

On June 22, 2023, on a motion by Mr. Martin seconded by Mr. Fraprie, the Board voted 5-0 to approve these minutes.

**TOWN OF YARMOUTH
ZONING BOARD OF APPEALS
MINUTES for MAY 25, 2023**

YARMOUTH TOWN CLERK

'23JUL3AM10:59 REC

The Yarmouth Board of Appeals met in quorum at 6:00p.m. on Thursday, May 25, 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: Mr. Martin, Mr. Fraprie, and Mr. Mantoni attended in-person. Chairman DeYoung and Mr. Igoe attended via Zoom.

Board Members Present: Barbara Murphy, appointed in May 2023, observed.

Staff Present: Lisa Sherman for first petition; Dolores Fallon for remaining petitions.

PETITION 5020: Ewa Argo, Trustee of the Seacret Realty Trust, 2 Smith Road, South Yarmouth, MA. Map & Lot #: 60.15. Zoning District: R-40. The Applicant seeks a Special Permit per §104.3.2(2) and/or Variance from §203.5 for front and rear setback relief to add mudroom in the front and deck in the rear.

Ewa Argo explained that the property is a corner lot. The front setback on Smith Road is less than 30 feet for the proposed front landing and mudroom, and add a floating, ground-level deck to the rear of the house.

Board Questions:

Mr. Martin: The deck will be 3.1 feet from the rear property line?

Ms. Argo: Yes.

Mr. Martin: Normally 20 feet required. Looking for hefty relief on that part. Not so much for the front. Little concerned about deck being so close to the rear line.

Ms. Argo: The neighbor behind me...

Mr. Martin: I did see the letter from the neighbor with their OK.

Mr. Fraprie: You also have a fence behind the deck?

Ms. Argo: Yes.

Mr. Fraprie: Other than that, I had the same questions as Mr. Martin.

Mr. Mantoni: Awful close to the rear lot line. How high is the step on the front landing?

Ms. Argo: The platform to the door is 20 inches.

Mr. Igoe: Where is the mudroom going? Is it the proposed foyer on the Site Plan?

Ms. Argo: Yes, the proposed foyer and stoop.

Mr. Igoe: I have some concerns on that rear deck as well. Actually, it's a sideline setback, so it should be 15 feet, so we're all clear.

Chairman DeYoung: I'm not clear. When constructed, how far will the deck be off the rear property line?

Mr. Martin: 3.1 feet.

Chairman DeYoung: 3.1 feet? I see that as a side measurement.

Ms. Argo: One corner of the deck will be 4 feet [from the property line]. The other corner will be 3.1 feet because it's on an angle.

Chairman DeYoung: In the front, there are going to be 3 steps in total?

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Ms. Argo: There's one step and then the platform which is 36 inches wide. So, there's only one step and one step to the platform.

Chairman DeYoung: So, two steps?

Ms. Argo: I guess.

Chairman DeYoung: When construction is finished, how much closer will the home be to the street? Not the steps or the platform; the structure.

Ms. Argo: The door will be 4 feet closer to the street.

Mr. Igoe: The stairs in the front. Is that going to be a pre-cast step cement?

Ms. Argo: Right now, it's already cement, so I just have to extend it.

Mr. Igoe: If they're cement or concrete, that doesn't count toward the setback; only if they're wood.

No Public Comments.

Board Discussion and Deliberation:

Mr. Igoe: Front mudroom area. I can go along with that. They're not meeting the 30 feet right now. The 4 feet that they're coming out; I think that's a fairly reasonable request. The deck out back. The 3 feet off the lot line is too close. I couldn't support anything closer than 10 feet, but I'm willing to discuss that with the Board.

Mr. Mantoni: The 3 feet is really close. Scale back the deck. I don't have a big problem with the front.

Mr. Fraprie: Maybe they could change the deck, so it's longer and not as deep. At least get to a 10-foot setback; in that range.

Mr. Martin: I have no trouble with the small foyer. Smith Road is a small dead-end road. I think it would make the front of the house look better. I agree the deck should be set back further. I would be comfortable even with 6 feet since that would have complied when this house was built, but 10 feet would be even better.

Chairman DeYoung: This is an odd situation because usually we're saying "no" to front setbacks, but sure, why not in the backyard, what do we care? Well, I care in this instance. I think 3.1 feet is a ridiculously close proximity to the fence. I don't know how firemen would get around it, if they needed to, built right up against the fence. We allow rebuild of decks in nonconformity or even an extension, but not to the extent that we're taking such as giant leap forward. On the front, I'm persuaded by the other Board Members. I don't care that it's getting closer to the street, but I do care about it in the majority of cases. Mr. Martin brought up a great point; it's a wonderful way to break up the front line of this home, so it will be aesthetically pleasing. I can support the front setback relief. As to the rear, it needs to be at least 6 feet off the property line. We can split the 6-10 feet and say 8 feet off the rear property line and be in conformity with side setback of 15 feet.

Mr. Igoe: I think the 8 feet is too close to that lot line. It really represents a rear lot line, although it's a side lot line. That's the rear of the house that faces that. You're gonna be right in the neighbor's yard. That's a living area that people will be on [the deck].

Chairman DeYoung: I mean take 8 feet off the proposed deck. Bring the deck down to 10 feet.

Mr. Igoe: Then, the result would be 11 feet off the lot line.

On June 22, 2023, on a motion by Mr. Martin seconded by Mr. Fraprie, the Board voted 5-0 to approve these minutes.

Vote:

A motion was made by Mr. Igoe and seconded by Mr. Martin to approve the Special Permit as requested, subject to the following condition: that the rear deck can be no closer than 11 feet from the rear property line.

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

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

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

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

PETITION 5022: Kaya Cinar, Trustee of the Peggy Pekran Cinar 2010 Trust, 4 Television Lane, West Yarmouth, MA. Map & Lot #: 14.91. Zoning District: R-25. The Applicant seeks a Special Permit per §104.3.2(2) and/or Variance from §203.5 for front setback relief to raze and replace a pre-existing, nonconforming single family dwelling and to increase height.

Dan Ojala, Down Cape Engineering, represented the petitioner: This property is located in the Radio City area of town; it's a low-lying area. They have had historic puddles in the area for as long as I can remember, 25 years, we've been measuring puddles in that area. We did have an abutter write a letter and ask that we not create any further problems. We are going to be making it better with this project. The rear yard is being leveled off and completely level; water will infiltrate into the ground. Proposing 3 dry wells around the house to pick up the roof run-off from the gutters and downspouts. There would be less water coming off the site. The home is in the flood zone. Sea level is rising slowly. This whole area was wiped out by a hurricane many years ago and was rebuilt much too low. We're going above the base flood elevation to 12.0. Concrete and water-resistant construction below that. Even if we get the 100-year event, the floodwaters will enter and exit the foundation through new Smart Vents that allow for equalization of water underneath the building. It is a "snug" site at 7,764 square foot, but we're being respectful. We can go up to 25% building coverage; we're going to 18.4% including the deck. The rear yard: We're raising up the septic. New Title V. Requires 20 feet to the full basement. The front pergola is 23.7 feet off the street. The front stairs are 23.8 feet. The main portion of the house is nearly compliant. The west side is compliant; we're eliminating nonconformities. The front of the structure and the east side will be 2 feet into the setback, that's in an area where the pergola already projects quite a bit. The building is compliant with the new height regulations. It's a 3-bedroom design. Two levels, so it's more usable upstairs.

Board Questions:

Mr. Mantoni: The square footage of the living area?

Mr. Ojala: 18.4% is the lot coverage. I don't have that figure in front of me.

Mr. Mantoni: On your plan, it says 1,880, which I don't think is too outrageous.

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Mr. Ojala: Most houses have a full basement for their stuff. Here, we have to make closets, which cuts down on the effective square footage.

Mr. Fraprie: How many current bedrooms?

Mr. Ojala: Currently, 2 bedroom.

Mr. Fraprie: The backyard with the septic. You're going up 8 feet?

Mr. Ojala: The elevation is 9 feet. So, 6 feet at the highest; 4 feet at the lowest. It will look OK because it will be a level area.

Mr. Fraprie: The whole backyard will be elevated. The height's fine. The setbacks look like they're improved. The house is shifting 10 feet to the right?

Mr. Ojala: Yes, just to get it out of that setback on the west.

Mr. Martin: The shed's going away?

Mr. Ojala: Yes.

Mr. Martin: As long as the drainage is being kept on-site to allay the fears of the abutter. It's becoming mostly more conforming. It is a small lot.

Mr. Igoe: I'm looking at the front elevation of the home itself. It appears there's a lot of exposed foundation. Do you know if there's any plan to cover that exposed concrete?

Mr. Ojala: We could absolutely do that. To the right of the stairs, the clapboards are brought down over the front façade. We do a similar thing on the west side and then probably a finish below that, so it doesn't look like bare concrete.

Mr. Igoe: Are you aware of the 1x12 shiplap that people are using to cover concrete?

Mr. Ojala: Hardie Board. That might be a good choice.

Mr. Igoe: If we made that a condition, that would be acceptable?

Mr. Ojala: Yes. Absolutely.

Mr. Igoe: I would make a comment that this is the way this subdivision has been redeveloped for a long time. All these houses are in a flood zone, so anybody who wants to do anything is going to have to go up. I agree with the petitioner that they are decreasing many nonconformities.

Chairman DeYoung: The construction that's being proposed is actually going to help any water that's attributable to this particular lot, to stay more focused on lot. It's running underneath a structure now instead of stopped by the structure. That is a tough road, but I don't think this is going to hurt it. I think it's going to help it. The issue of the street catch basins: There's not much we can do about that. We can ask that the petitioner do as much remedial work on-site as they reasonably can. The indication is that will be done by way of some catch basins on-site.

Public Comments.

Chairman DeYoung read a letter of opposition from Ronald and Noelene Cervin, 22 Television Lane, into the record. The letter included March 2023 photos of flooding on the street.

Referring to the abutter's concern, Chairman DeYoung asks Mr. Ojala regarding the grade of the street and the containment of water on the lot.

Mr. Ojala: It's quite level right now. It's 6 inches in 28 feet. Very gentle pitch. We're dealing with a lawn surface and a pervious gravel driveway. I don't think we can do much better than that. What we can do is take the roof runoff and put it in a dry well which we are doing. There will be less runoff post-development than pre-development.

Ralph Decker, 481 Buck Island Road, Unit 15 EA, had a question regarding the plan: If you're putting a structure for the water to flow through and it's 11 feet high, what's the direction of the

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water flow now? Are there underwater springs there? Is it water being directed to the street and expecting the Town sewage is supposed to capture all that water and run it off?

Mr. Ojala: It's what you call a "coastal flood event". A Category 4 hurricane. There would be a huge tidal surge that would inundate the entire area and there would be 6 or 7 feet of saltwater over the entire road. You could have bass swimming over the area. The concern is if you have a wall and it's watertight and you put 6-8 feet of pressure against it, it would cave in, and the house could fall over. To prevent that, you equalize the pressure by putting in these Smart Vents (one for every 200 square foot of enclosed area) that flip open and allow the water to gush in and equalizes the water on both sides. The seawater would flow back out. You would have a puddle that would dwarf any puddles that appear in these photos. When the water goes back down, then the water comes back out of the Smart Vents. If you don't raise up your house, you'll just ruin your furnace and you'll get mold, etc. With the new codes, you're much better off.

Ralph Decker, 481 Buck Island Road, Unit 15 EA: Basically, if Mother Nature took its toll, the neighborhood is going to be flooded anyway.

Mr. Ojala: You should know that at one time the hurricane of 1946 wiped out this whole neighborhood. It's definitely a vulnerable area.

Ralph Decker, 481 Buck Island Road, Unit 15 EA: With the 3 dry wells that you're putting in, what is the size and depth of the dry wells and is there any drainage from the dry wells themselves going out anywhere?

Mr. Ojala: We do a very shallow system. ~5% of the area drained into a dry well. We have ~4-foot dry wells. They can't be particularly deep in this area because you hit groundwater. In the higher areas of the lot, you can go down a couple of feet and get good sand, you put in a stone-filled trench which should infiltrate the vast majority of the roof runoff into the ground. If there's a catastrophic event, it would back up and you would expect coastal storm flowage during that type of event and it would be a drop in a bucket at that point.

Board Discussion and Deliberation:

Mr. Igoe: I think it's a reasonable request. We've approved a lot of these in this particular subdivision. Everybody has to build up to meet the code. The house is 1,800 square feet. If any of the abutters decide they want to rebuild, they are going to build a similar home. Most of the houses have been rebuilt in a similar size and style. They've done their best to decrease any nonconformities. They've put a lot of thought into what they're going to do with the runoff, realizing that there is a drainage problem on the street and trying to mitigate that as much as they can. I think they meet the criteria of the bylaw and I don't think it would be substantially more detrimental to the neighborhood. It's consistent and keeping with the houses in the neighborhood.

Mr. Martin: No issues. Logical request to build a new house that's not overwhelming, meets certain setbacks better, and takes care of a lot of the drainage questions that might cause a problem.

Mr. Fraprie: It seems to be consistent with the houses that have been updated. This house will be a nice addition. The raising of the house is necessary. If it does anything to alleviate the groundwater runoff, that will be great.

Mr. Mantoni: It looks like a nice home. The plan is well-done. I plan to support it.

Chairman DeYoung: When we look at these properties that are getting older, and they wish to become updated, they are confronted with the new reality of FEMA requirements because of flood zones; it's a good thing. In the South, you can see ground-level houses in flood zones that

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are wiped out in even minor hurricanes. It's good to see these new restrictions. What's interesting to me is: there is so little relief being requested [with this petition]. It's just because of the need for staircases with an encroachment in the front setback. It is de minimis.

Vote:

A motion was made by Mr. Martin and seconded by Mr. Fraprie to approve the Special Permit, as requested, subject to the following condition: allow a maximum of 8-12 inches of exposed concrete on the façade; the remaining concrete on the façade will be covered.

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

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

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

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

PETITION 5023: Shrim Inc., dba Freebird Motor Lodge, 553 Route 28, West Yarmouth, MA. Map & Lot #: 31.134; Zoning District: B-2. The Applicant seeks to overturn the decision of the Building Commissioner and/or a Special Permit per §303.13 or §303.5.5.2 and/or Variance from §303.5.5.2 to install a 22.5' x 17.9' sign.

Purvish and Parth Patel presented on behalf of Shrim Inc.

Chairman DeYoung asked the petitioners if they were before the Board on the same matter. [The petitioners appeared before the Board on February 9, 2023.]

Purvish Patel: We did. We had two requests. We took your advice, changed the design, and took down one of the signs. The new petition: We don't believe it's a sign. It's on a building that is within our property and that is not really visible from the street. We're not advertising our business name on it. This is strictly for branding purposes. Just to showcase our brand and promote Cape Cod. It's a wall where people would take pictures. We wanted to get an understanding of why it was looked at as a sign when it was within the property itself.

Chairman DeYoung: This wasn't covered the last time you were here?

Purvish Patel: We did cover it. You had said if it was by itself, you probably would have voted for it, but you needed a reason from the Building Commissioner on why it was rejected.

Board Questions:

Mr. Martin: If it's the Building Commissioner's interpretation that this meets the criteria of a sign, which I would agree with, then we're looking at two very big signs on buildings. I don't

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mind the idea of a mural on a back building, where it's not really meant to attract people. But in the front, I would have some issue with it, and I worry about the precedent. Where do you draw the line? If someone wanted to do the same thing and really promoting the business...this doesn't promote the business in terms of naming the motel, but it still meets the criteria of a sign. Unless that definition is changed, we're looking for a very huge sign that we don't typically approve. You're looking for the same mural for both buildings?

Purvish Patel: We're only looking for that back building.

Mr. Mantoni: I know we went back and forth on this last time, whether it's a sign or artwork, and I still don't know the answer. I only know that the Building Commissioner said it's a sign.

Purvish Patel: You can interpret the sign code in different ways. I'm not an attorney, so I wouldn't be able to argue that. Our goal is simply to bring brand awareness and promote Cape Cod. The minute we cross the bridge, we're 50 years behind the timeline. The theme of our hotel is based on the 1970s "Freebird" song from Lynyrd Skynyrd. We have a modern vintage vibe for our hotel. What we're doing is promoting artwork, music, and expression of art. Both of the murals are important, but we wanted to comply with the Town, so we dropped the first one. This one is on the inside of the property where no one is seeing it from the street. The only way you're seeing it is if you're a guest. We're not putting our hotel name on it. This is simply promoting Cape Cod. In today's world, all the travelers are looking for a unique experience; something's that different. We're not 15 years ago, where people are looking for a bed to sleep. In order to attract the new traveler, especially the Cape where most of the travelers are 50/60 years old, we're having a hard time attracting a crowd under 40. In a decade, it can hurt tourism a lot. We need to create properties on the Cape and encourage more developers and/or hotel owners to think outside the box.

Chairman DeYoung: Sir, if I could, I think we went over all this in the presentation last time. If there's something new you want to add that you didn't point out the last time, feel free to do that. Jay, do you have any questions?

Mr. Fraprie: I don't really have any questions. I don't really see this as a sign. It's more artwork or a mural. I don't think it's meant to facilitate trying to promote or advertise the actual facility itself. But whether or not that's an issue is something to talk about. If it's not a sign, but a mural or art, I'm not sure how to best address that.

Mr. Mantoni: I feel better that you eliminated the one on the road. Without re-hashing the whole thing, you think this is going to attract a younger clientele?

Purvish Patel: It's not that. It's tying the whole story of the hotel. Taking pictures and tagging people. People see the Cape being promoted. People are seeing where they are. Hence, the map of Cape Cod, which already exists on the building. We're just coloring around the map.

Mr. Igoe: I think we've covered this ground before. I think we covered the mural the last time. I'm in agreement with the Building Department. I'm not going to go against his determination and we're going to rewrite the sign code. If they want to change something, the best way to do it is to go to the Planning Board, and then go to Town Meeting. Try to get your own article on the warrant. I do consider this a repetitive petition and I would not agree to allow the petitioner to withdraw this petition. I would require it to be a vote up or down.

Chairman DeYoung: I'm not sure I understand it in total in any event. I hear that you're making an effort to promote art. Once that art is on there, it's not going to change, or is it? Are you going to have different artists replace this mural every so often?

Purvish Patel: No.

Chairman DeYoung: So, it's going to be completed, fixed, and left.

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Purvish Patel: Yes.

Chairman DeYoung: I don't see that as a promotion of art. I see that as a design you have on your building. When we're looking at the Route 28 streetscape on properties in the B-1, B-2 and limited B-3 zoning districts, it is just not appropriate that we do anything other than to abide by the sign code. We have a very comprehensive sign code. It must be changed at Town Meeting because we're not going to legislate those changes from this Board. My vote will be "no" to any significant change to the sign code and see this as a very significant change to the sign code.

Public Comments:

In Favor

Joseph Manning, 6 Vinebrook Road, South Yarmouth: I've lived in Town for 50 years. I've listened to the discussion tonight. I don't know that I agree that we're trying to uphold some aesthetic on the Route 28 corridor, whether it's in the B-1, B-2, or limited B-3. We've all driven up and down Route 28 recently, and it's not impressing anyone. The amount of blight we have on Route 28 right now is more than I can ever remember. I'm not speaking on behalf of the Community and Economic Development Committee or the Chamber of Commerce, but as a member of both, I think this is exactly the type of investment that we're trying to foster in that corridor. We all know that our tax base has reduced dramatically over the years and it's trending in the wrong direction. Wastewater will impact that dramatically, but these innkeepers are making a commitment to our community and they're investing their own money. If they're doing that, I think we need to support that. The vehicle that they're choosing has a brand and a style and it's meant to be an experience. I understand that this wall that's 100 feet off Route 28, in the back of the parking lot behind the main building, could be debated. The Building Commissioner has decided that it's a sign, but I don't agree. It's up to this particular body to use its discretion when applicants come before them with good ideas, with some energy, with commitment to stay here, to perhaps buy another motel and refurbish it, that we need to do everything in our power to support that effort. I'm not talking about rewriting the sign code. If this was unanimously decided as a piece of art, we wouldn't be talking about the sign code. It doesn't promote the name of the hotel. It doesn't really change the nature of what's already up there which is a map of Cape Cod; it just provides a fresh take on it and it provides an Instagrammable moment that I wholeheartedly agree is going to do more good for the Town than if we take petitioners like this and do very little to support their efforts. I urge this body to reconsider what I think I'm hearing. I support this petition. Thank you.

Steve O'Neil: Short-time resident; 5 or 6 years in the Town. I'm not speaking on behalf of the Community and Economic Development Committee, nor am I speaking on behalf of the Chamber of Commerce. However, I am going to speak on dovetails with a lot of work they do there. Before you tonight are some younger folks who are desirous of investing in the community and they want to take a different approach. In my opinion, that sign that they're talking about, being in the rear of the property, is not going to affect anything along Route 28, yet helps these individuals, who want to reinvest in the community, promote different style/different way that heretofore hasn't been done. As they indicated a few moments ago, they want to reach out to a different demographic in the community, using different methodologies such as social networks. I know we're on a fine line between art and signage. We're not trying to legislate, but I do think we want to give a nod to individuals who want to invest in this community along a corridor that

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right now is experiencing some decline. We have to start somewhere. These modest steps, along with a bigger step of wastewater, is eventually going to reinvigorate Route 28. Thank you.

Susie Kilmartin, 24 Little Dipper Lane, South Yarmouth: I'm a professional artist. I've done murals in Hingham and all over the United States. I'm absolutely in favor of this petition. I take issue that it's considered a sign since it's not visible from Route 28. Thank you.

Board Discussion and Deliberation:

Chairman DeYoung: Based on what I've heard, I think the point is being missed. This would be a legislative change to the sign code by Town Meeting vote as to what was/was not to be allowed. We have been consistently asked since then to consider changes to it, which we have resisted over and over again. Instead, we have suggested to everybody that petitions us, merely go to the Town Meeting on a warrant item or go to the Planning Board and ask them to incorporate one of your requests into a proposal to be considered at Town Meeting. That's the way to do this. My hope is that someone will hear that, loud and clear, and actually undertake that. I don't think there's anyone here on this Board that's against trying to render whatever is appropriate. I do take offense that Route 28 is derelict. I think we've made some darn good progress along there. We're working hard with people who want to invest in their businesses and whatever the Town's vision is, and it is not to see murals along Route 28, that I assure you.

Mr. Fraprie: I don't agree that this is a sign. It is art and we don't seem to have anything that regulates that. Even though I'd love to support it, I do think it's something that needs to go through the Planning Board, whether the request is to look into modifying the sign code or putting together something that would allow something like this.

Vote:

A motion was made by Mr. Igoe and seconded by Mr. Martin to uphold the decision of the Building Commissioner.

Mr. Igoe: I have read the Building Commissioner's letter with his interpretation of the Bylaw. I agree with his interpretation.

On a roll call vote (5-0), the request to overturn the decision of the Building Commissioner was denied.

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

A motion was made by Mr. Igoe and seconded by Mr. Martin to deny the Special Permit, as requested.

Mr. Igoe: The petitioner does not meet the criteria for a Special Permit under the definition of the Bylaw.

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

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

A motion was made by Mr. Igoe and seconded by Mr. Martin to deny the Variance as requested.

Mr. Igoe: The petitioner fails to meet the criteria necessary to qualify for a Variance under our Bylaw and under Chapter 40A.

On a roll call vote (5-0), the request for a Variance was denied.

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

PETITION 5024: Wakeby Development, Inc. Property Location: 184 South Sea Avenue, Unit #1, West Yarmouth, MA. Map & Lot #: 17.136.C1. Zoning District: R-25. The Applicant seeks a Special Permit per §104.3.2(2) and §104.3.2(4) and/or Variance from §203.5 for front setback relief to raze and replace a pre-existing, nonconforming dwelling within the existing footprint as part of a pre-existing, nonconforming use.

John Burke, Wakeby Development, represented the homeowner: The property is located in South Sea Village Condominiums. One of 33 units established in 1981. The home is much older. Seeking relief to remove the existing structure and place it within the existing footprint. Currently, the home is a 3-bedroom, 1 bathroom over 2 stories. ~1,064 sq ft living area. We plan on erecting a 3-bedroom, 3-bath home with a full basement, on the existing footprint. The new home will be 1,577 sq ft. The height of the new home is 23.8' at the ridge line. Use of the property will remain "as is".

Board Questions:

Mr. Martin: Looks like you're in the exact same footprint. Adding some landings, but removing a deck. It's a condominium cottage colony. It's not increasing the overall footprint, so I don't have any real issue. It's not in the flood zone. The [Condo] Board has approved your request.

Mr. Fraprie: The proposed landing and the proposed bay window. In the Site Plan, you show it as two small bump outs, but in the rendering, it looks like one roof that sticks out. Which is it?

Mr. Burke: On the proposed bay window, it's a cantilever over the foundation. The foundation stays the same. For the proposed landing, it will be a stoop.

Mr. Fraprie: In the rendering, you have one continuous roof over both.

Mr. Burke: The way I interpret the plot plan. The first 12-18 inches off the ground. Based on the elevation, I believe the roofline is over the door and over the window.

Mr. Fraprie: How far does that extend out?

Mr. Burke: Looks ~3 feet off the foundation.

On June 22, 2023, on a motion by Mr. Martin seconded by Mr. Fraprie, the Board voted 5-0 to approve these minutes.

Mr. Fraprie: The closest the building comes to the front is 14 feet today to the corner of the windmill area?

Mr. Burke: Yes.

Mr. Mantoni: You're basically reconstructing what's already there?

Mr. Burke: Yes.

Mr. Mantoni: It will certainly enhance the neighborhood.

Mr. Igoe: We've dealt with these redevelopments in this cottage colony as well as others. I've never seen us allow this before. I don't know that this fits into a legally preexisting nonconforming single family structure. It's not sitting on its own lot. It's on one big parcel. In the past, we have asked these owners to bring us some type of Comprehensive Plan as to how they may consider redeveloping the property. We've never been inclined to grant them relief like this on a one-off basis. The history of this particular property is that this was not a year-round cottage; it was a summer cottage. It's a seasonal cottage. It's meant to be a seasonal cottage. I know it's on a big piece of property, but now you're going to make this a year-round home. Then, they'll all come in and ask to be year-round homes. They're not on any subdivision plan. There's not lot lines. There's no setbacks. Historically, I don't remember the Board allowing relief like this, so I would not be able to support this.

Chairman DeYoung: I remember this Board *not* supporting relief like this in the past. So, I don't know how we now make some new determination. The whole nature of this property over the years has changed dramatically from what it was before it became condominiums. Sean, isn't there a restriction on this property that it *not* be used for year-round occupancy.

Mr. Igoe: My understanding is that we have restricted any use of this property beyond seasonal. We normally require them to shut the water off. I don't know if the Town still does that or not. They could use it from April 1 to probably November 1, then the Town shut the main off.

Mr. Martin: This is one of the first condominiums within the community. I don't believe there was a seasonal restriction imposed. There are a number of houses in the community that are used year-round. I don't know that a restriction applies here. There's been other relief asked for within South Sea Village. Some have asked for extra bedrooms and that *has not been allowed*. Some people have asked to enclose a porch and add a deck and typically that *has been allowed*. I don't think there's anything that says this has to remain seasonal.

Chairman DeYoung: In 1981, the relief sought was denied.

Mr. Fraprie: Petition #1875 from September 23, 1982, the addition for Unit 4 was approved. The cottage will remain a one-bedroom cottage for seasonal use only.

Chairman DeYoung: As Mr. Martin said, there's a whole bunch of decisions concerning this property because there's a whole bunch of structures within this property. I don't think it was intended that we would see homes of this size, with these number of bedrooms, become the norm of all the buildings in there, and I'm not going to support this tonight.

Public Comments:

Susan Kinnear, 41 & 45 Salt Marsh Lane, West Yarmouth: I don't know if I agree with putting a full basement there. It's very close to the flood zone. The underground streams that come through. Even if you're not in a flood zone, if you put in a full basement, you will have a basement of water. I live right behind this cottage. These were originally summer cottages, but there are people who live there year-round. The cottages were built with repurposed wood, so they were not viable for year-round living. The current residents have done a lot of work. The

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property itself is in incredible disarray; it's disappointing to see it look like that. Any improvement would be beneficial, if it was more in keeping with what the area is.

Bob Garrahan, 184 South Sea Avenue, Unit 13, West Yarmouth: Not speaking in opposition, just a comment. There are folks that live there year-round. Right now, that house is sitting there like a haunted house. There's no siding. They had foundation issues. It's a tremendous eyesore. While I don't agree with everything in the plans, I do think something needs to be done about this house for the community. Thank you.

Board Discussion and Deliberation:

Mr. Martin: In looking at the previous relief that was granted, I don't see where the cottages became condos. The first decision seems to be a prospectus for a condominium complex of new buildings.

Mr. Igoe: How active is the condo association if they're not looking after buildings in disrepair?

Mr. Martin: I think they're active. They have exclusive rights to that beach next to Seagull Beach.

Chairman DeYoung: They have sent in their support of the petition. They [the Condo Board] do exist from some standpoint.

Mr. Fraprie: I'm looking at the last decision (most recent from February 27, 2013) in the packet. There is some consistency on supporting some of these types of things.

Mr. Igoe: I think there's consistency in supporting a reasonable amount of remodeling, but keeping it the same as it was. I don't think you've seen this Board make a determination that you're allowed to take a little broken-down cottage and turn it into a blown-out, 3-bedroom, 2.5-bath year-round home. It's not a legally preexisting, nonconforming structure. If I may, this isn't the only cottage colony that we deal with. We've had similar requests from all of them.

Mr. Burke interjects with a question: If the property burns to the ground, what do you recommend? What have you done in the past?

Chairman DeYoung: I'm not going to even comment on that, and I don't think any Board Member should comment on it either. We only talk about facts; we don't talk about suppositions.

Mr. Igoe: I'd like to move the question, Mr. Chairman.

Vote:

A motion was made by Mr. Igoe and seconded by Mr. Mantoni to deny the Special Permit, as requested.

Mr. Igoe: The petitioner failed to meet the criteria under a Special Permit.

On a roll call vote (3-2), the request for a Special Permit was denied.

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

On June 22, 2023, on a motion by Mr. Martin seconded by Mr. Fraprie, the Board voted 5-0 to approve these minutes.

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 (2-3), the request for a Special Permit, was not approved.

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

Vote:

A motion was made by Mr. Martin and seconded by Mr. Igoe to approve the Variance, as requested.

Mr. Fraprie: I don't think it qualifies for a Variance under the criteria.

On a roll call vote (0-5), the request for a Variance, was not approved.

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

PETITION 5017: (continued from 05/11/23) **Jeffrey and Kimberly Lareau, 3 Jerusha Lane, West Yarmouth, MA. Map & Lot #: 23.172. Zoning District: R-25.** The Applicant seeks a Special Permit per §104.3.2(2) and/or Variance from §203.5 for front setback relief on pre-existing, nonconforming lot to build inground pool.

Chairman DeYoung: To refresh everyone's memory, it was a corner lot and we suggested that the petitioner look at other alternatives.

Jeff Lareau reviewed the plans with the pool builder, deciding to move the shed and put the pool in the backyard as the Board suggested.

Chairman DeYoung: I looked at the plans and you went out of your way to accommodate our concerns.

Board Questions:

Mr. Igoe: I see that it's set back from the bulkhead. Do you know the distance?

Mr. Lareau: It's roughly 8 feet from the bulkhead.

Mr. Igoe: Looks like it might be a little more, but I think you need a minimum of 15. You're going to have setback requirements from the foundation. I think the petitioner did a good job working with the Board. I think the alternative site for the pool looks OK to me.

Mr. Mantoni: With regards to the shed, you have 4 options on the plan.

On June 22, 2023, on a motion by Mr. Martin seconded by Mr. Fraprie, the Board voted 5-0 to approve these minutes.

Mr. Lareau: We threw around a bunch of options. We wanted to make sure we do what we have to do for the pool. Once we voted on a pool, we can move on and talk about the shed, if you want to do it all at once. But there are a lot of different variables with the shed. Some of those options are going to entail me spending a lot of money. I would like to talk about where the shed goes because if I have to start moving the fence, it's going to be very expensive. I'm already paying \$500 to move the shed to another spot in the yard, which I understand because I want the pool. Chairman DeYoung: We can't deal with that tonight because it's an additional form of relief that you need and it's not before the Board appropriately or neighbors or abutters who may have an interest.

Mr. Martin: I think the shed needs to part of the proposal one way or another.

Chairman DeYoung: If you want to make it a condition, that's fine.

Mr. Fraprie: He has 4 identified locations.

Mr. Lareau: I have one more I'd like to talk about, if we could.

Mr. Igoe: If I could interject, Mr. Chairman. I think the Chairman had it right. He only asked for relief for an inground pool. We can't give you any relief relative to the shed. The only thing we can tell you is: You can put the shed somewhere as a matter of right, if you meet the required setbacks. Other than that, you'd have to come back and see us.

Chairman DeYoung: In all fairness, going back to that meeting, that was what the petitioner was told. You can put the shed anywhere where it's legal to put it.

Mr. Martin: What we're saying is where you're showing it here may not be legal.

No Public Comments.

Board Discussion and Deliberation:

Mr. Martin: I'm pleased that the pool has been relocated; that's a great option. The shed would need to be relocated, so it's legal, or you'll need additional relief.

Chairman DeYoung: I think this petitioner went out of his way to accommodate our request in a tasteful way, and solve all the issues we had last time, relative to the pool. Getting it off that road and its proximity to a tarred surface is a big plus.

Vote:

A motion was made by Mr. Fraprie and seconded by Mr. Martin to approve the Special Permit per the revised plan of May 17, 2023.

On a roll call vote (5-0), the request for a Special Permit per the revised plan of May 17, 2023, was approved.

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

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

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

On June 22, 2023, on a motion by Mr. Martin seconded by Mr. Fraprie, the Board voted 5-0 to approve these minutes.

PETITION 5019: (continued from 05/11/23) **Maria Curtis dba Lightning Speed Go-Karts.** **Property Location: 228 Route 28, West Yarmouth, MA. Map & Lot #: 37.148. Zoning District: B-2.** The Applicant seeks a Special Permit per §301.2 from buffer trees requirement and/or allow N11 use in B-2 zoning district to install a seasonal go-kart racetrack.

Chairman DeYoung reminded the audience that Petition 5019 is a continued petition. If someone has something substantively different from the last time, please feel free to bring it to our attention.

Kieran Healy, BSC Group, appeared with the petitioner, Maria Curtis, and he presented the petition.

At the last meeting, some items requested by the Board have been added to the plan:

1. **Additional parking.** Another 17 parking spaces on front left side of the property. Set back from street and utilizing existing area. [Total parking spaces: 54]
2. **Placement of trees in front of property.** Previously, we had trees that could be moved easily. 5 trees in wooden enclosures set permanently in front of the facility itself. The trees would also help block the curb cut that would not be used to access the property.
3. **Sketch of the tent's interior.** There are 3 components: small office area for sales; maintenance area; go-kart loading and storage area.
4. **On-site safety.** Added 3 speed bumps to the driveway aisle to slow down traffic. In areas where you would possibly pick up speed, we've put in speed bumps. One speed bump as you exit Route 28 onto the property. One speed bump as you go from one parking area to the other parking area. One speed bump behind other two parking areas.
5. **Second layer of fencing.** Had fencing around the go-kart area on the west side. Added a 6-foot-wide strip all the way back to the restroom facilities. Will also have a secondary fence between the driveway aisle and the walkway to eliminate the possibility of someone crossing into that area. We will have some openings in that fence, so when people leave the parking area, they can walk right across and get onto the walkway to the entrance to the facility.

One of the items discussed last time was the potential for noise; the level of decibels on the site. The buildings in this area are commercial buildings. One of the concerns is the condominium to the rear would be affected by the noise. I took a Google overlay map that shows the location of the condominiums and the distance to the back edge of the go-kart property. There's a substantial distance between the condominiums and the rear edge of the go-kart property. The property line itself is close, but the actual distance to the nearest condominium building is 890 feet. That would decrease or eliminate any noise.

Board Questions:

Mr. Igoe: At the last meeting, when you pull into the entrance off Route 28, where you're going to feed customers off that walkway, in between the two handicapped spots, I thought we had a discussion about closing that off and leading your customers down through that fenced-in area to buy tickets.

On June 22, 2023, on a motion by Mr. Martin seconded by Mr. Fraprie, the Board voted 5-0 to approve these minutes.

Mr. Healy: The area itself, we have the walkway down. The area with the picnic tables will also be available for people to walk in and walk down. The striped area is for handicap accessibility; it could be used for people to walk in and out, but primarily it's for handicapped vehicles to park and wheelchairs to get in here. But the pedestrians themselves will walk right through this area by the picnic tables, so it would not go directly behind the two handicapped spaces.

Mr. Igoe: Where are you going to put a gate?

Mr. Healy: The gate would be in that same location.

Mr. Igoe: Where it says proposed gate, you're still planning on bringing people in there right off Route 28? So you're going to have people walking down the driveway to buy tickets. That was my concern last time. My thinking was this: Take your two handicapped parking spaces and put those as the first two as you drive in on the left side, and just put a gate straight across, an entrance gate adjacent to each parking area. All 3 entrance gates all the way up. People come in that way and walk down the walkway. Closed off on Route 28 and have your ticket booth right there. Everybody goes back up that walkway and walks into their respective parking area. I want to prevent traffic backing up on Route 28 and people getting hit by cars in the parking lot.

Mr. Healy: You're talking about moving the 2 handicapped parking spaces to the west side of the driveway.

Mr. Igoe: That's correct. Close that entrance off with a gate, and make your customers come into 3 adjacent gates that run up the walkway. Have directional signs (tickets this way) hanging on the interior fence. That way, you control the crowd. Otherwise, I think it's a vast improvement.

Mr. Martin: You don't have any sidewalk that goes from the gate/entrance area out to the street sidewalk.

Mr. Healy: Not expecting pedestrians.

Mr. Martin: You'll have pedestrians.

Mr. Healy: We can add that portion.

Mr. Martin: The trees in planters are now in front of the track. Are the other trees being planted?

Mr. Healy: The ones in front of the parking lot will be in permanent planters (the trees go in the ground). The ones in the parking lot will be in moveable planters. The reason for the temporary plants is this is a temporary, seasonal use of the property. There's a long-range plan for this property that doesn't include go-karts.

Mr. Fraprie: I appreciate you making all the changes. Is the minimum of 20 feet for the entire entrance still valid?

Mr. Healy: Yes.

Mr. Fraprie: How wide is the walkway between the two fences?

Mr. Healy: Minimum of 5 feet.

Mr. Mantoni: We did ask you to put speed bumps in, but are we concerned that the first speed bump off Route 28 *will slow traffic* and back it up on Route 28?

Mr. Healy: We don't believe it will because there's enough space for two vehicles as you come off Route 28, before you get to the speed bump. It's when it's less than two vehicles that you get that issue, so it's set at a distance of two vehicles.

Chairman DeYoung: I have no questions of what you presented; I understand the changes made. Overall, I think you've done a great job of addressing the concerns that we, as a Board, raised.

Public Comments.

In Favor

On June 22, 2023, on a motion by Mr. Martin seconded by Mr. Fraprie, the Board voted 5-0 to approve these minutes.

Mr. Frost: I am for Ms. Curtis' Lightning Speed Go-Karts and the new revisions that she has made.

In Opposition

Attorney Christopher Senie, speaking on behalf of his clients, Marilyn Luncht, 481 Buck Island Road, Unit 7E, West Yarmouth, MA, and Wagner Quintanilha, Wagner Hospitality Management, President. Mr. Quintanilha manages the Sunbird Cape Cod Resort and Annex, 216-226 Route 28, West Yarmouth, MA, a direct abutter to 228 Route 28.

Attorney Senie was contacted yesterday (day before the May 25, 2023 hearing) and has reviewed the video from the May 11, 2023, hearing on this matter.

The petitioner has applied for N-11 use (Other miscellaneous amusement & recreation services), which is an allowed use in this zone (B-2) if the ZBA approves a Special Permit. Just above the N-11 use in the Use Table is N-10 (Temporary outdoor recreation) which is not allowed in this zone. I assume the Board is proceeding as if this proposal fits within N-11 (Other miscellaneous amusement & recreation services).

§103.2.2: Special Permits shall not be granted unless the applicant demonstrates that no undue nuisance, hazard or congestion will be created and that there will be no substantial harm to the established or future character of the neighborhood or town.

That's an important sentence. It establishes who has the burden. Do the neighbors have a burden to establish that the noise that reaches their property will be a nuisance or does the applicant have a duty to demonstrate to this Board that it will not be a nuisance? It's the applicant's burden to demonstrate there will be no undue nuisance and no substantial harm to the character of the neighborhood. I recognize that these are subjective standards and this is your call, but the Board ought to be looking at: What are we basing a finding on? At the last hearing, two Board Members did express concern about noise levels. The Chair inquired of the applicant if she was qualified to take noise readings, if she had some skill or training in this. She said that she wasn't, but that she had visited some tracks, and on a handheld meter, had taken some readings in the 72/73/74 decibel level. We don't know her qualifications. We don't know what sound level reader was used or if it was calibrated before or after the testing. There's a lot we don't know. At the last hearing, a Board Member commented, "You know we can go out there and have a perfect 70 decibel reading when you put 10 karts there on the ground and light them all up. But you start them up, and then if they're actually on the track, speeding around, maybe that goes up to 170. I don't know." We really don't know the sound pressures that are going to reach the properties. Keep in mind that one of my clients is in the abutting property, operating a motel where people are trying to relax and get rest. One Board Member did say we need an expert study, so there would be a basis to the finding that there would be no nuisance, "I think I would just reiterate what was said around the noise. I think that some kind of study that really identified it from a professional, as to what the noise level would be, would be helpful. Just to reassure me that it doesn't carry in whichever direction that we're talking about."

I have had the occasion to present to Boards like this acoustical studies prepared by acoustical engineers. I've worked with about a dozen acoustical engineers in land use matters. It is not

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difficult or expensive or time-consuming for an applicant to have an acoustical engineer do so. In fact, it could have been done between May 11 and tonight; it's that a short period of time. It is not expensive. It's similar to your Board asking the developer of a shopping center to produce a traffic study. If there's concern about car trips and circulation, an applicant would produce a study for you, so that you could look at an expert's work. That is becoming more and more common. It's very simple to do.

The gasoline engines in these go-karts have a sound power level. Those engines did not enter the commerce stream without being tested in a lab. So, that engine, which is the loudest part of the go-kart, has a sound power level that gets plugged into a piece of software that produces a map to show how far the sound goes and at what levels. The result is a contour map. The sound source would be at the center of the circles. The circles are not exact circles (amoeba-shaped circles) because of other factors, such as softness of the ground. Sounds travels quicker and lasts longer over a flat surface like concrete or water, but if there's vegetated growth there, it's less. And the sound decays over distance. It's very easy and very standard for an applicant to produce a sound study. I'm urging that this process be slowed down and that be done in this case, so you will know, that the time this reaches my client's motel, which is right next door, what will the decibel levels be.

The other thing I noticed in the hearing is that there's been a lot of emphasis on the fact that this is going to be a temporary Special Permit. The emphasis seems to be to *not fulfill* all of the work that is normally done to determine if your standard is being met, but the Zoning Bylaws don't say that. If you're granting a Special Permit, it's a permanent thing. It may have a sunset date, but you have to be looking at it as a permanent land use decision that you're making, and your Zoning Bylaws, and none I've ever seen, there isn't a different standard for one that will sunset as compared to one that won't.

One Board Member said, "I think it's a great idea. I wouldn't agree to a permanent location here. I don't think it's the right thing for what we want to see on Route 28, but it's a heck of a lot better than what we're seeing now. If it's a limited duration, that's great, and you couldn't extend that duration without coming back to the Board." That's not a safeguard. You still need to do your job to understand what injury or adverse impacts might be incurred during these 3 years. Also, at the end of that 3 years, when the applicant has already made the investment, it's going to be very difficult to tell the applicant, "We're not going to renew it because it has caused a lot of distress." The time to ask for a study and understand what the likely impacts will be is now during special permitting.

I did look at other go-kart facilities on the Cape (Cartwheels in Dennis; Bud's Go-Karts in Harwich; Cartland in Wareham; Bass River Sports World in Yarmouth – the one in Yarmouth is electric karts). I understand from the record I read that the applicant has already bought the gas go-karts. In none of these other locations is there an abutter that sleeps there or has guests that sleep there. This would be something new, and I think your Board should take that step only when you have in front of you the information that would let you make the decision and apply your standard. You should be comfortable that there won't be a nuisance and it's the applicant's obligation to do that. There's only one way for her to do that, and that is to agree to present this study. Again, it is not an expensive study. I've done it very often and it doesn't take a long time.

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It is possible that you could ruin or severely damage an existing, vibrant business right next door. My client is here and works very hard on the Sunbird facility. This is go-karts running 10am-10pm. It's going to be loud. These are gas go-karts. There's a lot of danger here and it would be in everyone's best interest if the Board would take their time and go through the standards in your Bylaw. Thank you for allowing me to speak.

Wagner Quintanilha, Manager, Sunbird Motel, 216-226 Route 28 next door to the proposed go-kart business): All it takes is some reviews about the noise and gas fumes. It's going to drive my business away. I'm very concerned. I like the go-kart business. I used to drive go-karts myself. That noise. If you come to a hotel, you want to relax; you want quiet. It's a great neighborhood. We're very happy to be there. I really think it's going to hurt our business, having that kind of noise right next door. We have second-level rooms facing out; the sound will travel. I'd really like to request some study to be done by experts about the impact. In a quiet room, the decibel level is about 30. If I have an air conditioning unit that's louder than that, I have to replace it because it's just not comfortable, so you want it quiet.

On behalf of the Chairman, Board Member Dick Martin reads new correspondence regarding this matter into the record.

Board Discussion and Deliberation:

Mr. Igoe: I want to commend the petitioner for coming back with a revised track, addressing the safety and parking concerns, trying to do their best to give us the plantings that we wanted. I do think it's a great idea as far as a tourist attraction. I'm sure it would do very well. Something kids would love. After listening to the direct abutter at the hotel, I am concerned about the noise level and how that will affect his guests. He has sunk a lot of money [into the property] over the past 12 months; I've seen that. This issue of the noise level has me concerned to the extent that I'm not really there yet. I know they're asking for a 3-year Special Permit and it would sunset after 3 years. It would have a 1-year review. I would need some further convincing that the noise would not disrupt guests at the hotel next door.

Mr. Mantoni: I would agree with Sean. I think you did a great job of doing exactly what we asked you to do. This is the first time we have heard from the abutter and he has some serious concerns, operating a hotel right next door. We didn't have any opposition from him in the first meeting. But now, he has raised some serious concerns.

Mr. Fraprie: I appreciate all that was brought back. I think they listened to what we had to say and brought a lot back. There would need to be conditions on sidewalks toward the front. I'm also very concerned about the noise; I brought it up last time. I know there are professional ways of doing this; I've experienced that in the past. I would like to be convinced that it wouldn't affect the other business right next door. I would encourage the petitioner to get a professional review, at minimum.

Mr. Martin: Yes, I agree with Sean and Jay. I appreciate that changes have been made and listening to our concerns. There are a lot of neighbors here that are not thrilled with this idea, and I'm not seeing any professional information as to what certain decibels sound like and what the impact will be. Essentially, a motel is a residential neighbor as well as the other neighbors that are close-by – 100 feet across the street and the condominiums in back. If these were electric vehicles, I'd be gung-ho. If they were quiet, I wouldn't have any issue. I don't like the idea that

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everything is temporary. The plantings are temporary. There are sections of the buffer that don't have any plantings. There's a whole section by the motel – not even a tree in a planter; not to mention, no fence. The motel is right there and that needs to be properly buffered, even for a temporary use. I understand not wanting to do a whole lot because it's temporary. But temporary, as the attorney mentioned, may not be temporary and may turn into permanent, near-permanent or longer, or get extensions. Without a lot more information about the noise and the traffic, I find it hard to vote in favor, as it's presented. This kind of recreational use is good, but I'm not sure this is the right spot for it.

Chairman DeYoung: I'm a very big proponent that a business district should be allowed to have businesses conducted within it. This is very important that this be said, from my perspective, because of other businesses we have considered up and down Route 28. It is just not, in my mind, something that was quite to the fever pitch level that it is tonight, because we hadn't heard an opposition from the most immediately affected abutter. And had that occurred, because it seems his only concerns are due to noise. We discussed noise. We discussed how easy it is to get readings. Maybe we would have said, "C'mon in with sound detection equipment. Tell us what it's going to be under the worst-case scenario and the best-case scenario." Let's have a definite "Will it or will it not have an impact the guests at the adjoining property?" I don't know. They've just done a major rehab on that property. Maybe they put in some soundproofing materials in the walls and better window panes. I don't know if there will be any noise incursion into the guest rooms. What I do know is it would have been better to have heard it a couple of weeks ago rather than tonight because now I think we're going to have to say if we're going to give it any consideration. or outright vote it down, I'm not in favor of that. I'm not in favor of requiring a traffic study; I don't think that's an appropriate expenditure of money. I do think it would be ideal to have electric karts, but we don't. We have someone who's invested very heavily in gas karts. I think it's a viable business that would do well for the citizens and taxpayers, but also those people that we encourage to come down, that don't own a place down here. I'll bet you, dollars to donuts, that many of the people that now have spoken are likely not natives to this peninsula; they've relocated here after coming down and retiring or moving their family down because of the beautiful beaches and the wonderful entertainment that it provides year-round, and particularly in the summertime. It's a balancing of these things. I very seldom have sympathy for anybody that moves into a residential area abutting a business district; those are the realities. Business is business. I do agree absolutely with the comments tonight that the "new kid on the block" in terms of consideration is the sound into the hotel. And for that reason alone, if called to vote on it this evening, I will vote against this petition. Now, there are alternatives. Since sound is the overwhelming concern, I think it's up to the petitioner whether or not they want to present additional evidence at some later time. If not, that's fine as well. We'll vote on it tonight and bring this matter to a conclusion. To the petitioner, I ask, "What do you want us to do?"

Kieran Healy, BSC Group, requested a continuance to look into the sound study.

Chairman DeYoung: Having heard all of the noise issues on May 11, I'm somewhat befuddled by the fact that we, as a Board, have to tell the petitioner how to go about salving the legitimate concerns of neighbors. If you need time to get sound meters out there, and if the other Board Members agree to a continuance, so be it. It's on you to do it; not us.

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Mr. Igoe inquired into the particular noise study the petitioner plans to do: How are you proposing to do a noise study?

Ms. Curtis plans to get information from Attorney Senie.

Chairman DeYoung said the Board should not set the parameters of the noise study; it should be set by the sound engineer. There is a noise meter that can go into a hotel room, if the abutter who is concerned about noise, would permit it. Go-karts running at high speed; not at idle. You might want to consider that, but we're not here to dictate what's in the report. If you're interested, produce a report that allays the concerns of this Board, and hopefully, some of the neighbors.

Vote:

A motion was made by Mr. Martin and seconded by Mr. Fraprie to grant a Continuance, as requested.

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

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

The petitioner signed an Extension Agreement to continue to the June 22, 2023 hearing.

OTHER BUSINESS

Zoning Board Administrator: Tabled until Board can schedule a workshop to discuss parameters of this role.

Adjournment: Mr. Fraprie made a motion to adjourn, and Mr. Martin seconded. The May 25, 2023 Zoning Board of Appeals meeting adjourned at 8:45pm.