



**TOWN OF YARMOUTH
PLANNING BOARD
DECISION**

YARMOUTH TOWN CLERK

'13APR16PM8:22 REC

FILED WITH TOWN CLERK: April 16, 2013

PETITION: #109

HEARING DATE: March 20, 2013, (continued to April 3, 2013)

**PETITIONER:
& OWNER** Charles White Management Company, Inc.
330 Commonwealth Avenue, Boston, MA 02109

PROPERTY: 251 Route 28, West Yarmouth, Assessor's Map 37, Parcel 62.1.
Parcel located partially in the R25 Zoning District and partially in the
B2 Business/Hotel Motel Overlay District 1 (HMOD1) zoning
districts.

MEMBERS PRESENT AND VOTING: Chris Vincent, Brad Goodwin, Thomas Roche,
Tom DiPersio, Ken Driscoll and Norm Weare.

Notice of the hearing having been given by sending notice thereof to the petitioner and to all those owners of property, as required by law, and notice of the hearing to the public having been given by posting said notice with the Town Clerk and by publishing in *The Register* newspaper, the hearing was opened and held on the dates stated above.

PROJECT SUMMARY:

Charles White Management Company seeks a Special Permit pursuant to MGL Chapter 40A, Section 9 and Town of Yarmouth Zoning Bylaw 202.5.A2 to allow for two-family dwelling units within a B2 zoning district. The project includes 8.05 acres located at 251 Route 28, as shown on Assessor's Map 37, Parcel 62.1 and includes B2/HMOD1 and R25 zoning districts. The applicant recently subdivided this parcel into 4 lots, one lot fronting along Route 28 (Lot 1) and three lots in the rear of the original parcel (Lots 2, 3 and 4). Refer to Definitive Plan 2616F. Lot 1 currently contains a vacant commercial building with parking lot and two curb cuts along Route 28. Lots 2 and 4 currently contain vacant single family dwelling units, and Lot 3 is currently undeveloped.

The applicant is proposing to raze and replace the two existing single family dwellings with new two-family dwellings on Lots 2, 3 and 4; and raze and replace the existing retail commercial building on Lot 1 with a new mixed use commercial building to include two 1-bedroom dwelling units on the second floor, one of which is to be affordable. All proposed building locations are sited within the B2 zoning district. Under the proposed plan, all residential units would be rental units.

The project site includes various wetland resource areas which are under the jurisdiction of the Town of Yarmouth Conservation Commission (YCC), including wetlands, buffer areas, 100 year floodplain and 200' riparian zone from Chase Brook. The applicant has sought

and received an Order of Conditions from the YCC for the currently proposed project. The project also includes an Innovative/Alternative wastewater system, which discharges outside any of the wetland resource areas. The project results in the closing of one of the Route 28 curb cuts.

PLANS SUBMITTED AND MADE PART OF THIS DECISION:

Five Site Plans – All prepared for Charles White Management by Down Cape Engineering, 939 Route 6A, Yarmouth Port MA 02675

1. Sheet 1 of 5 – Existing Conditions plan, dated September 18, 2012, revised November 29, 2012, December 17, 2012, February 28, 2013 and March 29, 2013.
2. Sheet 2 of 5 – Layout/Landscape plan, dated September 18, 2012, revised November 29, 2012, December 17, 2012, February 28, 2013 and March 29, 2013.
3. Sheet 3 of 5 – Utilities/Grading plan, dated September 18, 2012, revised November 29, 2012, December 17, 2012, February 28, 2013 and March 29, 2013.
4. Sheet 4 of 5 – Details, dated September 18, 2012, revised November 29, 2012, December 17, 2012, February 28, 2013 and March 29, 2013.
5. Sheet 5 of 5 – Details, dated September 18, 2012, revised November 29, 2012, December 17, 2012, February 28, 2013 and March 29, 2013.
6. Turning Radius Sketch Plan, dated March 29, 2013.

DISCUSSION:

No letters in support of or in opposition to the project were received. No one spoke in favor or opposition to the Petition at the Public Hearings.

Attorney Michael Stusse, Dan Ojala of Down Cape Engineering, and Steve Shuman, Architect, represented the petitioner in their request for a Special Permit from the Planning Board pursuant to MGL Chapter 40A, Section 9 and Town of Yarmouth Zoning Bylaw 202.5.A2, to allow for two-family dwelling units within a B2 zoning district.

Dan Ojala of Down Cape Engineering gave an overview of the project including revisions made to the plans to address comments from Town Staff.

The Planning Board was pleased with the reduction of a curb cut along Route 28 and the use of an innovative/alternative wastewater system with disposal outside the wetland resource areas, rather than individual title 5 systems. There was limited discussion regarding the duplex on Lot 3 which may have more impacts to wetland resource areas than a single family home which may have a smaller footprint.

The main emphasis of the discussion regarding the Special Permit request was related to the number of affordable units being proposed. Although the petitioner's original application indicated the two apartments above the commercial building would both be affordable, the applicant modified this at the Public Hearing to be only one affordable unit. Mike Stusse indicated that two units were originally proposed as he was mistakenly under the impression that the units would be affordable for 15-20 years, when in actuality the Zoning Bylaw requires them to be affordable in perpetuity. As they are creating six *new* dwelling units, the zoning regulations only require one affordable unit. After discussion, the Board was comfortable with requiring only one of the units to be affordable in accordance with the

zoning bylaw, and leave it to the Community Housing Committee (CHC) to negotiate the details with the applicant.

FINDINGS:

The Board has reviewed the proposed plans with respect to the general criteria set forth in Bylaw Section 103.2.2 and finds that no undue nuisance, hazard, or congestion will be created by the granting of the requested Special Permits and there will be no harm to the established or future character of the neighborhood or town. The Planning Board reached this determination and allowed the requested relief from the Zoning Bylaw given by this Decision based on the following:

1. The Conservation Commission has issued Order of Conditions that would allow for the proposed duplexes on each lot and addressed the wetland and environmental resources on the property.
2. The development on Lot 1 is redevelopment of an existing, vacant commercial building and parking lot with the vast majority of the development being outside wetland resource areas and provides for a reduction in impervious area in the riparian zone. The development also includes streetscape improvements to improve the curb appeal of this property and screen the on-site parking.
3. One of the Route 28 curb cuts is being closed.
4. The two 1-bedroom units on Lot 1 are located in a mixed use building above the commercial area, resulting in no increase in the building footprint, and will utilize an otherwise unused space. One of these units will be affordable in perpetuity.
5. The proposed buildings on Lots 2 and 4 are in similar locations as the two existing dwelling units with the proposed building on Lot 4 being located further outside the riparian zone. Development on Lots 2 and 4 are in close proximity to the access road requiring shorter driveways and less fill in the floodplain.
6. The development on Lot 3 is occurring in an area which is mostly open lawn/meadow, and requires no additional clearing in the outer riparian zone. The impacts to the outer riparian zone are limited to mainly lawn and building roof. Clean stormwater runoff from the roof is being collected and infiltrated.
7. Lots 3 & 4 include a mixture of R25 residential and B2 business zoning districts. Duplexes are allowed by-right in the R25 zoning districts and are by Special Permit in B2. Although some lots have mixed zoning, the proposed buildings are located in the B2 zone and therefore, all lots require a Special Permit for duplexes.
8. Each building lot has sufficient area to accommodate duplexes.
9. Allowing duplexes on Lots 2, 3 and 4 in the rear of the property results in a net increase of four dwelling units.
10. The project provides an Innovative/Alternative (I/A) and pressure dosed wastewater system discharging outside of resource areas.

Finally, the Board also acknowledges that all cases are decided on their own specific facts, and granting the relief outlined in this Decision does not assure future applicants of similar outcomes.

VOTE: For these reasons and on a motion made by Brad Goodwin and seconded by Norm Weare the Board voted (6-0) unanimously to grant the applicant the requested relief for Petition #109 with conditions as follows:

RELIEF GRANTED FROM SECTION 202.5.A2 AND CONDITIONS FOR APPROVAL:

Relief is granted from Section 202.5.A2 – Use Regulation, to allow for two-family dwelling units to be located within a B2 zoning district on Lot 1, Lot 2, Lot 3 and Lot 4, with the following conditions:

1. The project shall consist of one (1) affordable 1-bedroom unit on Lot 1 to be located on the second floor of the proposed mixed use commercial building. The affordable unit or units shall qualify as low or moderate income units for the purposes of M.G.L. Ch 40B, sec. 20-23 and shall be in compliance with 760 CMR 56.00 the Local Initiative Program (LIP) and meet the guidelines and standards promulgated thereunder by the DHCD for the inclusion in the DHCD Ch 40B Subsidized Housing Inventory as Local Action Units. The affordable units shall comply with the Town of Yarmouth Affordable Housing Standards.
2. Duplexes on Lot 1 shall be located above the commercial space and shall not be in a separate or attached building.
3. Lot 3 shall have a minimum 12' wide paved driveway.
4. Each dwelling unit in the duplex buildings shall have their own water service with shut offs and shall meet the requirements of the town of Yarmouth Water Department.

No permit shall be issued until 20 days after the date of filing this decision with the Town Clerk of Yarmouth. Appeals from this decision shall be made pursuant to M.G.L., ch. 40A, §17 and must be filed within 20 days after filing of this notice/decision with the Town Clerk. This decision must be recorded at the Registry of Deeds and a copy forwarded to the Planning Board.



Christopher A. Vincent, Chairman
Yarmouth Planning Board