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**ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
MINUTES
THURSDAY, MAY 4, 2017
7 PM - TRURO TOWN HALL
24 TOWN HALL ROAD, TRURO**

QUORUM PRESENT: B. Perkel (Chmn); F. Todd (V. Chair); A. Hultin (Clerk); J. Thornley; J. Dundas, S. Areson (Alt). (Alt. Member Brown did not participate).
Also present, Planner Ruffer, Town Counsel Silverstein. (S. Kelly, Recording Sec.)

Meeting convened at 7 PM by Chairman Perkel.

Continuation: 2016-010/ZBA – Adventure Bound Camping Resorts, for property located at 67 S. Highland Rd (Atlas Sheet 37, Parcel 15) & 10 Old Dewline Rd. (Atlas Sheet 37, Parcel 19)(Reg. of Deeds title ref: Book 26095, Page 3). Applicant is appealing the May 4, 2016 Stop Work Order of the Bldg. Com., for work related to construction and installation of state-mandated sewage treatment facility, per plans filed, as continued from Aug 22, 2016, Nov. 28, 2016, January 23, 2017, and March 20, 2017 (w/time waivers).

Mr. Perkel noted at the previous meeting they had heard concerns about the alteration of the property and those issues (“restrictions”) and the statement had been made those issues should be incorporated into the deed. Correspondence from both Atty. Nagle representing Horton’s, and Sup’t Price of the NPS/Cape Cod National Seashore was noted as well. The National Seashore letter voiced concerns with the intensification of use at the site; 9 acres had been disturbed prior to permitting and proposed conditions at the site were noted as well. In 2010 they were told of the wastewater treatment facility and reiterated concerns over present and future intensification of use at the campground.

A chronology and executive summary had been provided previously by the National Seashore as well; they noted: in 1961 there were 130 camp sites; in 1971 there were 180; in 2010 there were 209 sites and there are now 218 camp sites.

It was also noted the last formal request was in 1971 to go from 130 sites to 187 sites; also the ratio of tents to trailers was formerly 3 to 1.

Member Dundas asked about the intensification of use; Mr. Perkel spoke of “hookups” ie: those in place before the stop work order; Mr. Todd asked for clarification on the Dec. 2016 letter from Atty Nagle regarding the number of tents vs. the number of RVs with respect to the 218 sites, and how the sewage treatment facility installation intensifies use at the site. Seashore representative McKean said there had been a shift from tents to more of a mobile home park. Mr. Dundas asked if improving conditions is considered “intensification,” and Ms. McKean said this would be a question for counsel; she added the NPS had anticipated there would be a wastewater treatment facility and thus they were supportive of said wastewater treatment.

Mr. Hultin referred to the Executive Summary from the CCNPS documents and said there seemed to be a gradual increase in sites and cited the Feb. 10, 1970 letter from the seashore which stated in part: “... the seashore’s opposition to their request to “expand utility systems to accommodate eight more mobile homes on a permanent basis....” He also asked about the Certificate of Suspension. Ms. McKean explained this basically says the government won’t take the property by eminent domain. Mr. Hultin said in 1971 it seemed Hortons said they were phasing out RVs and he asked if there were more mobile home sites as opposed to tent sites. He spoke of the chronology reference to the document requesting access to the power line; ref. to the 2010 letter noting 209 sites. He added, there are 218 sites referenced in the letter to the ZBA from Atty. Nagle. He asked if there was never a time that more mobile home sites were approved; he was told that was correct.

Chmn. Perkel asked Atty. Silverstein about the standard that applies to said unauthorized change of use and about the impact. Atty. Silverstein said there was now no buffer on the upper level and habitat had been lost which could not be replaced; there had been a change in the footprint to the camping-related use that had been in existence since 1961.

Drawings and maps were reviewed and discussed; Atty. Nagle spoke and noted he was confident the concerns raised by the Seashore and ZBA would be addressed; he said he wanted to respond to the Seashore, specifically to the number of sites at the campground; he said 218 sites had been approved by the Town of Truro; furthermore, no mobile homes are proposed. He provided history of the campground and provided plans for the current site and the proposed site; he added he had tried to address issues in his May 3, 2017 letter to the ZBA. He referenced Planning Board Site Plan Review which they would have to undertake as well. He said they were willing to limit the number of campsites to 218 with one proviso: the compliance with DEP's requirement regarding the water treatment plant; he said sites are juggled between 2 campgrounds, and there is more room at Hortons than at the North Truro campground; they have 548 sites between those two campgrounds and they are proposing to move ten sites from the North Truro campground over to Hortons. In regard to the "upper" area, any additions will go to the lower level only; there will be no additional sites in the upper area. There will be no additional mobile homes except one which is designated for staff; there will be no year-round residence use; time will be limited to seasonal only, with a deed restriction to that effect. Atty. Nagle reiterated, they would incorporate their proposed conditions into a deed restriction; in addition, he added it was necessary to update to a treatment facility to comply with state law. They wished to have allowable accessory structures at the campsites, and they had modernized with sewer, water and electric to the sites with subsurface cable. He explained there was temporary decking or platforms for access with no permanent footings; they would not allow anything that would require a building permit. In summary, Atty. Nagle said subject to the ZBA decision, they would incorporate ZBA conditions into a deed restriction.

ZBA member Todd asked about the mix of use at the campground. Atty. Nagle explained there were no specific provisions for the number of tents at a site or the number of RVs at a site, for example; they wished to have flexibility to accommodate customers; the upper area is more for tenters; Hortons wants to accommodate what the campers want. Mr. Todd asked about the cost for renting tents vs. renting RVs.

Mr. Hultin said it had been stated there would be no mobile homes and he asked for a definition of mobile homes and "seasonal" use; he was wondering about the applicant's view on how they do not become "permanent." He noted he would prefer to see a "tenting only" area; he felt if RVs are allowed everywhere, it's not "camping" anymore.

The primary difference for the RV is the temporary aspect – seasonal with wheels, said wheels can be moved; mobile homes can't be moved and require a building permit; RVs meet certain specifications; if one reviews those specifications (for RVs) it's clear they are vehicles; concerns were voiced over RV use, and an RV is very different from a mobile home at Hortons. Questions were asked about the RV rentals at Hortons. It was explained they rent a small number of RVs; in some instances they are left at Hortons; they are hooked up (to utilities); they are winterized; but are seasonal in use.

Atty. Nagle responded to a question on the RV use and said he did not know if his client would want to remove all RVs from the site. When asked if there were a size limit to tents or RVs, it was noted part of the problem is it has not been regulated; they now have a plan for site plan review. It was explained the larger RVs would fit on most but not all sites; members asked about the distinction between motorized RVs, pop-ups and tents and whether some sites are used more frequently. Hortons manager explained they were trying to fit the camper with the site with the easiest access; once a camper is at a site, it is probably there for the duration. Size of sites was discussed: some sites are 40x50 ft; some are 90 ft. long, but narrow. The 10 proposed sites at the lower area were discussed as was the 'clear-cut' aspect at the property.

Members asked about the buffer proposed and site plan concerns; they were told the restoration of the upper area will be pursuant to site plan review by the Planning Board; they want to restore the property adequately.

Mr. Todd asked about setback and how the layout would be provided; logistics discussed included installation of buffer, revegetating area and whether there was a buffer between the road and campsites.

There was also discussion on site plan review and planning board endorsement; it was noted the decision of the building commissioner on the Stop Work order would have to be affirmed, etc.

After a short break from 8:17 to 8:25, discussion resumed. It was noted in order to proceed to Planning Board site plan review, there has to be a ZBA decision in place. Some issues involved were: to uphold the decision of the building commissioner, address the stop work order because the application didn't go through site plan review; affirm this was not a protected use; members also wondered whether appearance before the Planning Board was moot (because of the unlawful aspect); it was noted they had been discussing the matter as a pre-existing non-

conforming use; Mr. Todd wondered if it was beyond the scope of said pre-existing non-conforming use and if it was not a conforming use whether they could have a Special Permit within the National Seashore.

Chmn. Perkel summarized: they have never seen this particular situation and he noted it was felt the use they have is a protected pre-existing non-conforming use; this use has changed in volume over a number of years (1997 cited); there is a history of expansion; therefore they are dealing with the issue which says this is a natural extension of what camping was, and is the growth consistent or is said growth such that it's too much of a "burden"....such expansion issue is one of judgement and fact, Mr. Perkel concluded. Mr. Todd asked whether they were arguing a "change of use."

Atty. Silverstein spoke of the zoning bylaw and cited Sec. 30.3.12 which dealt with changes of use and commercial use in the Seashore, "lawfully pre-existing non-conforming commercial uses and structures may continue, but in no case shall the use be altered or converted to another commercial use." In Sec. 30.7 there is an allowance for alteration extension by Special Permit; however this is not relevant to properties in the Seashore. He added, the question of a Special Permit is not before the ZBA since the applicants had withdrawn that aspect.

He spoke of the standards in the Powers case cited by Atty. Nagle and noted the ZBA would have to decide whether this proposal constitutes a change or unlawful extension of pre-existing non-conforming commercial use; they would have to determine if the use is so different from the grandfathered use, then it is not allowed, but use per se, is not before the ZBA.

The issue before the ZBA is whether to uphold the decision of the Building Commissioner. He also said Site Plan Review endorsement (approval) by the Planning Board does not insulate the applicants from the "violation" of zoning (adherence to the zoning requirements) in regard to that use issue. He said the Building Commissioner's order boils down to two distinct issues: the Site Plan Review issue and the separate issue of intensification of use. In their decision they could consider whether the use is different in nature and purpose from the grandfathered use and whether this difference impacts the character of the neighborhood. He also mentioned inclusion of items in the restrictive covenant mentioned by the applicant.

Members discussed wording of the decision; Atty. Silverstein noted it seemed the ZBAs "struggle" was with the "alteration" wording.

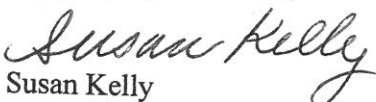
Atty. Nagle provided a summary as well; he asked the Board to consider whether the past or proposed use is grandfathered; he felt this was not a substantial expansion of a pre-existing, non-conforming use; this was not a change of use or extension of use; they were proposing "modernization" of what they have on site. He continued, in Site Plan Review, they will ensure that everything works together including assurances they have made to the ZBA. Highland View Cottages owner Davis spoke of the campground clearing and noted the number of mobile homes rented on a weekly basis now; she felt this campground was totally different from when it was under the Horton ownership; others including residents Riemer and Lucy spoke of the intensification of use.

At this point Chairman Perkel noted the evidentiary portion would be closed although he would leave the public hearing open.

Motion was made to continue to May 18, 2017 at 7 PM at Truro Town Hall.

Meeting adjourned at 9:26 PM

Respectfully submitted,


Susan Kelly