



Town of Barnstable
Zoning Board of Appeals
Minutes
March 24, 2010

A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday March 24, 2010 at 7:00 PM at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. Present at the meeting were Board Members William H. Newton, Michael P. Hersey, and Laura F. Shufelt and Associate Members Alex M. Rodolakis, Brian Florence, and George T. Zevitas

A quorum was met. Also present were Art Traczyk – Principal Planner and Marjorie Watson – Administrative Assistant.

Laura Shufelt	Present
James McGillen	Absent
Michael Hersey	Present
Craig Larson	Absent
William Newton	Present
Alex Rodolakis	Present
Brian Florence	Present
George Zevitas	Present

Laura Shufelt opened the hearing at 7:07 pm. Ms. Shufelt then read Appeal No. 2009-025 into record.

Appeal No. 2009-025 – Re-Notice

EAC Disposal, Inc.

Modification of Variance No. 1996-14

Opened April 1, 2009, continued, May 20, 2009, August 5, 2009, September 23, 2009, November 4, 2009 December 9, 2009, February 10, 2010 and moved to February 24, 2010. Re-noticed due to the interruption caused by the weather closure of Town Hall on the evening of February 10, 2010.

EAC Disposal, Inc., d/b/a Cape Resources Company has applied for a Modification of Variance No. 1996-14. The modification is sought to allow for revisions to the site that include a new wood processor and staging

area, alteration to interior site circulation, and additions and alterations to screening berms and landscape. The property is addressed 280 Old Falmouth Road, Marstons Mills, MA as shown on Assessor's Map 100 as parcel 008. The lot is in a Residence F Zoning District.

Members assigned: William Newton, Michael Hersey, Alex Rodolakis, Brian Florence, and Laura Shufelt.

Attorney Charles Sabatt is present to represent EAC Disposal Inc. dba Cape Resources Company with their request to further modify the existing variance granted in 1996. Atty Sabatt explained that the essence of the modification lies in the layout of the site and then detailed the three specific changes being requested in terms of the written provisions of the variance. He entered into record a chart illustrating these changes.

Atty Sabatt stressed that there is no change to product being processed, hours of operation or other limitations as was placed in 1996.

Atty Sabatt detailed the major modifications to the new plan, the intent of which is to move the operations southerly away from the residents to the north.

The current placement of the center berm necessitated that machines and trucks would have to travel around the center berm to access material stored north of it which resulted in creation of dust from the movement of the trucks. EAC desires to move the operation southerly away from the residential neighborhood. The proposal is to remove the center berm, level off the southerly area of the site and reinforce, reconstruct and extend a northerly berm and construct a third berm on the east, adding a second layer of internal insulation. The work area will be southerly of the new interior berm and will remain in the yellow hatched area.

At this point, Atty Sabatt stated that Brian Yergatian of BSC Engineering, Site Plan Engineer and Will Conrad, Manager for Cape Resources, were also present.

Atty Sabatt said that the proposed plan will confine customer traffic to the southeasterly portion of the site. In addition, after product is processed through the building, subsequent processing will also be confined to the southerly end of the property. The fire road will be leveled and graded and a locked gate, accessible only by key held by the Fire Department, will be installed. A drainage basin will be installed in the southerly end and water will be retained and dissipated in the basin.

Atty Sabatt completed his presentation to the board. Ms. Shufelt opened up the meeting to questions from the board.

Brian Florence asked Atty Sabatt if his client has spoken to the neighbors for input. Atty Sabatt responded that they had not but would be willing to do so. Mr. Florence also asked what testing models and standards had been used to validate the proposed plan. Brian Yergatian stated that no specific standards had been used. Mr. Florence then asked if the client would have any objection to an independent peer review. Atty Sabatt stated that they would be agreeable but would like to have input as to who is chosen and an estimate of cost.

The board members then asked several more questions on specific details of the plan.

Ms. Shufelt then opened the meeting for public comment. Summary of comments is below:

Peter Kohler – 150 Chuckles Way, Marstons Mills

Mr. Kohler stated that he does not believe there has ever been an as built of the previous plan and questions if the plan submitted today is an as built plan. Before moving forward, we should take the overlay of the yellow hatched area and overlay it to this plan. We need a cleaner, more detailed plan as to what exists today.

Mr. Kohler stated that item 10 of the original variance states that there should be a 100' vegetated buffer around the property; this does not exist.

Mr. Kohler does not believe the existing northerly berm is 75'; the original 1996 plan shows that there should be a 90' berm. He would like to see this addressed.

What will happen to material that is stockpiled? If it remains where it is, it should be vegetated to prevent it from blowing into the neighborhood.

Misters don't serve any purpose; they are a waste of water.

He would like the opportunity to meet with Cape Resources.

Are there standards for noise and dust for an operation of this size?

The operation does not change much from 1996; it was found to be a nuisance in the courts. The permit is supposed to be for our protection and we would like to make sure that we can work through it to make sure that we don't have to deal with the nuisance going forward. The plan is missing detail and information. We were given the same type of plan in 1996 and the 26 assurances in that plan were never met.

Kathy Maloney – 16 Braddock Drive, Marstons Mills

There are issues that have not changed over the years and need to be dealt with. There needs to be specific ways to monitor noise, odor, dust; Ms. Maloney asks the ZBA to require these monitors.

Ms. Maloney referred to the site plan review comments regarding DEP and EPA standards. DEP informed Ms. Maloney that DEP standards were not applicable to this site as it was located in a residential area, which was not typical for this type of operation. She asked that the best practices be appropriate for a residential area.

Ms. Maloney also requested that changes to the northerly berm be made in the off season to minimize the effects of dust and debris on the neighborhood.

Ms. Maloney stated that a row of arborvitae will not look like natural topography.

Terry Maloney – 16 Braddock Drive, Marstons Mills

Mr. Maloney stated that he likes the idea of working with Cape Resources, although he said that this was done before and the original plan was never followed. This is his concern after 14 years working on this. Mr. Maloney would like to see some monitoring of the process. Mr. Maloney stated that over the years the company has been sold and each time the use becomes intensified. He asks that the building inspector come out once a year for a formal visit. He also suggests an operations plan that is updated by Cape Resources on a regular basis including a list of complaints and how they are addressed. He also suggested that a copy of the variance be displayed in the Cape Resource office.

Mr. Maloney then thanked the board for their attention to this matter.

End of public comment.

The board members agreed to a site visit on Tuesday, May 18, 2010 at noon.

A discussion followed regarding the hiring of an outside consultant to assist the board in evaluating the proposal in terms of noise, dust, and odor levels. Town staff will meet with the applicants to discuss the scope of service.

A motion was then made by William Newton, seconded by Brian Florence, to authorize the hiring of outside counsel to assist the board in evaluating this proposal.

All in favor.

Laura Shufelt requested that the final proposed plan label and quantify the buffer for the entire site. Ms. Shufelt also asked that the applicant provide, for the next meeting, the calculation of the square feet of work area excluding the berms (both existing and proposed) and labeling of the number, type and height of landscape materials.

Atty Sabatt will provide a list for the board of items that are being asked to be waived.

A motion was made by Brian Florence, seconded by Bill Newton, to continue this to April 14, 2010, at 7 pm.

Motion to adjourn; seconded. All in favor. Meeting adjourned at 8:45 pm.