1. DESCRIPTION

1.1 Owner/Applicant: CapeBuilt Lagoon Ridge LLC (Eric Peters, agent)

1.2 Project Location: Land on Double Ox Road, Hope’s Way, and Sages Way (Map 27, Lots 30-33; Map 28, Lots 30-46 and 50-51; Map 35, Lots 90-91), Oak Bluffs

1.3 Proposal: Modifications regarding 55+ age restriction, NHESP habitat, and surety bond for the septic system. (Amended modification request was submitted on 6/13/22.)

1.4 Zoning: Residential (R3). The Form C plan was based on the Oak Bluffs Flexible Development bylaw, which may allow density bonuses for certain obligations such as affordability, over 55 housing, and open space. Portions of the area are within the Lagoon Pond DCPC and Oak Bluffs Water Resource Protection District (WRPD).

1.5 Local Permits: Special Permit, Board of Health

1.6 Surrounding Land Uses: Rural residential subdivisions and woods.

1.7 Project History: The MVC approved DRI 464 (subdivision of land into three parcels) in 1998 with conditions; DRI 464-M2 (Form B Preliminary Plan for subdivision of about 32.5 acres to create 23 lots with up to 25 dwellings) in 2014 with conditions; and DRI 464-M3 (Form C Definitive Plan for the 23-lot subdivision in three clusters [A, B, and C]) in 2016 with conditions. As proposed in DRI 464-M3, between six and eight of the units in cluster C of the subdivision were to be restricted as housing for people over 55. The conditions included requirements that the applicant follow Universal Design standards for the 55+ units as described in the covenants, provide a surety bond to cover the expense of possible nitrogen mitigation measures, and various requirements related to the documentation and protection of NHESP habitat. The MVC voted in 2020 to extend DRI approval to Nov. 5, 2024. The LUPC approved the project’s phasing plan (Condition 2.3) in Oct. 2021, and to approve various documents related to the shared septic system (Condition 7.6) as they apply to clusters C and B in May 2022. (Cluster A will be developed later.)

1.8 Project Summary: The proposal consists of three parts:

1. Modify the conditions related to NHESP habitat as follows:

Eliminate the following:

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.

Add the following, which includes conditions in the Oak Bluffs Special Permit that pertain to open space:

8.1 As offered by the Applicant, over sixty (60%) of the acreage shall be preserved as open space in its natural state.

8.2 All open space shown on the Plan as “preserved open space” shall be conveyed by deed, approved as to its form by the Oak Bluffs Planning Board and its counsel, to a duly created homeowners’ association for the development, as provided for by Oak Bluffs Zoning Bylaw Section 7.3.14.3, including that ownership of the open space passes with conveyance of the lots in perpetuity. As provided for in Oak Bluffs Zoning Bylaw Section 7.3.14.3, the Declaration and any Declaration of Restrictions regarding open space shall explicitly state that the Town or its employees shall have the right to enforce the open space requirements in perpetuity, regardless of the expiration of any declarations, as this condition is being imposed in part as a necessary prerequisite to the issuance of this Special Permit. The Oak Bluffs Planning Board and its counsel shall review the final version of the Applicant’s Declaration and any Declaration of Restrictions regarding Open Space before endorsement or recording.

8.3 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 Oak Bluffs Zoning Bylaw 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.” As provided for in Oak Bluffs Zoning Bylaw Section 7.3.14.2, the Declaration of Covenants and the Declaration regarding open space with deed restriction shall explicitly state that the Town or its employees shall have the right to enforce the open space requirements in perpetuity, regardless of the expiration of any declarations, as this condition is being imposed in part as a necessary prerequisite to the issuance of the Special Permit issued by the Oak Bluffs Planning Board. The Oak Bluffs Planning Board and its counsel shall review...
the final version of the Applicant’s Declaration of Covenants and any Declaration of Restrictions regarding Open Space before endorsement or recording.

8.4 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.

8.5 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. [Same as original condition 8.2.2.]

8.6 Conditions 8.2 through 8.4 shall be completed within one year after the issuance of the first occupancy permit for a residence in Cluster C.

8.7 No wastewater treatment facilities shall be place outside of the development envelopes of lots in Clusters A and B.

Eliminate the following (in red):

6.1 Permitting from the Town
- The Applicant must, consistent with this Decision, apply to the appropriate Town of Oak Bluffs Officers and Boards for any local development permits which may be required by law.
- The permit-granting authorities of the Town of Oak Bluffs may now grant the request for approval of the Applicant’s Form C proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval.
- The Applicant shall not release or sell any lot until it has received a Certificate of Compliance issued by the Executive Director of the Martha’s Vineyard Commission confirming that the following conditions in this Decision has been satisfied: 2.2; 3.1; 4.1; 4.2; 4.3; 7.10; and 12.2.
- The Town building inspector shall not issue a Building Permit until it has received a Certificate of Compliance issued by the Executive Director of the Martha’s Vineyard Commission confirming that the following conditions in this Decision has been satisfied: 1.1; 2.3; 6.2; 7.2; 7.3; 7.4; 7.5; 8.1; 8.2.1; and 8.2.2.

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 as open space are still restricted under the 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.)

2. Modify the decision for DRI 464-M3 so that the subdivision will no longer have any units restricted to people over 55, and eliminate the following 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.

The 55+ restriction was also required in the Oak Bluffs Special Permit Decisions from 2018 and 2021. However, in filing for the Local Initiative Program (LIP) through the MA Dept. of Housing and Community Development (also required by the Oak Bluffs Special Permit, so that the affordable units could be added to the town’s Subsidized Housing Inventory), the applicant was advised 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. Modify the condition related to the septic system surety bond as follows:

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 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. In the event that a mitigation plan is required to offset the difference in the nitrogen load, the applicant/owner shall present the mitigation plan to LUPC for its review and approval.

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 also notes that the functionality of the proposed Amphidrome system has been demonstrated to a greater degree than in 2016, that the system was approved by the Oak Bluffs Board of Health with conditions in 2021, and that a letter from the contracted water supply and pollution control company FR Mahoney & Associates confirms 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.

2 ADMINISTRATIVE SUMMARY

DRI Referral: Self-referred. May 30, 2022
DRI Trigger: 1.3D (Previous DRI)
LUPC: June 6, 2022
MVC: June 23, 2022