



## TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642-2544

All departments 508-240-5900 • Fax 508-240-1291

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### EASTHAM ZONING BOARD OF APPEALS

#### MEETING MINUTES

Earle Mountain Room

December 1, 2016, 5:00 pm

ZBA members present: Robert Sheldon, Edward Schneiderhan, Joanne Verlinden, Stephen Wasby (Alternate), Ralph Holcomb (Alternate)  
ZBA members absent: None  
Staff present: Paul Lagg, Town Planner, Debbie Cohen, Administrative Assistant

ZBA chairman Robert Sheldon opened the meeting at 5:00 pm, explained meeting protocols and stated the meeting was being recorded. Mr. Sheldon announced that George Reinhart and John Zazzaro had resigned from the Board.

**Case No. ZBA2016-15** – 4680 State Highway, Map 8, Parcel 202. Belvernion, LLC (Owner) seeks a Special Permit pursuant to M.G.L. c. 40A s. 9 and Eastham Zoning By-law Sections IX.A (lot size), V (uses, all districts) and VI.D (non-conforming uses) to demolish an existing non-conforming mixed use building and construct a new garage with office space above and to change the use of an existing retail structure from bakery to fish market.

*Seated on this case: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb*

Ben Zehnder and Mac Hay were present at the hearing. Mr. Wasby and Ms. Verlinden stated that they were customers of Mac's Seafood. Mr. Zehnder handed out a revised site plan which eliminated the parking lot connection to Willy's Gym, revised the parking space arrangement and changed the number of seats from 11 to 10. He proceeded to describe the proposal to the Board.

Mr. Wasby asked about the expected traffic flow in and out of the new location. Mr. Zehnder replied that he anticipated traffic to remain similar to the flow at the existing location. Ms. Verlinden asked about the connection to Willy's. Mr. Hay responded that he had met with the gym owner regarding the issue and planned to place a berm or plantings to block access to her parking lot.

Barbara Niggel, owner of Willy's Gym spoke regarding the drainage problem in the parking lot. There were no other comments from the board members or from the audience.

Mr. Wasby read the proposed **findings of fact**:

1. The property is located at 4680 State Highway (Map 8, Parcel 202) and is located in District D (Retail Sales/Service).
2. The applicant has applied for a Special Permit pursuant to M.G.L. c. 40A s. 9 and Eastham Zoning By-law Sections IX.A (lot size), V (uses, all districts) and VI.D (non-conforming uses) to demolish an existing non-conforming mixed use building and construct a new garage

with office space above and to change the use of an existing retail structure from bakery to fish market.

3. The lot size is 38,477 sf.
4. The site has been granted prior Special Permits on 9/11/03 and 2/10/05 authorizing use of the site for retail sales, restaurant and catering kitchen.
5. The proposal will not create any new dimensional non-conformities.
6. The retail sales and office uses are allowed by right in District D. The proposed restaurant and catering kitchen uses require a Special Permit.
7. After an evaluation of all the evidence presented, the proposed use will not be substantially more detrimental to the established or future character of the neighborhood or the Town and the structure involved will be in harmony with the general purpose and intent of the Zoning By-law and zoning district.
8. The proposal will not have a negative impact on the visual character of the neighborhood.
9. The proposal does have adequate methods of sewage disposal, sources of potable water and site drainage.
10. The proposal does provide adequate protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies.
11. The proposal does provide adequate provision for utilities and other necessary or desirable public services.
12. The proposal does provide adequate protection from degradation and alteration of the natural environment.
13. Artificial light, noise, litter, odor or other sources of nuisance or inconvenience will be adequately controlled.
14. One abutter appeared in favor of the proposal and one letter was received from the same abutter.
15. The Board makes no finding with regard to traffic and defers to the Planning Board on the issue.

A **MOTION** by Stephen Wasby to approve the findings of fact as stated, **seconded** by Ed Schneiderhan.

In favor: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 5-0

**Motion passed – Unanimous**

Mr. Wasby read the **conditions**:

1. Any changes to the project plans dated 10/12/16 rev. 11/30/16, except those that are de minimis, must be reviewed by the Zoning Board of Appeals. If the Board finds a change to be substantial, re-notice is necessary for a new hearing.
2. The applicant shall obtain approval(s) from the Eastham Board of Health and if necessary, MassDEP prior to the start of the project.
3. The applicant shall obtain approval from the Eastham Planning Board prior to the start of the project.

A **MOTION** by Steve Wasby to approve the conditions as stated, **seconded** by Ed Schneiderhan.

In favor: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 5-0

**Motion passed – Unanimous**

A **MOTION** by Steve Wasby to **GRANT A SPECIAL PERMIT** for ZBA2016-15 to demolish an existing non-conforming mixed use building and construct a new garage with office space above and to change the use of an existing retail structure from bakery to fish market, **seconded** by Joanne Verlinden.

In favor: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 5-0

**Motion passed – Unanimous**

**Case No. ZBA2016-16** – 1 Bayberry Lane, Map 13, Parcel 143. Morcaldi Family Trusts (Owners) and Richard and Lea Schneider (Applicants) seek a Special Permit pursuant to M.G.L. c. 40A s. 9 and Eastham Zoning By-law Sections IX.A (lot size), IX.B (setback requirements) and VI.B and C (non-conforming uses) to demolish a pre-existing non-conforming single family residence and build a new single family residence with increased non-conformity to setback.

*Seated on this case: Schneiderhan, Verlinden, Wasby, Holcomb*

Ben Zehnder was present at the hearing. Mr. Sheldon recused himself. Mr. Zehnder described the proposal, noting that the application had already received Board of Health, Conservation Commission and Planning Board approvals. Ms. Verlinden commented that the proposal seemed in keeping with the neighborhood. There were no questions from the board members or from the audience.

Ms. Verlinden read the proposed **findings of fact**:

1. The property is located at 1 Bayberry Lane (Map 13, Parcel 143) and is located in District A (Residential).
2. The applicant has applied for a Special Permit pursuant to M.G.L. c. 40A s. 9 and Eastham Zoning By-law Sections IX.A (lot size), IX.B (setback requirements) and VI.B and C (non-conforming uses) to demolish a pre-existing non-conforming single family residence and build a new single family residence with increased non-conformity to setback.
3. The lot size is 13,450 sf.
4. The proposal will maintain the existing non-conformity to the southerly side line setback where 9 feet is existing and 25 feet is required. The northerly sideline setback will have increased non-conformity where 13 feet is existing, 10 feet is proposed and 25 feet is required.
5. The proposal received Residential Site Plan approval from the Eastham Planning Board on November 16, 2016.
6. After an evaluation of all the evidence presented, the proposed use will not be substantially more detrimental to the established or future character of the neighborhood or the Town and the structure involved will be in harmony with the general purpose and intent of the Zoning By-law and zoning district.

7. The proposal will not have a negative impact on traffic flow and/or safety.
8. The proposal will not have a negative impact on the visual character of the neighborhood.
9. The proposal does have adequate methods of sewage disposal, sources of potable water and site drainage.
10. The proposal does provide adequate protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies.
11. The proposal does provide adequate provision for utilities and other necessary or desirable public services.
12. The proposal does provide adequate protection from degradation and alteration of the natural environment.
13. Artificial light, noise, litter, odor or other sources of nuisance or inconvenience will be adequately controlled.
14. No abutters appeared in favor of or in opposition to the proposal. No letters were received regarding the proposal.

A **MOTION** by Stephen Wasby to approve the findings of fact as stated, **seconded** by Joanne Verlinden.

In favor: Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 4-0

**Motion passed – Unanimous**

Mr. Wasby read the **conditions**:

1. Any changes to the project plans stamped by the Town Clerk on 11/17/16, except those that are de minimis, must be reviewed by the Zoning Board of Appeals. If the Board finds a change to be substantial, re-notice is necessary for a new hearing.
2. The applicant shall obtain approval from the Eastham Board of Health prior to the start of the project.
3. The applicant shall obtain approval from the Eastham Conservation Commission prior to the start of the project.

A **MOTION** by Joanne Verlinden to approve the conditions as stated, **seconded** by Steve Wasby.

In favor: Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 4-0

**Motion passed – Unanimous**

A **MOTION** by Steve Wasby to **GRANT A SPECIAL PERMIT** for ZBA2016-16 to demolish a pre-existing non-conforming single family residence and build a new single family residence with increased non-conformity to setback, **seconded** by Joanne Verlinden.

In favor: Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 4-0

**Motion passed – Unanimous**

**Case No. ZBA2016-8** – (continued from 10/6/16) 455 Steele Road, Map 4, Parcels 518, 519, 542. Karen Kollar (Owner), Julie Csenger (Applicant) seek a Special Permit pursuant to M.G.L.

c. 40A s. 9 and Eastham Zoning By-law Section V District A (Uses) for the housing of two horses in an existing accessory structure.

*Seated on this case: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb*

Julie Csenger was present at the hearing. She described the revised proposal and management plan and confirmed that two paddocks would be separated by her driveway but both horse stalls would be together in one paddock. She clarified that she did intend to keep two horses (or one horse and a companion animal such as a donkey). Mr. Wasby stated for the record that there are a number of horses in the area and he did not find them incompatible with the neighborhood. He also expressed concern that without any actual town animal regulations, it seemed unfair to impose arbitrary regulations on any applicant.

Ms. Verlinden asked if the existing shed would remain. Ms. Csenger replied that she intended to keep it as a tool shed. Ms. Verlinden expressed concern that the roof of the stable was still too low, and she was also worried that an acre of paddock area was not provided. Ms. Verlinden asked where the applicant planned to ride the horse. Ms. Csenger responded that there were many sand roads in the surrounding area, and that she could also trailer the horses to another site if necessary. Mr. Schneiderhan added that he agreed the stall roof height seemed low, but he thought the Board's health concerns were well addressed by the revised plan.

Mr. Sheldon read letters received from William and Charlotte O'Connor of 230 Silver Spring Beach Road, Joan Hamelburg of 125 Pierce Road, and Douglas Eagles of 170 Silver Spring Beach Road all opposed to the application. There were no comments from the audience.

Mr. Wasby read the proposed **findings of fact**:

1. The property is located at 455 Steele Road (Map 4, Parcels 518, 519, 542) and is located in District A (Residential).
2. The lot size is 38, 500 sf.
3. The applicant has applied for a Special Permit pursuant to M.G.L. c. 40A s. 9 and Eastham Zoning By-law Section V District A (Uses) for the housing of two horses.
4. The keeping of non-commercial livestock, animals and poultry is permitted within the Residential district provided that it is not injurious, noxious or offensive to the neighborhood. While the use is permitted, a Special Permit is required for the proposed horse stalls.
5. The proposed horse stalls are located outside of the adjacent 100 foot protective well radii.
6. After an evaluation of all the evidence presented, the proposed use will not be substantially more detrimental to the established or future character of the neighborhood or the Town and the structure involved will be in harmony with the general purpose and intent of the Zoning By-law and zoning district.
7. The proposal will not have a negative impact on traffic flow and/or safety.
8. The proposal will not have a negative impact on the visual character of the neighborhood.
9. The proposal does have adequate methods of sewage disposal, sources of potable water and site drainage.
10. The proposal does provide adequate protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies.

11. The proposal does provide adequate provision for utilities and other necessary or desirable public services.
12. The proposal does provide adequate protection from degradation and alteration of the natural environment.
13. Artificial light, noise, litter, odor or other sources of nuisance or inconvenience will be adequately controlled.
14. Three abutters appeared in opposition to the proposal. Three letters were also received in opposition to the proposal.

A **MOTION** by Stephen Wasby to approve the findings of fact as stated, **seconded** by Ed Schneiderhan.

In favor: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 5-0

**Motion passed – Unanimous**

Mr. Wasby read the **conditions**:

1. Any changes to the project plans to be submitted and stamped by the Town Clerk by 12/19/16, except those that are de minimis, must be reviewed by the Zoning Board of Appeals. If the Board finds a change to be substantial, re-notice is necessary for a new hearing.
2. Issuance of this Special Permit is limited to the applicant (Julie Csenger) and the owner of the property (Karen Kollar) for the boarding of a maximum of two (2) horses. Any changes to the owner and/or applicant will require re-filing with the Zoning Board of Appeals.
3. The applicant shall cooperate with municipal staff to address any unanticipated issues that may arise related to the care of the horses and/or any issues which may be detrimental to the subject location or to surrounding properties. If the need for a revision to the management plan dated 11/16/16 is necessary then a revised management plan shall be submitted to the Zoning Board for acceptance under this Special Permit.
4. The applicant shall adhere to the “Barn Management Plan” dated 11/16/16. The Zoning Board reserves the right to revoke this Special Permit if, based on sufficient evidence the Board determines that the keeping of the horses has become injurious, noxious or offensive to the neighborhood, or that the Barn Management Plan has not been properly and consistently implemented.

A **MOTION** by Steve Wasby to approve the conditions as stated, **seconded** by Ed Schneiderhan.

In favor: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 5-0

**Motion passed – Unanimous**

A **MOTION** by Steve Wasby to **GRANT A SPECIAL PERMIT** for ZBA2016-8 for the housing of two horses, **seconded** by Ed Schneiderhan.

In favor: Sheldon, Schneiderhan, Wasby, Holcomb

Opposed: Verlinden

**The VOTE:** 4-1

**Motion passed**

**Case No. ZBA2016-14** – 545 Nauset Light Beach Road, Map 23, Parcel 9 and 120 Cummings Lane, Map 23, Parcel 6. Michael Schaffer (Owner) seeks a Variance pursuant to M.G.L. c. 40A s. 10 from Eastham Zoning By-law Section V (uses, district F – Seashore District) to demolish an existing single family residence, relocate an existing single family residence from adjacent lot and build a new detached garage with non-conformity to expansion allowed within District F and non-conformity to required setbacks.

*Seated on this case: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb*

Michael Schaffer was present at the hearing and described the proposal. He confirmed that trees would be removed as needed in order to move the house and also that the proposed garage was in addition to an existing one car garage. Mr. Wasby expressed concern over how the proposed garage would encroach into setbacks. Mr. Schaffer described the zoning by-law criteria he used to inform his decision. He noted that he sought setback relief in consideration of his neighbors, as he planned to put the garage on the wooded side of the lot rather than closer to the abutting properties. Ms. Verlinden asked if it would be possible to instead add a bay to the existing garage. Mr. Schaffer replied that any addition to the existing garage would run into the existing septic system or proposed house location. Mr. Sheldon asked about access to the lot. Mr. Schaffer explained that the access road was town owned.

Mr. Sheldon read a letter from Joseph Everett, 155 Cummings Lane in support of the project. There were no questions from the audience.

Ms. Verlinden read the proposed **findings of fact**:

1. The properties are located at 120 Cummings Lane (Map 23, Parcel 6) and 545 Nauset Light Beach Road (Map 23, Parcel 9) and are located in District F (Seashore).
2. The Applicant has applied for a Variance pursuant to M.G.L. c. 40A s. 10 from Eastham Zoning By-law Section V (uses, district F – Seashore District) to demolish an existing single family residence, relocate an existing single family residence from adjacent lot and build a new detached garage with non-conformity to expansion allowed within District F and non-conformity to required setbacks.
3. Residential dwelling units are permitted within District F provided that any moving, alteration, enlargement, maintenance, or repairs will not increase the habitable space by more than fifty percent (50%) of the habitable space existing on September 1, 1959 nor the accessory space by more than 50% of the total habitable space.
4. The existing dwelling size in 1959 was 1,793 sf. The proposal will not increase the dwelling size. A new 576 sf accessory structure (garage) will be constructed on the site. The accessory structure will be less than 50% of the total habitable space.
5. The relocation of the dwelling and construction of the proposed garage will create a new non-conformity to the street setback (20 feet where 50 feet is required) and to the side setback (15 feet where 25 feet is required).
6. Representatives from the National Seashore have been notified of the application for Variance as required under the Eastham Zoning Bylaw Section V.F. The representatives are supportive of the proposal.

7. There are circumstances related to shape, topography and soil conditions of the land created by ongoing coastal erosion in the immediate vicinity of the site affecting such land or structures but not affecting generally the zoning district in which it is located.
8. A literal enforcement of the provisions of the zoning ordinance would involve a substantial hardship caused by ongoing erosion at this site which would render the structures unusable to the applicant.
9. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance as the proposal will minimize impact to the surrounding environment and to the abutting neighbors.
10. No abutters appeared in favor of or in opposition to the proposal. One letter was received in favor of the proposal.

A **MOTION** by Stephen Wasby to approve the findings of fact as stated, **seconded** by Ralph Holcomb.

In favor: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 5-0

**Motion passed – Unanimous**

Ms. Verlinden read the **conditions**:

1. Any changes to the project plans stamped by the Town Clerk by 10/31/16, except those that are de minimis, must be reviewed by the Zoning Board of Appeals. If the Board finds a change to be substantial, re-notice is necessary for a new hearing.
2. The applicant shall obtain approval from the Eastham Planning Board prior to the start of the project.
3. The applicant shall receive approval from the Eastham Board of Health prior to the start of the project.
4. No kitchen shall be established in the accessory building.

A **MOTION** by Steve Wasby to approve the conditions as stated, **seconded** by Ed Schneiderhan.

In favor: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 5-0

**Motion passed – Unanimous**

A **MOTION** by Steve Wasby to **GRANT A VARIANCE** for ZBA2016-14 to demolish an existing single family residence, relocate an existing single family residence from adjacent lot and build a new detached garage with non-conformity to expansion allowed within District F and non-conformity to required setbacks, **seconded** by Ed Schneiderhan.

In favor: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 5-0

**Motion passed - Unanimous**

Minutes



A **MOTION** by Steve Wasby to approve the minutes of November 3, 2016, **seconded** by Ed Schneiderhan.

In favor: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 5-0

**Motion passed – Unanimous**

Adjournment

A **MOTION** by Steve Wasby to adjourn the regular hearing with a five minute recess until the following hearing, **seconded** by Joanne Verlinden.

In favor: Sheldon, Schneiderhan, Verlinden, Wasby, Holcomb

Opposed: None

**The VOTE:** 5-0

**Motion passed – Unanimous**

The meeting adjourned at 6:35 pm.

Respectfully submitted as prepared by Debbie Cohen

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Robert Sheldon, Chairman  
Zoning Board of Appeals