Lagoon Ridge Subdivision Modifications
DRI 464-M4

Land Use Planning Committee
June 6, 2022
Lagoon Ridge Modifications

Owner/applicant: CapeBuilt Lagoon Ridge LLC (Eric Peters, agent)
Location: Land off Barnes and Double Ox Roads, Oak Bluffs
Original Proposal: A Form C Definitive Plan for a proposed subdivision of approximately 32.5 acres of land to create 23 lots with up to 25 dwelling units.

Decision filed 6/16/16
MVC 11/5/20 – Approved second extension through Nov. 5, 2024 (to record the subdivision plan and covenants)
LUPC 10/4/22 – Approved project phasing plan (Condition 2.3)
LUPC 5/2/22 – Approved share septic system documents (Condition 7.6)
Cluster B

Note: the precise location of the development envelopes is to be determined by the lot owner prior to construction.
Cluster A
Clusters B and C required to have a shared treatment facility.

Cluster A required to have nitrogen reduction systems.
Updates since 2016

• Planning Board Special Permit issued and revised in 2018 (included reconfiguration of Cluster C to have a 50 ft buffer of open space)
• MVC extensions granted in 2019 and 2020 (now valid through Nov. 5, 2024)
• Special Permit conditions 10, 11, and 12 amended in February 2021
  • Affordable units increased from 3 to 4, located on 2 lots in Cluster C as duplex units
  • The additional unit further restricted as one of the six units for occupancy by people 55 and older
  • Phasing plan (Cluster C → Cluster B → Cluster A)
Proposal (summary)

1. Eliminate conditions related to NHESP habitat
2. Modify decision so that no units will be restricted to people over 55
3. Eliminate requirement for surety bond to cover possible mitigation costs if the shared septic system does not work
1. Modify conditions related to NHESP habitat

8.2 As conditioned by the Division of Fisheries and Wildlife (DFW) Natural Heritage and Endangered Species Program (NHESP) based on a site plan prepared by Kristen Reiman dated March 26, 2014 for a development of a twenty-five (25) dwelling unit residential subdivision totaling 11.49 acres of permanent disturbance on a 32.1-acre property with 9.1 acres of the property to be permanently protected through a Declaration of Restriction and an additional 11.51-acres to remain as undisturbed open space, conditioned as follows:

8.2.1 Prior to start of Work, the Applicant shall record this (NHESP letter dated June 3, 2014) letter and the Site Plan in the Dukes County Registry of Deeds so as to become a recorded part of the chain of title for the Property. Prior to the start of Work, the applicant shall provide the Division with proof of said recordation.

8.2.2 Prior to the start of Work on each respective lot, symbolic fencing shall be erected around the limit of Work, as shown on the Site Plan, and maintained throughout the construction period. No work shall occur outside of the limit of work as shown on the Site Plan.

8.2.3 Within twelve (12) months of the start of Work, the Applicant shall provide proof to the Division (DFW and NHESP) of appropriate recordation of the above-referenced Declaration of Restriction in the Dukes County registry of Deeds so as to become a recorded part of the chain of title of the property.

8.3 Any substantial changes to this plan shall be submitted to the Natural Heritage and Endangered Species Program (NHESP) for further review.
1. Modify conditions related to NHESP habitat

**Staff comments**

- The applicant notes that the area was delisted as NHESP habitat in 2017, so the conditions are no longer applicable.

- The portions of the subdivision identified in Condition 8.2 are still restricted under Oak Bluffs Special Permit conditions 7-9, regardless of the NHESP designation.

- The property is currently listed as BioMap2 Core Habitat and Prime Forest Land by the state; and as “Exceptional” open space, according to the MVC Open Space Guideline Rating.
Condition 7: All open space shown on the Plan as “preserved open space” shall be conveyed by deed, approved as to its form by the Board and its counsel, to a duly created homeowners’ association for the development ... including that ownership of the open spaces passes with conveyance of the lots in perpetuity. [...] 

Condition 8: All open space shown on the Plan as “open space with deed restriction” – that is, the area outside of the roving development envelopes shown on Lots 1-4 and Lots 20-23 – is to be restricted under Section 7.3.14.4, which states that “a conservation restriction pursuant to G.L. c. 184, ss. 31-33 shall be placed on the land.” [...] 

Condition 9: The open space with deed restriction shown on Lots 1-4 and Lots 20-23 must be maintained in its natural state. The Declaration and any Declaration of Restrictions regarding open space with deed restriction shall reflect this condition, which is also required by the MVC Decision. 

Applicant should clarify whether this covers all 20.61 acres in MVC condition 8.2.
2. Eliminate 55+ restriction

Condition 11.1:

The Applicant shall follow the measures addressing the details of the six (6) units meeting “universal design” standards described in the covenants.

Staff comments

• The 55+ restriction was also required in the Oak Bluffs Special Permit Decisions from 2018 and 2021.

• OB Special Permit required that an application be filed with the Local Initiative Program (LIP) through the MA Dept. of Housing and Community Development so that the affordable units could be added to the town’s Subsidized Housing Inventory.

• In filing for the LIP, the applicant was advised by DHCD that the 55+ restriction violated the Fair Housing Act and would make the project ineligible for the LIP. The Oak Bluffs legal counsel and Planning Board chair have since concurred.
3. Eliminate requirement for surety bond

Condition 7.8:

If testing for the shared facility fails to meet nitrogen level requirements, and efforts to correct those failings are not successful, the Applicant shall provide mitigation (e.g. install and pay for I/A systems of all lots in the development and other parcels in the watershed) to offset the difference in the Nitrogen load. Prior to installation of the shared facility, the Applicant shall prepare a report detailing the safeguards and replacement guarantees to the functioning of the system once it is designed and installed. The Applicant shall provide a surety bond issued by an insurer qualified to do business in Massachusetts to cover the expense of such mitigation measures should they be necessary, the amount will be determined once the final system is designed. The bond shall be released to the Applicant after the facility 1) has been operational for one year, 2) has more than 50% of the 52 planned bedrooms for Cluster B and Cluster C contributing effluent to the facility for a minimum of six months, and 3) has satisfactory testing results for the most recent continuous six-month period.
3. Eliminate requirement for surety bond

Staff comments

• The applicant has provided a letter from CapeBuilt’s insurance agency stating that it was unable to find any bond products that would meet the requirements of Condition 7.8.

• The applicant notes:
  o The functionality of the proposed Amphidrome system has been demonstrated to a greater degree than in 2016.
  o The system was approved by the Oak Bluffs Board of Health with conditions in 2021.
  o A letter from the contracted water supply and pollution control company FR Mahoney & Associates confirming that the system is designed to meet a total nitrogen limit of less than 10 mg/L.

• The company has stated that while the system is designed to handle 6,100 gallons per day, it is conservatively sized and could handle 6,600 GPD in the winter and 8,000 GPD in the summer.

• An equipment warranty, Environmental Technology Verification Report, and letter from FR Mahoney describing the technology and safeguards, have also been provided.
Submittals

- Modification requests (3) with attachments
- Amphidrome installation lists
- Amphidrome brochure and system overview
- Reports on other Amphidrome projects
- DEP General Use Certification
- Environmental Technology Verification Report
- Equipment warranty
- FR Mahoney letters regarding technology and safeguards
- Applicant emails
• **Operations and maintenance costs:** Cape Built will initially subsidize the costs for O&M on a pro rata basis for homes within clusters A and B prior to transfer to buyers and will then turn responsibility for the O&M to the homeowners association. Pumping frequency is likely to be 2x per year but will depend on loading to the system and will be determined based on sludge and scum levels in the tank.

• **System operator:** Cape Built will contract with a local operator with the property wastewater operator license who will be trained by Amphidrome. Amphidrome will also offer support after the sale.

• **Alarms:** There is to be a power outage alarm. The pump alarms will have visual and audio alarms. All alarms will notify the operator via phone/text or other appropriate automated method. FR Mahoney will also ensure that the system is constructed with the ability to remotely access the system. The typical alarm package has a 12 volt battery, when AC power is lost it will notify the operator. In addition the 12 volt battery will report any alarms until the battery dies. The battery life is about 1-2 days. Once power is restored the battery will recharge itself, If the battery goes below 11 volts it will issue a low battery alarm as well.

• **Generator:** In the event of a power failure, the check valves allow for the water to flow through via gravity so water will still flow through the whole system normally even without pumps. In addition, Cape Built will install an automatic propane-fueled backup generator adjacent to the control house that will be capable of operating the Amphidrome system in the event of a prolonged power failure.
7.9) The Applicant shall submit a plan to cover the costs of maintaining the shared facility in perpetuity. The affordable housing lots and units shall be exempt from contributing to such costs unless the applicant or association, prior to the transfer of the affordable lots to the town, develops with the Dukes County Regional Housing Authority a contribution formula for these lots/units that does not jeopardize the affordability of said lots/units. Any such formula shall be approved by the Land Use Planning Committee of the MVC before being recorded or implemented.