

**Planning Board Meeting
March 8, 2023
Minutes**

These minutes are not verbatim – they are the secretary’s interpretation of what took place at the meeting. - Open Meeting Law, G.L. c. 30A§22.

Board Members: Tim Grandy, Steven Bolotin, Birgitta Kuehn, and Frank Mand
Staff Members: Robin Carver and Lee Hartmann
Recording Secretary: Eileen Hawthorne

Administrative Notes:

Minutes*:

January 25, 2023, February 8, 2023 and February 22, 2023

Birgitta Kuehn moved for the Board to approve the minutes of January 25, 2023, February 8, 2023 and February 22, 2023 as presented; Steven Bolotin, second; the **vote** was unanimous (4-0).

Covenants, Plans and Releases*: None

Form A Plans*:

A4848 – Pinehills LLC, Owl’s Nest, Map 78B, Lots 11-606 and S-279 – Lot Line Adjustment to create lots 11-704 and S-282

Steven Bolotin moved for the Board to determine that Form A plan A4848 was entitled to endorsement; Frank Mand, second; the **vote** was unanimous (4-0).

A4849 – Garibaldi Street Condominium Trust, 24 and 26 Garibaldi Street, Map 3, Lots 1-182 through 1-190 and Wood Builders Development Realty Trust, Plymouth Rock Terrace, Map 3, Lots 1-289 through 1-293 – Lot Line Adjustment to create lots 1-338 and 1-339

Frank Mand moved for the Board to determine that Form A plan A4849 was entitled to endorsement; Birgitta Kuehn, second; the **vote** was unanimous (4-0).

A4850 – Kapell Pinnacle Watercourse Trust, 420 Billington Street, Map 89, Lots 5-10 and 5-11 – Lot Line Adjustment to create lots 5-12 and 5-13

Birgitta Kuehn moved for the Board to determine that Form A plan A4850 was entitled to endorsement; Steven Bolotin, second; the **vote** was unanimous (4-0).

**ZBA 4087 – One Trick Pony LLC
7 Lincoln Street, Map 23, Lot 54**

Special Permit required per Section 203-9.C to alter a pre-existing nonconforming hotel use and structure

The Board received the following documentation for this review:

Staff Report

Project Narrative

Fire Department comments dated February 22, 2023

Building Footprint – Existing and Proposed Conditions

Building Elevations

Locus Map and site photographs

Site Plan dated February 10, 2023

Handouts: Engineering Department comments dated March 1, 2023

Plymouth Center Steering Committee comments dated March 6, 2023

James Kampper presented his request for a special permit to convert an existing storage space to a handicap accessible one bed unit as part of the Blue Anchor Motel.

The Board members and staff spoke in support of the project.

Birgitta Kuehn moved for the Board to recommend approval to the Zoning Board of Appeals subject to the following conditions:

Prior to issuance of a Building Permit a Municipal Lien Certificate shall be provided to the Building Commissioner as evidence of payment of any back taxes, fees or penalties owed to the Town, if any.

The Applicant must confirm that there are no proposed site changes as part of the change in use.

Steven Bolotin, second; the **vote** was unanimous (4-0).

Site Plan Review – WMG Plymouth Owner LLC

5 Resnik Road, Map 103, Lot 14K-189

Determination that the site is a unified complex and request for 26% reduction of parking spaces

The Board received the following documentation for this review:

Staff memo

Project Narrative dated February 10, 2023

Engineering Department comments dated September 30, 2022

Locus Map

Site Plans dated February 7, 2023

Handout: Engineering Department comments dated March 2, 2023

Atty. Robb D'Ambruso, D'Ambruso Law and Bill Shaw, Associated Engineering of Plymouth, Inc. reviewed the history of the subject property that was previously permitted for a storage facility and then subsequently an addition to the storage facility was approved in September.

The site plan review for the addition provided for seventy-eight parking spaces in total. In October, 2022 the bylaw was amended to expand the unified complex designation into the Mixed Commerce (MC) zone and allows for a 33% reduction in parking. This current site plan review is to designate the site which is both LI and MC as a unified complex and reduce the parking by 26% by eliminating 20 parking spaces and reducing the parking to 58 spaces - five in the front of the storage facility and 53 parking spaces shared with the adjacent medical office building. The area of the site where the 20 parking spaces were originally proposed would be landscaped. The Engineering Department has submitted an updated comment letter that all their concerns have been addressed.

Lee Hartmann acknowledged that the use is allowed by right and a self-storage facility is not a high-volume use, therefore the designation as a unified complex and the proposed reduction in parking is appropriate.

Steven Bolotin moved for the Board to determined that this project on Lot 14K-189 constitutes a unified complex with a reduction in parking as described in Section 203-1(D)3 of the Zoning Bylaw, and to notify the Building Commissioner that the extension of the unified complex to include the entire site and a 26% reduction in parking for a low traffic volume use (self-storage) is consistent with the intent of the unified complex provision of the Zoning Bylaw and the site plan complies with the minimum requirements of the Zoning Bylaw, provided that:

Prior to issuance of an Occupancy permit a Registered Professional Engineer must certify that the drainage system, drive ways, curbing and parking areas have been installed; and a registered landscape architect or other qualified licensed professional must certify that the landscaping has been installed; all according to accepted practices and in compliance with the Zoning By-law and the approved site plan.

Lighting is to comply with Section 205-65 Prevention of Light Pollution of the Zoning Bylaw and LED lights are required on the exterior of the building and on site.

All proposed plantings shall be native and/or salt tolerant, with the majority being native to the region. The Petitioner shall include native shrubs within the wildflower seed mix open area south of the building.

There are a number of materials that are listed as prohibited from being stored within the Aquifer Protection District. This list shall be posted in the building and included in lease documents that the storage of hazardous and toxic materials, petroleum, fuel oil, and heating oil are prohibited.

Frank Mand, second; the **vote** was unanimous (4-0).

ZBA 4086 – Janet M and Jean-Pierre Skov

163 Bay Shore Drive, Map 43, Lots B-56, (X Lots B-55 and B-67)

Special Permit required per Section 205-4 Dimensional Table to waive side setback to construct a deck and plunge pool

The Board received the following documentation for this review:

Staff Report

Engineering Department comments dated February 16, 2023

Fire Department comments dated February 22, 2023

Conservation Planner comments dated February 7, 2023

Locus Map

Pool Specs dated November 17, 2022

Site Plan dated January 15, 2023

Handout: Letter from Bradford Cushing dated March 2, 2023

Mark Flaherty, Flaherty & Stefani, Inc presented the request for a special permit in order to construct/install a 9'x16' plunge pool (4'-5' deep) with surrounding deck with a 6' side setback from the property line instead of the required 10' side setback. The Conservation Commission has reviewed and supported the project and the abutting neighbor has submitted a letter of support.

Robin Carver noted that the site is in an area with single family dwellings and wetlands. Ms. Carver stated that with the updated Engineering Dept. comments there are four conditions in the staff report that can be removed.

The Board members expressed their concerns with the impact of the proposed deck and pool on the septic system. They were concerned whether there would be adequate access to the septic system for pumping and/or repair. They were also concerned with how the winter maintenance of the pool (draining the water) would impact the septic system, the surrounding wetlands and might cause erosion.

Mr. Flaherty explained that a 40-millimeter-thick membrane would be surrounding the pool to prevent leakage/drainage to the septic system. He showed the locations of the deck footings and the hatches for access to the septic system for pumping and noted that erosion control measures would be installed during construction. He stated that he had a conversation with the Director of the Public Health Department who supported the proposed project. He will be obtaining a letter from the Director prior to the Zoning Board of Appeals public hearing.

Frank Mand suggested adding a condition that would require the septic system to be pumped on a regular schedule.

Mr. Hartmann explained that it would be difficult to enforce a condition that the septic system be pumped on a regular schedule but that it should be encouraged. The suggestion could be to add it under the Findings section.

Birgitta Kuehn requested more information about the size, age and condition of the septic tank and asked if there would be an inspection prior to construction. Ms. Kuehn noted that it is recommended that septic systems be pumped every three years.

Mr. Flaherty replied that there is a relatively new house on the site (built in 2017) and the septic system passed a Title V inspection last year.

Steven Bolotin moved for the Board to recommend approval of ZBA 4086 to the Zoning Board of Appeals with the following two items added to the Findings and the following Conditions:

Findings:

The Planning Board is requesting the Petitioner to adhere to MA Title 5 Septic System guidelines and clean out the septic system a minimum of every three (3) years; and to clean and inspect the existing system for any defects currently before plunge pool and deck are constructed. Provide a report from a licensed contractor.

The Planning Board is requesting the Petitioner to outline to the ZBA the maintenance and water management of the plunge pool and provide maintenance and winter closing procedures of the plunge pool such as when emptying or discharge of the pool that it ensures no negative affects to the existing septic system and/or adjacent wetland area.

Conditions:

Prior to issuance of a Zoning Permit a Municipal Lien Certificate shall be provided to the Building Commissioner as evidence of payment of any back taxes, fees or penalties owed to the Town, if any.

The Applicant is proposing to construct a deck over the existing septic tank and septic leaching field/distribution box. It is recommended that the Applicant demonstrate that adequate access will be maintained underneath the proposed deck to allow for septic system maintenance/pumping.

The Applicant should show all proposed sonotube/deck foundations to confirm no support structures will be placed on septic system components.

The Applicant should consult with the Public Health Department to determine if the proposed plunge pool is subject to Title V setbacks to a septic tank or leaching field.

The Applicant must show erosion control measures on the plan.

Frank Mand, second; the **vote** was unanimous (4-0).

B640 – 55 and 57 Doten Road TDR

Joshua and Sarah Bows, Map 42, Lots 43A, 43B, 43-9 and 43-10

Create 18 Transfer of Development Right Certificates preserving 17.77 acres under a Conservation Restriction

The Board received the following documentation for this review:

Staff Memo

Draft Vote

Project Narrative dated January 15, 2023

B631 – 57 Doten Road subdivision vote

Conceptual Subdivision Plan dated February 13, 2023

Subdivision Plan dated October 8, 2019

Lee Hartmann explained the Transfer of Development Right's process is where land in the R40 and RR zones that could be developed would be protected through the issuance of TDR certificates with the number of certificates based on the number of lots that could be created by right. The certificates would be banked for future use in developing another property. The petitioner has submitted a conceptual plan showing the layout for 18 lots. The number of certificates that could be issued would be 16 as two of the lots have existing dwellings on them. A special permit would be required to land the certificates in the future.

Joshua Bows, the petitioner explained that his property abuts the Holtec property and he is concerned with future development of that site. Mr. Bows explained that the previous owners of his property filed an RDD subdivision that preserved a large portion of the site as open space. He subsequently purchased an adjacent lot that provided additional frontage on Doten Road and could allow for a new subdivision road. He explained that his intention is to put the land that could be developed as shown on the conceptual plan under a Conservation Restriction (CR). The CR would provide his property with a more permanent buffer from future development of the abutting land.

The Board members supported the more permanent protection of the open space that the CR would accomplish.

Steven Bolotin moved for the Board to find that the conceptual road layout and lot dimensions are found to satisfy the requirements of the Planning Board under the Bylaw, grant the sixteen (16) TDR certificates, and to waive the requirements for an appraisal as the alternative use (a conceptual development plan) is adequate to establish the number of TDR certificates; Birgitta Kuehn, second; the **vote** was unanimous (4-0).

ZBA 4085 – Save the Pine Barrens, Inc.

Fire House Road and 140 Fire House Road, Map 121, Lots 1A and 2-2

Zoning Appeal under Mass. G.L. c.40A §7, 8, and 15 and ZBA Special Permit Case No. 3879 dated March 6, 2018, extended for 2 years on February 17, 2021 of the Building Commissioner's December 29, 2022 denial of the December 19, 2022 demand for enforcement of a cease and desist and remediation of unlawful earth removal at Fire House Road

The Board received the following documentation for this review:

Staff Report

Engineering Department comments dated February 17, 2023

Fire Department comments dated February 22, 2023

Conservation Planner comments dated February 7, 2023

Petitioner's submission dated January 26, 2023

Atty. Jonathan Polloni, Senie & Associates PC, representing Save the Pine Barren Inc., presented the appeal of the Building Commissioner's denial of a demand for enforcement request. The petitioner alleges that the construction of the tailwater recovery pond exceeded the parameters of the special permit for gravel removal that was issued under Zoning Board of Appeals (ZBA) Case No. 3879 by removing more material than was allowed and increasing the depth and area of the pond. They felt that the gravel removal was not necessary and incidental to the cranberry bog operation and the creation of a tailwater recovery pond did not warrant the removal of a forested area with high elevations. Atty. Polloni noted that the time period for the special permit has expired and the project has not been completed. He explained that the sand and gravel provides an important function by protecting the aquifer. There is no evidence that the nitrogen and pesticides from the cranberry bogs that were leaching into White Island Pond have been mitigated. He noted case law from Dunstable and the Dover Amendment that supported his position that there is no agricultural exemption for creating a tailwater recovery pond and the wetland protection bylaw has been violated.

Atty. Robb D'Ambruoso, D'Ambruoso Law presented a rebuttal to the argument that the tailwater recovery pond is not a permissible activity on an agricultural property. The Building Commissioner has determined that the project does comply with the special permit that was granted by the ZBA. An as-built plan has been submitted and engineering reports have been submitted quarterly as required.

Lee Hartmann explained that there is a disagreement about what is necessary and incidental, with the appeal petitioner stating that the tailwater recovery pond is not appropriate and the agricultural exemption language that is in the 2018 decision is not appropriate. He noted that the remedy to address the issues mentioned would have been to appeal the special permit that was granted by filing an appeal within 20 days of the recording of the decision with the Town Clerk. No evidence has been presented that more than five acres were disturbed at any given time and wetland protection is under the purview of the Conservation Commission. The staff recommendation has been drafted with assistance from Town Counsel. Mr. Hartmann explained that excavation outside the area shown on the plan resulted from using 21,500 cu yds of sand that was being removed from the excavation area to sand the 48 acres of bogs and then removing 21,500 cu yds of material from the borrow pit usually used to sand the bogs from the site. There is no evidence that the gravel removal exceeded what was permitted. Excavation beyond 10 ft. in depth is allowed when creating a pond or bog. The as-built plans that were received last week show that the amount of gravel removed from the site was the amount permitted and the maximum cut was 56 ft, not the 100 ft. as alleged.

Frank Mand expressed his concerns with the general process that allows for permitting gravel removal of close to one million cu yds from a large upland property. Mr. Mand asked if there was a process to appeal activity that exceeds the scope of a special permit. He stated that given the complexity of the assertions he did not feel qualified to make a decision at this time. Mr. Hartmann explained that if there is an allegation that work has exceeded the parameters of the special permit the Building Commissioner could schedule a site inspection and/or a cease and desist until the alleged violation is addressed. This would happen while the project is ongoing. In this case, we have a certification from a professional engineer that the project complies with what was permitted under the special permit.

Birgitta Kuehn supported the efforts of Save the Pine Barrens Inc to protect the sole source aquifer. Ms. Kuehn agreed with Mr. Mand that the appeal is complicated. She did not feel she had enough information to make a decision that would have any bearing on the appeal. Ms. Kuehn encouraged the cranberry growers to engage in practices that work toward protecting the sole source aquifer.

Steven Bolotin commented that once the special permit was issued the gravel removal was legal. There is no avenue for us to retroactively determine if the gravel removal was incidental. An appeal of the special permit should have been filed during the 20 day period after the vote was recorded with the Town Clerk. The Building Commissioner has the capability to determine whether a special permit has been violated and he reviewed the complaints and determined that the alleged violation was without basis. Mr. Bolotin stated that there is no proof of a violation and the request for a waiver of the \$1000 ZBA filing fee was inappropriate until such time that a court determines whether the fee is lawful.

Tim Grandy remarked that the project was approved by the ZBA in 2018 with conditions. Mr. Grandy supported the efforts of Save the Pine Barrens Inc to protect the aquifer and acknowledged that the professional engineers have certified that the gravel removal did not exceed the scope of the special permit. He did not feel that he could overturn the Building Commissioner's decisions. He encouraged Save the Pine Barrens and cranberry growers to work together with the Boards on future projects.

Ms. Kuehn asked if the tailwater recovery pond is functioning to keep nitrogen, phosphorous, and pesticides from leaching into White Island Pond.

Atty. D'Ambruoso replied that the tailwater recovery pond is used to irrigate, drain and flood the bogs instead of drawing water from White Island Pond. It eliminates the transfer of hazardous materials into White Island Pond.

Mr. Hartmann noted that the White Island Pond Association requested that the cranberry grower stop using White Island Pond for agricultural purposes.

Eric Pontiff explained that the water used for the cranberry bogs now comes from and is returned to the tailwater recovery pond. The chemicals entering the pond break down over time and are no longer discharged into or impact the water quality of White Island Pond. Mr. Pontiff confirmed that only 837,000 cu. yds of material was removed from the site.

Birgitta Kuehn moved for the Board to take no action on ZBA Case No. 4085; Steven Bolotin, second; the **vote** was (3-1) with Tim Grandy in opposition.

Mr. Hartmann stated that there will be no Planning Board recommendation forwarded to the ZBA and the staff report would be forwarded to the Zoning Board of Appeals.

Birgitta Kuehn moved for the Board to recommend that the tail water recovery pond be monitored to ensure that it is functioning as it has been designed and is no longer impacting the water quality of White Island Pond.

Atty. D'Ambruoso noted that the Board cannot impose a condition relative to water quality for an agricultural use.

Ms. Kuehn withdrew her motion.

Mr. Hartmann informed the Board that there are several similar filings submitted by Save the Pine Barrens group and asked the Board if they want to review each case.

Tim Grandy suggested that the Board review the next petition and make a determination as to whether they want to continue to review additional cases.

8:52

Other Business: *“Topics not reasonably anticipated by the Chair 48 hours in advance of the meeting.”*

Tim Grandy announced the Select Board has accepted a donation of land on Bourne Road from A D Makepeace for a future fire station. The donation will now be presented to Town Meeting for acceptance.

Steven Bolotin moved for the Board to adjourn at 8:52 p.m.; Birgitta Kuehn, second; the **vote** was unanimous (4-0).

***On file with the Office of Planning and Development in project case files.**

Respectfully Submitted,

Approved: March 22, 2023

Eileen Hawthorne
Administrative Assistant