney Downey are inappropriate. The issues of easements are inappropriate; it is not up to this Board to determine this. If Attorney Downey's clients have a right to use the way, their remedy is to go to court, and prohibit us from building the deck. These claims keep getting made over and over again.

Potamis – I feel that all questions have been addressed and satisfied.

Duffy – I reject Attorney Downey's comments that there are some Board Members acting on behalf of the Applicant, or anyone else. I look at this case solely as a waiver for the parking requirements. I also follow Town Counsel's direction that the right-of-way is not in our purview, and it is up to the Applicant to get an injunction from the courts. The analysis of the parking, as provided by McMahan, suggested that the parking is sufficient in the downtown area. The additional parking for this deck really doesn't amount to anything, and it doesn't seem to justify the concern. When you are looking at parking waivers, you have to look at the whole Town. I'm very impressed that they have taken this seriously, and got additional parking spaces. I would be inclined to grant this.

Murphy – I agree with some points that Mr. Duffy made.

Ament – If you count the 2 dining areas and bar, you can have 88 seats, and we are proposing only 74 seats; that is not changing, and we are not increasing. We are taking 12 seats off the deck. 118 is the total number of seats and we could have; 88 seats inside the restaurant as a by-right.

Peterson – I also agree with most of what Mr. Duffy said, and we have heard a lot. The parking has become a problem, and the assessment has to be borne by the Town. That will take time.

Finneran made a motion to close the hearing. Duffy seconded the motion. Motion carried 5-0.

Potamis – I'm satisfied, Mr. Duffy summarized it well.

Finneran – My position hasn't changed; whatever the Town had as a policy was when we had unlimited parking. Seating has been reduced to 118; there are 59 parking spaces in Town Hall. I shared with you my experience, when I tried to get in last year, and the Select Board was holding a hearing for this project, on the Flow Neutral By-law. The Transportation Committee brought concerns forward to the Town, after a year's worth of work, and were ignored and frustrated. The Town Manager at that time did try to deal with this. At some point this problem has to be dealt with, and no one can deny there's not a parking problem here. We cannot deny them their restaurant, but we have to consider everyone. The problem has only gotten worse, and adding another 59 spaces isn't going to help; they are asking for extra, and that's what we would be denying them. That parking study was an insult to our intelligence. We have a problem, and we aren't dealing with it.

Murphy – I agree with Mr. Finneran; this Board asked for a traffic study and we were denied. I don't see how the parking would be enforced. If my daughter worked here, and was coming in

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for a 4:00 p.m. shift, and it was pouring rain, she would park here [Town Hall Square], and no one would know. I also wouldn't want my child, or anyone, walking from here to the Lawrence School at night, after their shift in the dark, to get to their car. I just don't see how the parking will be enforced for the employees.

Finneran – I worked in the business for a great deal of time, and after 9:30 – 10:00 p.m., when I used to work in a bar, I would walk the waitresses out to their cars. The wait staff won't park blocks away.

Potamis – The McMahon study was done by a professional. I think that we asked for a parking study, but I don't think that it was an aggressive discussion. We don't enforce anything; we could put some requirements in the decision, but I don't see those two issues rising to a denial.

Peterson – I think we were thinking of a more robust parking study.

Stockman – In the updated seating plan that was received, I made a note on page 7 of your draft, regarding the seating count. The architect recognized 118 seats, they also referenced a total of 139, I mistyped as 137. Per the Building Commissioner and Fire Department, they recommended that the waiver be granted for the total number of allowed seats, and not the number that they provided; it would be a matter of whether or not you want to limit them to 118 seats. We typically reference the plans in the decision.

Duffy – What is actually allowed is what we vote, and limit it in our decision. Mr. Ament gave testimony that there will be 118 seats. This parking issue will resolve itself; if no parking is available, people will stop coming, and that is a risk that developers take.

Potamis made a motion to approve the parking reduction, based on 118 seats. Duffy seconded the motion.

Roll Call Vote: Finneran – No, Murphy – No, Peterson – Aye, Duffy – Aye, Potamis – Aye
Motion did not carry with members Finneran and Murphy in opposition (3-2); application is denied.

Application #	Applicant Name:	Address:
075-22	Blue moon Sea Grill	159 main Street
Document (s) Submitted:	Date Submitted:	Submitted By:
Copies of revised sheet (FAI)	10/25/22	(Signature)
Letter from B. Ament	10/25/22	(Signature)
SP PB Application	10/25/22	(Signature)
Email from R. Mehta ^{w/2 photos}	10/25/22	(Signature)
Email/re: knd. J. Connick	10/27/22	(Signature)
letter w/ comment	10/27/22	(Signature)
PB letter	11/15/22	(Signature)
letter - A. Kirk	12/1/22	(Signature)
letter - M.O.D	12/2/22	(Signature)
letter - M. O'Connell-Dunne	12/5/22	(Signature)
Email - M. O'Connell Dunne	12/4/22	(Signature)
filed waiver Ext.	12/8/22	(Signature)
letter - Foley	12/9/22	(Signature)
letter - Vannerson	12/9/22	(Signature)
letter - M. O'Donnell-Dunne	12/12/22	(Signature)
Email - M. Praggno	12/15/22	(Signature)
letter - M. O'Dunne	12/9/23 1/3/23	(Signature)
filed waiver Ext	1/18/23	(Signature)
letter E. Kirk	1/25/23	(Signature)
Email - R. Mehta w/ attachments	2/1/23	(Signature)
filed extension	2/3/23	(Signature)
letters w/ attachments	4/5/23	(Signature)
letter of support - Ament	4/6/23	(Signature)
letter of support - Hilland	4/11/23	(Signature)
letter M. Downey	4/12/23	(Signature)

Application #	Applicant Name:	Address:
075-22	Blue Man Sea Grill, Inc.	159 Main St.
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / Fee	9/2/22	ament
owner / app. authorization	}	}
Flow Neutral approval		
Copy of PB application		
letter - Support Chamber of Comm.		
(9) copies site plan		
(9) sets arch plans.		
Request Abutters	9/7/22	AM
Request renewals	9/7/22	AM
Replene - planning	9/8/22	AM
Replene - Assessors	9/8/22	AM
Replene - H2O	9/12/22	AM
Rec'd Abutters	9/15/22	AM
Replene - ConCom	10/3/22	AM
Replene - Eng.	10/4/22	AM
email from M. Maggio ^{with attachments}	10/9/22	WS
Email w/ attachments ^{M. Maggio}	10/13/22	AM
Copy of email to M Maggio ^(BAMINT)	10/13/22	AM
Email w/ attachments	10/14/22	AM
Email from Neg. Maggio	10/14/22	AM
letter of fulfillment	10/24/22	AM
letter of support (colony)	10/25/22	AM
letter of support (freddy)	10/25/22	h
(6) pages of signatures (support)	10/25/22	AM

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Open Meeting:

- 1) Vote Minutes: May 4, 2023, May 11, 2023 and June 8, 2023
Finneran made a motion to approve the minutes of May 4, 2023, May 11, 2023 and June 8, 2023. Murphy seconded the motion. Motion carried 7-0. All in favor.
- 2) Review letter to Select Board re: Special Town Counsel – vote anticipated
Morse - We have a 40B Application, that has been submitted to the State, that is proposing 300+ units. That project will be coming before us, and given the size, I would like to request Special Town Counsel for this project. My suggestion is that we request someone be appointed that specializes in 40B.
Duffy – I do appreciate your comment that something at this magnitude will overwhelm Town Counsel’s office. I would agree with Mr. Morse.
Potamis – We should cc Town Counsel, the Planning Board and the Town Manager when this letter is sent out.
Murphy made a motion to approve the letter to the Select Board, to request funds for Special Town Counsel. Peterson seconded the motion. Motion carried 7-0. All in favor.
- 3) Board Discussion - none
- 4) Board Updates –
Morse - We are finally up to a full complement of the Board and we thank you for applying (Tony Petrucci).
- 5) Future Agenda Items - none

Meeting adjourned 9 PM.

Respectfully submitted,

Ashley E. DeMello, Office Assistant
Board of Appeals