



Town of Groveland Zoning Board of Appeals

183 Main Street
Groveland, MA 01834

APPROVED on September 16, 2020
MOTION: Kathleen Franson made a motion to approve the August 19, 2020 meeting minutes as amended. Jason Normand seconded the motion. A roll call vote was taken. Voting aye: Chris Goodwin, aye. Kathleen Franson, aye. John Stokes, aye. Jason Normand, aye. Motion approved.

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Board/Committee Name: ZONING BOARD OF APPEALS
Date: WEDNESDAY, AUGUST 19, 2020
Time of Meeting: 7:30PM
Location: REMOTE MEETING VIA ZOOM VIDEO
CONFERENCE

2 Present: Jason Normand, Kathleen Franson, John Stokes, Chris Goodwin

3 Absent: Matthew Guy

4 Staff Present: Rebecca Oldham; Amy Kwesell, KP Law, Town Counsel; Paul Haverty with Blatman,
5 Bobrowski & Haverty, LLC, MHP Consultant

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7 Jason Normand, Chair: The Zoning Board of Appeals meeting for Wednesday, August 19, 2020 was
8 called to order at 7:35PM. As a preliminary matter, this is Jason Normand, the Chair. Permit me to
9 confirm that all members are present and can hear me. Members, when I call your name, please
10 respond in the affirmative.

11 Kathleen Franson

12 *Here*

13 Christopher Goodwin

14 *Here*

15 John Stokes

16 *Here*

17 J. Normand: Staff, when I call your name, please respond in the affirmative.

18 Rebecca Oldham

19 *Here*

20 Amy Kwesell

21 *Here*

22 Paul Haverty

23 *Here*

24 J. Normand: This Open Meeting of the Groveland Zoning Board of Appeals is being conducted
25 remotely consistent with Governor Baker's Executive Order of March 12, 2020, due to the current
26 State of Emergency in the Commonwealth due to the outbreak of the "COVID-19 Virus."
27 In order to mitigate the transmission of the COVID-19 Virus, we have been advised and directed by
28 the Commonwealth to suspend public gatherings, and as such, the Governor's Order suspends the
29 requirement of the Open Meeting Law to have all meetings in a publicly accessible physical location.
30 Further, all members of public bodies are allowed and encouraged to participate remotely. For this
31 meeting, the Groveland Zoning Board of Appeals is convening by video conference via Zoom as
32 posted on the Town's Website identifying how the public may join. Please note that this meeting is
33 being recorded, and that some attendees are participating by video conference. Accordingly, please be
34 aware that other folks may be able to see you, and that take care not to "screen share" your computer.
35 Anything that you broadcast may be captured by the recording. All supporting materials that have been
36 provided members of this body are available on the Town's website. We are now turning to the first
37 item on the agenda. Before we do so, permit me to cover some ground rules for effective and clear
38 conduct of our business and to ensure accurate meeting minutes. I/the Chair, will introduce each
39 speaker on the agenda. After they conclude their remarks, the Chair will go down the line of
40 Members, inviting each by name to provide any comment, questions, or motions. Please hold until
41 your name is called. Further, please remember to mute your phone or computer when you are not



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speaking; please remember to speak clearly and in a way that helps generate accurate minutes. Finally, each vote taken in this meeting will be conducted by roll call vote.

PUBLIC HEARING

CONTINUED: Application #2019-3, 4 Sewall Street, Groveland Realty Trust, LLC c/o William Daley: requests a Comprehensive Permit pursuant to the provisions of M.G.L 40B, §§ 20-23 and 760 CMR 56.00, to construct 192 apartment units in four (4) residential buildings, a clubhouse with related amenities, such as a pool, and associated access ways, sidewalks, parking, utilities and stormwater infrastructure located in the Industrial (I) Zoning District.

MOTION: Jason Normand motioned to OPEN the continued public hearing for Application 2019-3, 4 Sewall Street. Chris Goodwin seconded the motion. A roll call vote was taken. Voting aye: Chris Goodwin, aye. Kathleen Franson, aye. John Stokes, aye. Jason Normand, aye. Motion approved.

Michael Dempsey, Conservation Commission Chair: Thank you for letting me speak tonight to the Board and bring some of our conservation issues before you. I am prepared to discuss the letter of August 14th which was a response to the Applicant's response and then the items in my March 18th letter. And finally, if you so allow it, I would like to go through the waivers request from the Conservation Bylaw. As far as the letter of August 14th, we disagree with the Applicant's response to this letter. They claim there is no need for your board be involved with habitat or environment, but we disagree. The items under our local bylaw, even though we may put them in a MassDEP Order of Conditions, are not enforceable and they cannot be enforced and MassDEP may choose not to acknowledge them. There are 13 waivers being requested by the Applicant from our local bylaw and they claim they should be absorbed by the ZBA process. If we can't talk about them and you can't talk to them, who will bring these issues up? The bylaw issues have already been called into question by the Applicant as far as the State filed ANRAD. Once we issued our results the Applicant filed for a state superseding order because he did not agree with the decision and when DEP did not overturn the issue, he has taken it to court. We feel as though this would be the tactic moving forward and the same actions will be taken.

Kathy Franson: There appears to be conflicting information and I would like guidance from Amy and Paul as to our jurisdiction.

Paul Haverly with Blatman, Bobrowski & Haverly, LLC, MHP Consultant: Any relief under the Comprehensive Permit process is granted by the ZBA. The substantive waiver, such as setbacks and no touch zones, do require relief from the Board. But the Board must take into consideration if the determination is consistent with local need and does it make it uneconomic.

M. Dempsey: I think in order to understand the differences I should explain what those requests are and how the waiver will affect them. The Commission would like if the roadway was moved out of the buffer area. Under the local jurisdiction we have the ability to protect 100 feet out and with new development we typically like to keep that as far out as possible. There is a 200-foot buffer to the riverfront area and if that is actually a stream and is not perennial and not intermittent than there is 200-foot buffer zone from that stream, and there are different requirements. If the court does not overturn our decision than there are a few other issues that are covered under the state wetland protections act. We want to prevent pollution from the roadway flowing into the stream and the surrounding wetlands. The state does not make a determination on residential vs. commercial development but the local bylaw does.

Jay Talerman with Mead Talerman and Costa: At the end of the day, we do not disagree with the Conservation Commission concerning the process. The buffer zone is more stringently applied in the local bylaw versus the Wetland Protection Act. There might be a more stringent review because of the 40B permit and the requirement to be consistent with local need, etc. We do not think this should be



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89 dismissed. We have gone through a review and we have limited buffer zone disturbance. Our other
90 requests are waivers from procedural matters. If we lose the administrative appeal and it is perennial
91 than we are going to have to address that with the Conservation Commission. But the issue before us
92 now is buffer zones and we welcome the discussion but we have made conscious efforts to stay out of
93 the buffer and put in various protection measures.

94 M. Dempsey: According to your plans the applicant plans to work up to the 25-foot buffer and we
95 have state orders of conditions that have been overturned to allow 16 feet away from a resource area.
96 That is why we have a local bylaw.

97 Chip Nylen with Lynch, DeSimone & Nylen, LLP: The reason the letter was written as such is because
98 Mr. Dempsey was not able to attend the last meeting. I suggest the discussion for reducing impact to
99 wetland resource areas is best had with the Conservation Commission. With the entry way- the Chair
100 seems to discuss this is a commercial project but this is a residential project. If that is the case than that
101 is why there is some discrepancies. We have an odd stream that is intermittent in some places and
102 perennial in others. It is not an easy question to answer. This is a question of fact and where the water
103 is not running most of the time and running on an occasion. He wants the roadway out to the buffer
104 zone and that should be a technical discussion and what the impacts are. Our intention it to construct a
105 roadway that does not impact the wetlands.

106 Brian Butler with Oxbow: It should be noted that our use of the buffer zone is not in the pristine area,
107 it was impacted by Aggregate and their mining industry.

108 M. Dempsey: The second item is monumentation and signage. We have found that monumentation
109 and signage offers future protection of the resource areas and we require them for all new projects and
110 when there is significant impact for an existing project. We want monumentation at the 100- foot
111 buffer zone and additional signage is also desirable. These are not required under MassDEP Wetlands
112 Protection Act.

113 C. Nylen: We don't have a disagreement and we think we can discuss that at the Conservation
114 Commission level, as it is important. In principal we are not opposed to that.

115 M. Dempsey: Erosion control is another concern; we want to discuss where those are placed and we
116 want to be able to specify what those controls are and would like regular maintenance and monitoring
117 of the controls and wetlands flags by a third party. We also want to be allowed to enter the property to
118 administer the order of conditions and enforcing it.

119 J. Talerman: We have no opposition to a condition of such and expect to be held to those standards.

120 C. Nylen: Under the Wetlands Protection Act you would be able to administer your duties and enter
121 the site, it is in your right.

122 M. Dempsey: We then have the seasonal restriction; we do not allow work from November 1 to April
123 15 in the buffer zone. This involves protecting an area that does not do well during that time of year
124 and protecting the buffer zone and resource area, plantings and slopes. It is especially important if we
125 can't protect all work in the 100-foot buffer. The seasonal restriction is meant to protect those areas
126 during those sensitive times of the year.

127 C. Nylen: We are not opposed to a seasonal restriction. We are opposed to an arbitrary 6-month
128 suspensions. We believe it should be tailored to the specific project. We would discuss this with the
129 Commission when we go through the NOI process.

130 William Daley: There are 4 acres that need to be built for habitat area and there is work taking place
131 between the 25-foot and 100-foot buffer and the only time I can work in the turtle restricted areas is
132 between November and April. That is the time for the turtles and the permit under the conditions of the
133 Natural Heritage permit I was issued. This has been worked out under the CMP. These numbers and
134 grades need to be met.



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135 M. Dempsey: The other item is the performance bond. It is standard for a non-performance and
136 emergency responses to resource areas during construction.

137 J. Talerman: We are not opposed to performance guarantees and security provisions. We would like to
138 do this in a comprehensive manner.

139 P. Haverty: The surety issue depends on the project being proposed. Some of the issue is going to be
140 occupancy. Particularly some are less if the road is to remain private. So typically, they look to the
141 subdivision rules and regulations.

142 K. Franson: I would like to ask what Mike would prefer for a security.

143 M. Dempsey: We would like an escrow account that we can easily access under an emergency
144 situation perhaps \$10,000 or \$20,000. The other issue is habitat. We can do more in terms of
145 protection in the way of signage. This would not be under the Wetlands Protection Act. We request
146 standard Natural Heritage standards for habitat conservation areas including monuments and markers
147 and management plans, survey plans and perpetual habitat maintenance and escrow and the
148 conservation restriction to be held by the Conservation Commission on the DiBiase property.

149 B. Butler: All of those items are covered by the CMP and maintenance of 4.8 nesting habitat and
150 perpetuity. Of the 10.65 acres of the DiBiase property acquired there are acres that are being offered to
151 the Conservation Commission and it will all be defined and separated from all active recreation
152 activities but will be allowed for passive recreation.

153 Amy Kwesell with KP Law, Town Counsel: The response I have heard from the Applicant is, that we
154 will deal with that when we get to the Conservation Commission NOI filing. But if you waive the
155 bylaw the Conservation Commission cannot enforce the bylaw. The monuments and signage and all
156 that will be worked out, I have no doubt. But there are some concerns about waiving the local bylaw
157 before they even get to the Conservation Commission.

158 Joel Kahn with Equity Alliance: We are also at a point in the process where we need to discuss who
159 will be drafting what a decision might look like and how these waivers are intertwined into the
160 agreement. It might be productive to begin a parallel path.

161 John Stokes: How do we protect the voice of the Conservation Commission through this process? It
162 seems to me that if they are going to iron it out than iron it out before we make a final decision. I do
163 not want to okay something now and then they can't negotiate.

164 A. Kwesell: You either do not grant the waiver or you offer conditions in your comprehensive permit.
165 So, then they subsequently go to the Conservation Commission and only go for the Wetlands
166 Protection Act.

167 P. Haverty: The Board needs confirmation on which conditions the Conservation Commission needs
168 the ZBA to impose because they do not have the authority to impose under the Wetland Protections
169 Act. You cannot add condition at a later date.

170 J. Talerman: We have no problem doing what Mr. Dempsey has requested. It is only the issue of the
171 buffer.

172 Chris Goodwin: I agree with Paul. We need to see what would be under your purview and what would
173 not.

174 M Dempsey: These items I discussed tonight are those items.

175 J. Normand: We should start to draft the decision and look at those waivers.

176 **BOARD**: Will reconvene on September 16th to give all parties time to prepare suggested conditions.

177 **MOTION**: Chris Goodwin motioned to CONTINUE the public hearing for Application 2019-3, 4
178 Sewall Street until September 16, 2020. Kathleen Franson seconded the motion. A roll call vote was
179 taken. Voting aye: Chris Goodwin, aye. Kathleen Franson, aye. John Stokes, aye. Jason Normand,
180 aye. Motion approved.



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182 **MEETING MINUTES:** Approval of July 1, 2020 meeting minutes.

183 **MOTION:** Kathleen Franson made a motion to approve the July 1, 2020 meeting minutes as drafted.
184 Chris Goodwin seconded the motion. A roll call vote was taken. Voting aye: Chris Goodwin, aye.
185 Kathleen Franson, aye. John Stokes, aye. Jason Normand, aye. Motion approved.

186

187 **ADJOURNMENT**

188 **MOTION:** Kathy Franson made a motion to adjourn the meeting. The motion was seconded by Chris
189 Goodwin. A roll call vote was taken. Voting aye: Chris Goodwin, aye. Kathleen Franson, aye. John
190 Stokes, aye. Jason Normand, aye. Motion approved. Meeting adjourned at 9:52PM.