



Town of Barnstable
Zoning Board of Appeals
Minutes
July 27, 2011

Laura Shufelt - Chair	Present
William Newton – Clerk	Present
Michael Hersey	Absent
Craig Larson	Absent
Alex Rodolakis	Absent
Brian Florence	Present
George Zevitas	Present

Also present were Elizabeth Jenkins – Principal Planner and Carol Puckett – Administrative Assistant.

Laura Shufelt opens the hearing at 7:05 PM

Introduction of Board Members – Board members introduce themselves.

Laura indicates that first is EAC Disposal, Inc., and reads the appeal into the record:

**7:00 PM Appeal No. 2009-025 – Continued 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, moved to February 24, 2010, April 14, 2010, May 26, 2010, July 14, 2010, August 11, 2010, September 15, 2010, October 27, 2010, December 1, 2010, February 2, 2011., March 9, 2011, April 13, 2011, May 11, 2011, June 8, 2011, June 22, 2011 and July 27, 2011..

Board Members Assigned: William H. Newton, George T. Zevitas, Brian Florence, Alex M. Rodolakis, Laura F. Shufelt
Extension granted June 8, 2011 to extend 60 days Decision Due: August 20, 2011

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 present tonight: William Newton, Brian Florence, George Zevitas, Laura Shufelt. Alex Rodolakis will be watching from home.

Attorney Sabatt is representing the applicant. He wants to review the areas of disagreement on the draft decision which has been prepared by staff. First, this activity is an important service especially in the mid-cape area as there is no other facility to take in yard waste material. The landfill will not take in trees, limbs, etc., and as far as this town is concerned, there would be no other place to dispose of it. The concerns of the neighbors are significant and the burden is on his client to live in harmony with the neighbors. He would ask to weigh or balance the need against the interests in the draft decision. The plan that been put

forward by his client was to create a more efficient operation but also to address the neighborhood concerns. The majority of the stockpiling was moved as further away from the north and northerly corner, they are aware of the complaints, and there has been a serious effort to try and accommodate that and resolve those concerns. The extension of the berm and the placement of the activities to minimize the impact of this facility were taken. His client started that way and is still on that track. The places there are issues are: Item #12 on page 6 of the draft decision.

William Newton asks if he has any problems with the findings. Attorney Sabatt indicates that he does not have a problem with them but talks about going back to Site Plan Review. Attorney Sabatt then wants to address Item #12 and indicates that it is their position today that those mists are no longer necessary. When this site was developed 15 years, the berm was new and there was no growth. Today, there is growth which was an objective initiated back then. To get the mists to operate properly the trees would have to be trimmed and the growth would be sufficient. The mists conflict with the growth of the trees and they believe it is inevitable to eliminate the mists. Back in 1993, he is not sure if there was a water truck but will continue that practice in order to keep the dust down. He wants to address the asphaltting of the circular drive in the draft decision and is disagreeing with this at the moment provided they could achieve other more important objectives.

William Newton asks Attorney Sabatt if they would have difficulty going back to Site Plan Review as he would like to hear from them. Laura indicates that is why they have hired the consultant. Elizabeth Jenkins doesn't believe that the consultant's report made reference to the mists and that it was in the original 1993 decision and would like to ask the consultant about the growth on the berms and the height of the berms.

Attorney Sabatt addresses page 7, #'s 14, 15 & 16. He indicates that these are standards for a large composting operation. He indicates that their proposed methodology is that there would be 3 compost piles, with each operating every three years so that two of those piles would be undisturbed for one year resulting in minimal turning of the piles lessening the potential for odor. The consultant called for a blower which would have to operate on a regular daily basis creating noise which is what they are trying to escape from. Also, this methodology would increase the potential for odors. When they talked to the consultant about this, the consultant asked for volumes as he said it might have a bearing on the volume of the composting that they do. His method is costly for his client and feels it would be counter-productive. Attorney Sabatt indicates that their engineer, Nate Weeks, is here. Attorney Sabatt indicates that We Care indicates that this is their smallest operation compared to another facility in New York.

Mr. Weeks from GHD speaks. He indicates that the consultant recommended there be a blower running 24 hours a day and a building for the power and that the piles be constructed by a loader. This is used for high rate processes. He explains the aerobic processes. The proposal from Mr. McCarron was to switch to a higher rate process. There could be more materials brought in but there hasn't been a need for that type of facility. The materials that come in are from landscapers which is a way to dispose of the low flow and is why they would recommend this process. He believes that this facility processes approximately 3000 tons per year according to DEP.

Brian Florence asks if there is any documentation comparing standard processes. Mr. Weeks indicates that there are choices and that anaerobic processes produce less odors if operated properly, take longer time, have longer rates and does not require a blower 24/7 and would recommend this for this site.

Attorney Sabatt talks about the blower running 24/7 which might contribute to the noise issue and that the last time they were here with the consultant they talked about running the machine outside of the structure. His client has been willing to house the two machines at issue inside a building. He would like the board to consider that concession and asks if they could let his client choose the composting method.

William Newton talks about continuing with the consultant. Attorney Sabatt indicates that they are prepared to go forward with the funding.

Assistant Town Attorney Charlie McLaughlin indicates that it would be helpful that information in terms of findings for the proposal address the periodic turning of the piles but is not sure how much noise, odor or frequency. He would ask for factual analysis regarding the comparison with the blowing method and is not sure that this board has all the information.

Laura asks for those facts be given to the consultant.

Attorney Sabatt then talks about the building that will house the machinery. He thinks that the design of the structure would be better worked out with staff. They do agree and will construct the building and house the machinery within it. The colorizing machine will also be in the building but if there is a colorizing process without grinding they would like language to address that.

Page 8

Item #22

Attorney Sabatt indicates that it will be a matter of what is consistent. Laura asks what it was based on. Elizabeth says it was recommended.

Item #23

As to the vegetated buffer, the language is similar to the original variance which hasn't been done as there is a structure within that area. They would be asking to be relieved from the 100 foot vegetated requirement along Old Falmouth Road as it is a fire road and is a pre-existing area. He indicates that there will be a stockade fence with plantings in front of it. The landfill is across the street and there would be no one impacted visually but asks to be relieved on the southerly side and to maintain the current vegetated buffer there. Brian Florence asks if there would be a problem with a condition about maintaining the fence. Attorney Sabatt is agreeable.

Item #25

Regarding maintaining a mulch pile, Attorney Sabatt indicates that they would like to maintain a pile there as it acts as a sound barrier and would like to discuss with staff. They are agreeable to a 12 foot fence and will maintain it.

Item #27

Regarding the asphaltting of the circular driveway, Attorney Sabatt indicates that it is a cost issue and that they would be willing to concede but for now would like a hard compact surface. He talks about starting with hard packed stone and maybe meet with staff or the Building Commissioner in the future.

Item #29

Regarding tailings, isn't sure how they could possibly comply with it. Elizabeth Jenkins indicates that it wasn't in the Best Management Practice plan and was called out by the consultant. There was no plan for removing these tailings in that they are not allowed to do any permanent on-site disposal and what would happen to these tailings. The consultant recommended that there be a plan as to what would happen at the end of the day to these tailings.

Attorney Sabatt thinks it can be worked out with staff

Item #31 C

Attorney Sabatt indicates that it was addressed in another item

Page 10

Items #38 to 48

Attorney Sabatt indicates that his client will agree to periodic monitoring and would propose semi-annually. His client has no problem with arranging or paying for it.

Item #47

Regarding the daily log, Attorney Sabatt would like to modify and refine and would like the opportunity to meet with staff regarding on providing a reasonable log.

Laura indicates that it is in the Best Management Practices. Elizabeth comments that the noise level would be at the residential abutting property line and not in work area.

Item #50

Duration of the variance, Attorney Sabatt indicates that it was in the original variance and is a major issue for them. In consultation with Charlie McLaughlin and staff, it would need to be advertised and Attorney Sabatt indicates that he will make an additional filing, get it advertised and bring it to the board on the final night to make all the changes as this is a significant investment. He feels that if they can work out the conditions that the termination date could be eliminated.

Charlie McLaughlin indicates that he doesn't want any possibility about the length of this and would suggest enough time be given to the applicant to get it advertised and get the notice out.

Laura talks about condition #3 and wants to address it. Attorney Sabatt indicates that it would appear that they would have to develop these plans, approved at various levels, and then the one year period would begin. Laura asks about a time frame on getting the plans.

Elizabeth wants to clarify the site plan review issue. She would like input from the board regarding that and asks if the board would prefer formal or informal Site Plan Review. The board discusses. The board thinks that there should be an informal site plan review before next meeting of this appeal.

Laura asks if there anyone here from the public who would like to speak either in favor or in opposition.

Peter Kohler would like to recommend that the turning of the piles of compost materials be done at the beginning of the week during normal working hours instead of the weekends when people are more likely to be outside. He would suggest that there be minimal processing on the weekends. Attorney Sabatt clarifies how often the piles are disturbed. Mr. Kohler then comments that the monitoring record wouldn't have to be in great detail, however, if there is a complaint that day they could see what might've caused it. He also indicates that there is a machine with large cylinders that sifts the loam outside of a building and doesn't see it referenced in the conditions. He thinks it should be tested to see what the noise level it is at. He also wants to know who would post the testing of the noise levels and thinks inspections should be initiated by the Town or third party. As far as the loam pile by the office, he doesn't see it as being an issue with it being there. He also asks what the long range plan would be for the facility and their expected shelf life. He believes that the continuation of utilizing the mixers will encourage growth.

Terry Maloney from 16 Braddock Lane appreciates the board's efforts. He indicates that with the delivery and moving of the piles there will be odor and that a modern blower process should be pursued. He supports keeping the 2015 date. This operation should be kept in compliance.

William Newton asks Mr. Maloney if not having the operation doing business on Saturday would be helpful, Mr. Maloney answers yes.

Kathy Maloney thinks the anaerobic process is still stinky. Brian Florence explains that both processes are the same as far as aerobic. Also, about grinding in a building it is required as part of their original existing variance. She also believes that the ten decibels mentioned is part of the original variance. She wants to note that as far as the colorization process is concerned, that in the past, they had added red coloring which was airborne and could be found on neighbor's outdoor furniture.

Laura would like the Building Commissioner, Tom Perry's opinion as to if it would be something he could enforce.

Brian Florence asks about sifting loam in the building. Attorney Sabatt thinks that they could not do sifting in a building and will try to address that. Brian also asks about exploring the testing to the satisfaction of the neighbors. Brian also wants to explore the processes during normal work hours and not the weekend. Attorney Sabatt indicates that currently, the operation closes at noon on Saturday but will look into that possibility.

They discuss a continuance. Attorney Sabatt to sign an extension of time. Motion is made by Brian Florence and seconded by George Zevitas to continue this to September 14th at 7:00 PM.

CONTINUED TO SEPTEMBER 14, 2011 at 7:00 PM

Laura then calls the Leoni appeals

**7:05 PM Appeal No. 2011-025 – Continued Ray D. Leoni Nominee Trust – Ray D. Leoni
Trustee
Enforcement Action**

Ray D. Leoni, Trustee of the Ray D. Leoni Nominee Trust has appealed the Building Commissioner's decision to deny the issuance of a building permit for the alteration of an existing pier in accordance with Section 240-131.4(D)(1) *Craigville Beach District Use Regulations - Change, Expansion or Alteration of Uses and Structures As of Right*. The appellant sought to alter an existing pier as-of-right on an accessory lot located opposite and across the road from the principal lot on which the single-family dwelling is located. The principal lot is addressed 22 Coddington Road, Centerville, MA as shown on Assessor's Map 186 as Parcel 052 and the accessory lot is addressed 47 Ladd Road, Centerville MA as shown on Assessor's Map 206 as Parcel 059-001. They are in the Craigville Beach (CRD) zoning district and the Centerville River North Bank Neighborhood overlay district.

Opened June 22, 2011. No members assigned. No testimony taken. Agreement to extend time limits signed. New Decision Due Date = October 03, 2011.

**7:05 PM Appeal No. 2011-026 – Continued Ray D. Leoni Nominee Trust – Ray D. Leoni Trustee
Special Permit – Craigville Beach District Use Regulations**

Ray D. Leoni, Trustee of the Ray D. Leoni Nominee Trust has petitioned for a Special Permit pursuant to Section 240-131.4(D)(2) *Craigville Beach District Use Regulations - Change, Expansion or Alteration of Uses and Structures by Special Permit* or, in the alternative, a Special Permit pursuant to Section 240-44(A) *Accessory Uses Permitted with Special Permits*. The petitioner is seeking to alter an existing pier on an accessory lot located opposite and across the road from the principal lot on which the single-family dwelling is located. The principal lot is addressed 22 Coddington Road, Centerville, MA as shown on Assessor's Map 186 as Parcel 052 and the accessory lot is addressed 47 Ladd Road, Centerville MA as shown on Assessor's Map 206 as

Parcel 059-001. They are in the Craigville Beach (CRD) zoning district and the Centerville River North Bank Neighborhood overlay district.

Opened June 22, 2011. No members assigned. No testimony taken. Agreement to extend time limits signed. New Decision Due Date = November 19, 2011.

**7:05 PM Appeal No. 2011-027 – Continued Ray D. Leoni Nominee Trust – Ray D. Leoni Trustee
Variance – Subordinate Nature of Accessory Uses**

Ray D. Leoni, Trustee of the Ray D. Leoni Nominee Trust has applied for a variance to Section 240-43 *Incidental and Subordinate Nature of Accessory Uses*. The applicant is seeking to alter an existing pier on an accessory lot located opposite and across the road from the principal lot on which the single-family dwelling is located. The principal lot is addressed 22 Coddington Road, Centerville, MA as shown on Assessor’s Map 186 as Parcel 052 and the accessory lot is addressed 47 Ladd Road, Centerville MA as shown on Assessor’s Map 206 as Parcel 059-001. They are in the Craigville Beach (CRD) zoning district and the Centerville River North Bank overlay district.

Opened June 22, 2011. No members assigned. No testimony taken. Agreement to extend time limits signed. New Decision Due Date = October 03, 2011.

Laura Shufelt indicates that a letter has been submitted by Attorney Albert Schulz asking for a continuance.

Motion is made by Laura Shufelt and seconded by William Newton to continue this to August 24, 2011 at 7:00 PM

CONTINUED TO AUGUST 24, 2011 AT 7:00 PM

A motion is made by Brian Florence and seconded by William Newton to adjourn.

Vote:

All in favor.

Meeting adjourned at 8:50 PM