



**TOWN OF YARMOUTH
PLANNING BOARD
DECISION**

YARMOUTH TOWN CLERK

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FILED WITH TOWN CLERK: June 5, 2014

PETITION: #111

HEARING DATE: May 21, 2014

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

PROPERTY: 251 Route 28, West Yarmouth, Assessor's Map 37, Parcel 62.1.1.
Parcel located in the B2 Business/Hotel Motel Overlay District 1
(HMOD1) zoning districts.

MEMBERS PRESENT AND VOTING: Anthony Panebianco, Ken Driscoll, Chris Vincent, Thomas Roche, and Brad Goodwin.

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 date 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 a two-family dwelling units within a B2 zoning district on Lot 1 of Definitive Subdivision Plan 2616F (Beatrice Lane), 251 Route 28, West Yarmouth.

Charles White Management Company had previously received approval from the Planning Board for the 4-lot Definitive Subdivision #2616F and Special Permit Petition #109 to allow for two-family dwelling units within a B2 zoning district. The original project included construction of a commercial building with two second floor apartments located along Route 28 (Lot 1), and three duplexes located on the rear lots (Lots 2, 3 & 4). One of the apartments over the commercial building on Lot 1 was to be affordable pursuant to Section 412 of the Bylaw and was included as a condition of the Special Permit Petition #109.

The applicant is proposing to replace the commercial building/apartments on Lot 1 with another rental duplex and a communal tennis court. As they are required to provide one affordable unit to meet inclusionary zoning, they are proposing to meet this requirement through a cash payment as allowed by Section 412.4.3 of the Bylaw

The subdivision road is currently under construction with all original structures having been removed. No lots have been released from the Covenant and no building permits have been issued for new structures as of the date of issuance of this Decision.

PLANS SUBMITTED AND MADE PART OF THIS DECISION:

Plan entitled "*Site Plan in West Yarmouth, MA #251 Route 28 prepared for Charles White Management*", prepared by Down Cape Engineering, Inc. of 939 Main Street, Yarmouth Port, MA, dated September 18, 2012 and revised November 29, 2012, December 17, 2012, February 28, 2013, March 29, 2013 and April 8, 2014.

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 Hearing.

Attorney Michael Stusse and Dan Ojala of Down Cape Engineering, represented the petitioner in their request for a Special Permit from the Planning Board.

Attorney Mike Stusse gave a brief presentation of the project. Due to the difficulty in finding a commercial tenant, the applicant has opted to modify the Special Permit to eliminate the commercial building with two second floor apartments on Lot 1 and replace it with a duplex and communal tennis/pickle-ball court. The proposed project has a smaller impervious footprint and is located further away from wetland resource areas. The proposal includes a planted berm along Route 28 for screening. The proposed tennis court will be for tenants only and not open to the public. The applicant proposes to meet the affordable housing requirements through a cash payment. The applicant will need to modify the Declaration of Restrictive Covenants to reference the changes included in Petition #111; file a request to amend with the Conservation Commission; change the inclusionary zoning from a unit within the development to cash payment; and review the changes with the Board of Health to a previously approved shared system.

There was limited discussion by the Planning Board on the proposed changes to Lot 1. In general, the Board felt the proposed changes would result in less traffic and congestion, and the site was suitable for residential development. The proposed method for meeting the inclusionary zoning requirements are allowed in the Zoning Bylaw.

FINDINGS:

The Board has reviewed the proposed plan and submittal information 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 relief in Special Permit Petition #111 for one duplex and communal tennis court on Lot 1 of Subdivision Plan 2616F 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 proposed plantings and berm as shown on the Site Plan will assist in defining the streetscape and screening the duplex and communal tennis court.

2. Access to Lot 1 remains off of Beatrice Lane.
3. The revisions to Lot 1 result in less impervious area which is located further away from resource areas.
4. Lot 1 has sufficient upland area to accommodate a duplex.
5. The duplex will result in less traffic than the previously approved commercial building with two second floor apartments.

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: On a motion by Brad Goodwin and seconded by Ken Driscoll, the Board voted (6-0) unanimously to grant the applicant the requested relief for Petition #111 with the following conditions, with Anthony Panebianco, Ken Driscoll, Chris Vincent, Tom Roche and Brad Goodwin voting in favor:

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

Relief is granted from Section 202.5.A2 – Use Regulation, to allow for a two-family dwelling unit to be located within a B2 zoning district on Lot 1 with a communal tennis court, with the following conditions:

1. The overall development creates six new dwelling units and is required to provide one affordable unit to meet inclusionary zoning as outlined in Section 412.2 of the Zoning Bylaw. The applicant shall meet this requirement through a cash payment (fees in lieu of) as allowed by the Section 412.4 of the Zoning Bylaw.
2. All plantings and berm shall be installed on Lot 1 as shown on the referenced Site Plan.
3. Each dwelling unit in the duplex building shall have their own water service with shut offs and shall meet the requirements of the town of Yarmouth Water Department.
4. The communal tennis court will be for use by the residents of the four lots off Beatrice Lane and their guests and shall not be for commercial use.
5. The Declaration of Restrictive Covenants shall be modified to reflect the proposed changes outlined in Petition 111.
6. When the property is transferred out of single ownership, easements shall be granted to access Lot 1 over Lot 2 and for access to the communal tennis court on Lot 1.

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