

On August 24, 2023, on a motion by Mr. Martin seconded by Mr. Fraprie, the Board voted 5-0 to approve these minutes.

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**TOWN OF YARMOUTH
ZONING BOARD OF APPEALS
MINUTES for JULY 27, 2023**

The Yarmouth Board of Appeals met in quorum at 6:00p.m. on Thursday, July 27, 2023 in the Hearing Room at the Yarmouth Town Offices, located at 1146 Route 28, South Yarmouth, MA. The meeting was held in hybrid mode, where the public could attend in person or via Zoom.

Board Members Present and Voting: Chairman DeYoung, Mr. Igoe, Mr. Martin, Mr. Fraprie, Mr. Mantoni, and Ms. Murphy (Alternate).

Staff Present: Kathryn Brooks

SPECIAL PERMIT 4965: Camp Wingate Kirkland, 79 White Rock Road, Yarmouth Port, MA. Map & Lot #: 115.233.1.1. Zoning District: R-40 & APD. One-year review of the conditions per condition #7 of Special Permit No. 4965 dated August 8, 2022.

On July 28, 2022, the Zoning Board of Appeals granted Special Permit No. 4965 to the Petitioner, which owns and operates Camp Wingate*Kirkland on the subject property, authorizing the use of an approximately 255 square foot addition to the "Lodge 8" building and of an approximately 708 square foot Yurt/Tent structure at the camp, subject to specified conditions. One of the conditions of that decision was that the Petitioner come back to the Board a year later (i.e., July 2023) to review compliance with the conditions.

Appearing on behalf of the Petitioner was William Rubenstein, one of the principals, and Attorney Eliza Cox of Nutter McClennen & Fish, LLP.

Attorney Cox provided a handout to the Board and marked as Exhibit 1 by Chairman DeYoung.

The Petitioners discussed compliance with each of the 7 conditions of the July 2022 decision, as follows:

Condition 1) There be no occupancy of the yurt and the newly constructed addition to Lodge 8 until such time as there is a certificate of occupancy issued following inspection of both the yurt and the addition and by both the Building Department and the Board of Health: The Petitioners provided a copy of the June 5, 2023 Certificate of Inspection issued by the Town of Yarmouth as Exhibit A to the Handout, which specified the occupiable structures on the premises, including Lodge 8. The Yurt was not listed on the document. The Petitioners explained that the Yurt was not being occupied as the Petitioners were still working through code safety measures.

Condition 2) That all deliveries/trash removal to the camp and to the property from White Rock Road and that such deliveries occur between the hours of 10 AM to 4 PM: Exhibit B to the Handout was a letter dated June 1, 2022 [sic](the Petitioner testified at the hearing that the date of the letter was a typo and that the letter was sent on June 1, 2023) to the Camp vendors and delivery providers reminding them to comply with the conditions of the decision. The Petitioner indicated that it may, in the future, seek permission to modify this condition, but until

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that time, would continue to abide by the condition and instruct delivery drivers to operate in accordance with the condition.

Condition 3) That there be no further expansion of any structure or construction of any new structure at this property without Zoning Board approval: The Petitioner confirmed that there have been no expansion of existing structures or construction of new structures without approval by the Board.

Condition 4) That the petitioner have annual inspections by the Board of Health and Building Department: Exhibit A and C of the Handout confirmed annual inspection by the Town of Yarmouth Building and Health Department.

Condition 5) That no business be conducted on this property except that of the Camp: The Petitioner confirmed that the Camp is the only business conducted on the subject property.

Condition 6) That the staff/campers will not ring the camp bell after sundown: Exhibit D of the Handout contained an excerpt from the Camp's Staff Manual instructing that the camp bells are not allowed to be rung after sundown.

Condition 7) That the petitioner return to this Board at the end of July 2023. To review with the Board its compliance with the prior conditions: The Petitioner's attendance at this meeting documented compliance with this condition.

Board Questions/Answers:

As needed, the Camp redirects deliveries every day for vendors not coming in the way the condition is set due to a change in the driver.

No Public Comments.

Vote:

A motion was made by Mr. Fraprie and seconded by Mr. Martin that the Petitioner did not need to return to the Board for another annual compliance review, and that the Board was satisfied that the Petitioner had met all the conditions of the July 2022 Special Permit.

On a roll call vote (5-0), the motion was approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

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PETITION 5038: Matthew and Robyn Feid. Property Location: 184 South Sea Avenue #10, West Yarmouth, MA. Map & Lot #: 17.136.C10. Zoning District: R-25. The Applicant seeks a Special Permit per §104.3.2(4) and/or a Variance from §203.5 to expand deck in a preexisting, nonconforming use.

Matthew Feid, the property owner, provided an overview. Would like to expand the deck to enjoy the water view. The petitioner noted approval from Conservation Commission and a letter of support, signed by 3 abutters. Current deck is 3’x6’. The new deck is 18 feet long and goes out a maximum of 10’ depending on the line for the Conservation land.

Board Questions:

- Proposed mitigation area: An area that the applicant proposed prior to appearing before the Conservation Commission, but the mitigation area is *not* part of an Order of Conditions.
- Elevation of deck platform: 6 feet.
- Existing landings on each side of the house are identical staircases.

Public Comments:

Chairman DeYoung noted the Conservation Commission memo; approval from the petitioner’s Condominium Board; and read into the record a letter of support signed by 3 neighbors: Susan Handel (Unit #9); Leslie Cotter (Unit #11); Jack Elliott (Unit #12).

Board Discussion:

This petition is a reasonable request, as we’ve tried to be accommodating to exterior decks, which are not living space. A recent ZBA petition for a raze/replace, second-floor expansion, and full basement – a significant increase in living space – was denied.

Vote:

A motion was made by Mr. Fraprie and seconded by Mr. Martin to approve the Special Permit as requested.

On a roll call vote (5-0), the request for Special Permit was approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

A request was made by the petitioner to withdraw the Variance, without prejudice.

A motion was made by Mr. Fraprie and seconded by Mr. Martin to allow the petitioner to withdraw the request for Variance, without prejudice.

On a roll call vote (5-0), the request to withdraw the Variance, without prejudice, was approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE

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- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

PETITION 5039: Michael Mettey, 503 Route 28, Unit 18, West Yarmouth, MA. Map & Lot #: 31.35.C18. Zoning District: B-2. The Applicant seeks a Special Permit per §104.3.2 for a ground-level deck, pergola, and utility closet as part of a preexisting, nonconforming use.

Appearing on behalf of the Petitioner was Attorney Paul Tardif, joined later by the homeowner, Paul Mettey.

The Condominium Property, of which the Applicant's unit is part, is located in the B2 Zoning District and is improved with twenty five condominium units, and constructed in approximately 1950, spread over a lot containing 1.74 acres. Petitioner's Unit 18 consists of a one story, one bedroom, and contains 324 square feet. The Unit is approximately 40.5 feet from the nearest side boundary, 230 feet from the front boundary along Route 28, and 16 feet from the Unit located to the south of #18.

In 2015, the applicant constructed an approximately 230 square foot deck on the ground, and enclosed the water heater which had been moved to the outside of the unit at the suggestion of the insurance company that year. Over the years, the applicant had erected 2 metal pergolas, and finally replaced the last pergola with a wooden version in 2020, which is currently located on the deck.

The deck and pergola were built without the benefit of a building permit, but with the approval of the condominium association of unit owners. The deck is 29.5 feet from the side boundary, which complies with the 25-foot side setback requirement for the B2 Zoning District.

The need for relief was only recently learned when a Building Department representative was alerted to an illegal use being made of a different condominium Unit located directly on Route 28. The applicant is merely seeking to keep the deck, the utility closet built on that deck, and the wooden pergola. There are no changes to the inside of the unit.

Public Comments:

The Bayberry Village Condominium Association submitted a letter to reaffirm their original, and continued, approval of the improvements.

No abutters appeared in opposition to the project.

Board Questions:

The Board expressed concern regarding the safety of the utility closet, and questioned the size of the deck (i.e., the width of deck (21') exceeds the width of the house (18')). The Board was adamant that any change from the existing improvements would need to be brought back to the Board for further approval.

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Vote:

A motion was made by Mr. Igoe and seconded by Mr. Martin to approve the request for the Special Permit, with the following conditions:

1. No structural changes to the existing deck, utility shed and the pergola may be made without the further review and approval of the Zoning Board of Appeals;
2. An inspection by the Yarmouth Fire Department will be conducted to determine that the utility closet and venting of the same are in compliance with the fire code;
3. An inspection by the Building Department of the plumbing and wiring of the utility closet meet all building code requirements; and
4. Full compliance with all other conditions of the Building Department and Fire Department.

The members voted 5-0 as follows with Ms. Murphy present as an Alternate:

Steven DeYoung	-	Aye
Sean Igoe	-	Aye
Dick Martin	-	Aye
Jay Fraprie	-	Aye
John Mantoni	-	Aye

PETITION 5040: Allyn Chafetz, Trustee of the Chafetz Family Realty Trust, 6 Tall Pines Drive, Yarmouth Port, MA. Map & Lot #: 117.15. Zoning District: R-40. The Applicant seeks a Special Permit per §202.5, Footnote 12, O-8 Use to allow in-person psychotherapy sessions in home office.

Allyn Chafetz, represented herself and provided an overview of her petition. Since the pandemic, instead of visiting her clients at their homes, Ms. Chafetz’ elderly clients use the phone for psychotherapy sessions. Ms. Chafetz would like to see clients in-person again, except at her home office, instead of their homes.

Board Questions:

- Parking: Driveway is double wide. Due to confidentiality, there’s only one car visiting at a time. Clients are staggered, so they are not interacting.
- Hours: 9am-6pm. First client appointment at 9am and last client appointment at 5pm. Number of clients per day: Average of 4.

The following two parts of the bylaw are not incompatible. You can provide a professional service from a home office without clients coming to the property.

O-8 Use Footnote 12: “Allowed Board of Appeals as an accessory use in a dwelling provided that it is the principal residence of the person utilizing the office space.”

Zoning Bylaw §416.2(6): “Home Occupations shall not permit clients or customers on the premises, not have on-site retail, not result in increases to traffic or parking, and not permit deliveries or shipping other than through the US Postal Service, FedEx, UPS or similar services.”

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Public Comments.

Mr. Martin asked the petitioner if she was aware that neighbors had sent a letter in opposition to the petition. She was not aware. The letter was signed by 22 neighbors.

A request was made by the petitioner to withdraw the Special Permit, without prejudice.

Vote:

A motion was made by Mr. Igoe and seconded by Mr. Fraprie to allow the petitioner to withdraw the request for the Special Permit, without prejudice.

On a roll call vote (5-0), the request to withdraw the Special Permit, without prejudice, was approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

PETITION 5031: (continued from 6/22/23) **JDB 212 Mid-Tech Drive, LLC, Jeffrey Bilezikian, Manager. Property Location: 186-212 Mid-Tech Drive, West Yarmouth, MA. Map & Lot #: 84.12. Zoning District: B-3/APD.** The Applicant proposes to demolish the existing structure and parking lot and redevelop the property by constructing an 11,360 sq. ft. contractor bay building with 11 units and 33 parking spaces. The Applicant seeks a Special Permit per §§104.4.1 and 104.4.2 of the Zoning Bylaw to allow a condominium form of ownership for the contractor bay building. The Applicant seeks a Special Permit per § 202.5 and § 406.5 of the Zoning Bylaw to allow for a Contractor’s yard (non-hazardous) in the Aquifer Protection District. The Applicant seeks a Special Permit pursuant to § 104.3.2.3 of the Zoning Bylaw to raze and replace a nonconforming structure. The Applicant also seeks a Special Permit and/or Variance per § 301.4.1 to waive the requirement that parking areas be located at the side and/or rear of the principal structure; § 301.4.4 to waive the requirement that existing trees of at least 4” caliper within prescribed buffers be retained in parking areas for five (5) or more cars; § 301.4.6 to waive the requirement that the lot contain at least one (1) tree of 3” (three inch) caliper or larger per eight (8) cars be located within the parking area and dispersed throughout the parking area for parking lots for twenty (20) or more cars; and § 301.4.9 to waive the requirement that all lots in the B-3 District which shall contain a business use retain existing trees of at least 4” caliper within prescribed buffers.

Attorney John Kenney representing Jeffrey Bilezikian who is the manager of JDB 212 Mid-Tech Drive, LLC (and the initial trustee of the proposed condominium trust). With Attorney Kenney is John Lavelle, Baxter Nye Engineering.

Mr. Lavelle provided an overview:

- Site is more than one acre.
- Proposed: 11 contractor bays. 11,360 sq ft building. 33 parking spaces; 6 spaces north & south side of building are elongated (30 feet long) to accommodate contractors’ trailers.

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- Proposed building meets all setbacks.

Attorney Kenney provided a narrative:

- Raze/replace an existing building.
- Proposing a non-hazardous general contractors yard.
- Located within the Aquifer Protection District, Special Permit required.
- At this time, Mr. Bilezikian is unsure if he will sell or lease the contractor bays.
- Trees:
 - Proposing to clear vegetation and re-plant with 22 shrubs and shrub groups.
 - Proposing 5 trees even though the parking lot has 20 or more cars.
 - Removing trees to build the drainage swales.

Board Questions:

Mr. Martin: Thinks the existing building (2 levels, ~5,300 sq ft footprint) looks nice and the new building is much larger (1 level, ~11,000 sq ft footprint) and unattractive. He counted 50 large trees in the front buffer and beautiful in-lot trees that would be removed. On the plan, keeping ~5 original trees and planting ~5 more trees.

Mr. Fraprie:

- Proposed Building Coverage (on the lot): 18.9%
- Proposed Building Coverage + Impervious Surfaces: Allowed 70%. Existing 64%. Proposed 62%.

Mr. Igoe: Redesigned plan to show stormwater runoff *not* a swale at the front and façade “dressed up” better than existing plan (e.g., siding above the 4-foot concrete). See Ryan Family Amusements’ façade.

Mr. Mantoni: Asking for a lot of relief. What about scaling down the project?

Ms. Murphy (Alternate): No comments.

Chairman DeYoung: Can’t support it. Looks like a barracks. Needs to be redesigned.

Mr. Martin: It’s a 600-foot long building with 22 doors.

Concerns from the Board include the storage of hazardous materials, the removal of trees and buffer, the design of the exterior, and the Condominium Documents.

- At the next hearing, identify/show the provisions in the Condominium Documents that satisfy the Town of Yarmouth bylaws regarding management of the condominium.
 - 104.4.1 Any legally existing conforming or nonconforming structure or use may be converted to a condominium form of ownership with a Special Permit from the Board of Appeals if the Board of Appeals finds that there is no change of use, that **the declaration of condominium document(s) explicitly define the existing use (e.g. seasonal use, time sharing use, number of units, existence or absence of kitchen facilities, etc.) and that the “declaration of condominium document(s)” is written with proper management authority to insure maintenance and repair of public health and safety aspects (e.g. water lines, sewage facilities, etc.) of the property being converted.** The Site Plan Review Team may review condominium documents before application to the Board of Appeals, at the discretion of the Building Commissioner.
- What is the description of the storage of hazardous materials? How will the Aquifer Protection District and wellfields be protected?
- If there’s a decision, Attorney Kenney instructed to add the following to a draft:

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- Per the Building Commissioner, each unit will require its own Certificate of Occupancy, including any subsequent owners and tenants/lessees.
- Add the Health requirements, starting at the bottom of page 2 and continuing to all of page 3 from the August 16 Site Plan Review into a condition.

Attorney Kenney requested an extension and signed extension agreement to September 14, 2023.

Vote:

A motion was made by Mr. Igoe and seconded by Mr. Mantoni for a continuance to September 14, 2023.

On a roll call vote (5-0), the request for a continuance to September 14, 2023 was approved.

- Mr. Mantoni: AYE
- Mr. Igoe: AYE
- Mr. Fraprie: AYE
- Mr. Martin: AYE
- Chairman DeYoung: AYE

Adjournment: Mr. Igoe made a motion to adjourn, and Mr. Mantoni seconded. The July 27, 2023 Zoning Board of Appeals meeting adjourned at 8:16pm.