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“The Board of Appeals shall have the following powers and duties...to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship.”

A variance from the terms of within the Ordinance shall not be granted by the Board of Appeals unless and until a written application for a variance is submitted demonstrating:

(a) That social conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;

(b) That literal interpretation of the provision of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;

(c) That the special conditions and circumstances do not result from the actions of the applicant; and

(d) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same zone;

Further, pursuant to the Town of Charlestown Zoning Ordinance § 175-40(C)(1)(g), a variance from the terms of within the Ordinance shall not be granted by the Board of Appeals unless and until:

(a) A completed application form for a variance is submitted which demonstrates the applicability of the above criteria. In addition, requests for variance in the Critical Area Overlay District O shall not be heard unless the state's Critical Area Commission has received a copy of the variance request at least two weeks prior to the scheduled public hearing.

(b) The Board of Appeals shall find that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building or structures. In making this determination for variance

requests in the Critical Area Overlay District O, the Board of Appeals shall consider the following as tantamount to a minimum variance:

(1) That the granting of a variance to the yard and/or Buffer requirements results in new structures or impervious surfaces being located as far back from mean high water, tidal wetlands or tributary streams in the Critical Area as is feasible; and

(2) That the applicant takes steps to mitigate impacts, insofar as possible, including reforestation on the site to offset disturbed forested or developed woodlands on at least an equal area. basis; afforestation of areas of the site so that at least 15% of the gross site is forested; and implementation of any mitigation measures which relate to habitat protection areas, as delineated in the Charlestown Critical Area Program, and recommended by state agencies are included as conditions of approval.

(3) The Board of Appeals shall further find that the granting of the variance will be in harmony with the general purpose and intent of this chapter, shall not result in a use not permitted in the zone in which the property subject to variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(4) For variances in the Critical Area Overlay District O, the Board of Appeals shall find that the granting of the variance will be in harmony with the general purpose and intent of this chapter and the Charlestown Critical Area Program, shall not result in a use not permitted in the management area (i.e., IDA, LDA or RCA) or an increase in the number of permitted dwelling units (i.e., density limits) in which the property subject to the variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(5) In addition and to the extent possible based on best available information, all property owners immediately contiguous to the application shall be notified by certified mail and furnished a copy of said application.

Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this chapter in the zone involved or any use expressly or by implication prohibited by the terms of this chapter in said zone.

In granting the variance, the Board of Appeals may prescribe such conditions and safeguards as it deems appropriate which comply with the intent of this chapter and the Charlestown Critical Area Program.

Per the Town of Charlestown Zoning Ordinance § 175-26(B), a private club shall provide one off-street parking space per one hundred (100) square feet of gross floor area for each building erected. The Applicant requests a variance of thirty-four (34) parking spaces from the requirement that he have one off-street parking space per one hundred (100) square feet of gross floor area for each building erected. Per Town of Charlestown Zoning Ordinance § 175-26(C), a private club shall provide parking on the same or nearby premises. If on a nearby premises, the nearest point of the parking lot shall not be further than one hundred (100) feet for a commercial use. The parking area must remain under the control of the owner or operator of the use to which the parking area is appurtenant. Applicant requests a variance from Zoning Ordinance § 175-26(C) to permit the use of a parking lot eight hundred (800) feet from the subject parcel.

Robert V. Jones, Esq. appeared before the Board of Appeals on behalf of the Applicant, The Eagle Point Club, LLC. Mr. Jones proffered that the building located on 125 Conestoga Street is approximately 4,000 square feet. Mr. Jones proffered that a strict application of the ordinance would require forty (40) parking spaces. Mr. Jones proffered that 125 Conestoga

Street currently has six (6) parking spaces. Mr. Jones proffered that the Applicant owns the parking lot associated with the Wellwood restaurant, which is 800 feet from 125 Conestoga Street. Mr. Jones proffered that the existing parking lot associated with the Wellwood restaurant is able to accommodate the additional overflow of thirty-four (34) parking spaces. Mr. Jones proffered that the Town of Charlestown currently has five locations surrounding the Wellwood parking lot and that said locations do not have adequate parking. Mr. Jones proffered that the Town of Charlestown, non-patrons, and local residents currently utilize the Applicant's lot without issue to accommodate use of town amenities and other local uses. Mr. Jones proffered that the residence located at 125 Conestoga Street is used for the bride and bridesmaids to prepare for the wedding ceremony. Mr. Jones proffered that the subject parcel has a history of being a private club and the Applicant's use is consistent with that history. Mr. Jones provided a detailed explanation as to why the Applicant is a private club. Mr. Jones proffered that the Applicant is not requesting an expansion or nonconforming use for the subject lot. Mr. Jones proffered that a literal interpretation of the provision of this chapter would deprive the Applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter since he would be unable to utilize his lots. Mr. Jones proffered that the granting of the variance requested would not confer on the Applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same zone.

Larry Metz is the owner of The Eagle Point Club, LLC and he testified on behalf of the Applicant. Mr. Metz testified that he intends to solely host wedding ceremonies and wedding rehearsals at 125 Conestoga Street. Mr. Metz testified that he operated eleven (11) wedding ceremonies at 125 Conestoga Street in 2019, and that each ceremony typically takes about one hour. Mr. Metz testified that he has received unwarranted anger and personal attacks lodged

against him regarding this matter. Mr. Metz testified that he is not operating a nightclub. Mr. Metz testified that he does not permit guests at wedding ceremonies to park along the street despite other residents and visitors parking along the street. Mr. Metz testified that he utilizes parking attendants and jitneys to accommodate parking and ensure that there is as little impact to local traffic as possible during a wedding ceremony or rehearsal. Mr. Metz testified that he gives specific directions to wedding event attendees and parking attendants to park cars at the Wellwood restaurant parking lot.

David Ashworth testified in opposition to the variance request and testified that The Eagle Point Club, LLC is not a private club. Mr. Ashworth testified that 125 Conestoga Street is a private home that the Applicant wants to use for a commercial use.

Greg Godon testified in opposition to the variance request and read aloud a letter from Samuel Speakman that was also in opposition.

Pauline Bryant testified in support of the variance request. Ms. Bryant testified that she resides directly across the street from 125 Conestoga Street. Ms. Bryant testified that she has no objection to the Applicant continuing to host wedding ceremony or rehearsals at 125 Conestoga Street. Ms. Bryant testified that she does request that the jitneys transporting wedding event attendees be better coordinated.

Christie McDevitt testified in support of the variance request. Ms. McDevitt testified that the strength of local business was a determining factor in her decision to move to the Town of Charlestown. Ms. McDevitt testified that she does not see how the granting of a variance to 800 feet and permitting overflow parking of 34 parking spaces would be detrimental to the Town of Charlestown.

The application and all of the documents submitted to the Town of Charlestown were reviewed, considered, and made part of the record. The Town Administrator informed the Board of Appeals that the Critical Area Commission was notified and that it has no requirements or conditions related to the subject proceeding.

The Board of Appeals does find that the Applicant has established:

(a) That social conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district. Specifically, the history of the parcel being identified as a club, the Town of Charlestown's history as a wedding venue, and the singular view and beautiful surrounding environment associated with 125 Conestoga Street that makes it a desirable wedding venue;

(b) That literal interpretation of the provision of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter. Specifically, nothing prohibits the hosting of wedding events at 125 Conestoga Street; however, the limited parking available and distance to the Wellwood parking lot unnecessarily prohibit the use of the subject property to host weddings if overflow parking is needed. Such a prohibition is ridiculous given the proximity of an available lot owned by Mr. Metz that is able to handle the overflow parking. Further, the distance of 800 feet will significantly reduce the interruption to parcels adjacent to 125 Conestoga much more than if the parking lot was only 100 feet from their respective residences;

(c) That the special conditions and circumstances do not result from the actions of the applicant. Specifically, Mr. Metz and Mr. Jones both testified that 125 Conestoga Street has a history of being a private club and that the continued use of the property in that capacity is in keeping with its historical use; and

(d) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same zone. Specifically, all parcels within the R-3, High Density Residential District have the same privileges as Applicant;

The Board of Appeals fully incorporates by reference into this Opinion the contents of Applicant's Application for Variance, Amendment to Application for Variance, and all documents provided by Applicant in support thereof.

Further, pursuant to the Town of Charlestown Zoning Ordinance § 175-40(C)(1)(g), a variance from the terms of within the Ordinance shall not be granted by the Board of Appeals unless and until:

(a) A completed application form for a variance is submitted which demonstrates the applicability of the above criteria. In addition, requests for variance in the Critical Area Overlay District O shall not be heard unless the state's Critical Area Commission has received a copy of the variance request at least two weeks prior to the scheduled public hearing.

(b) The Board of Appeals shall find that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building or structures. In making this determination for variance requests in the Critical Area Overlay District O, the Board of Appeals shall consider the following as tantamount to a minimum variance:

(1) That the granting of a variance to the yard and/or Buffer requirements results in new structures or impervious surfaces being located as far back from mean high water, tidal wetlands or tributary streams in the Critical Area as is feasible; and

(2) That the applicant takes steps to mitigate impacts, insofar as possible, including reforestation on the site to offset disturbed forested or developed woodlands on at least an equal area. basis; afforestation of areas of the site so that at least 15% of the gross site is forested; and implementation of any mitigation measures which relate to habitat protection areas, as delineated in the Charlestown Critical Area Program, and recommended by state agencies are included as conditions of approval.

(3) The Board of Appeals shall further find that the granting of the variance will be in harmony with the general purpose and intent of this chapter, shall not result in a use not permitted in the zone in which the property subject to variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(4) For variances in the Critical Area Overlay District O, the Board of Appeals shall find that the granting of the variance will be in harmony with the general purpose and intent of this chapter and the Charlestown Critical Area Program, shall not result in a use not permitted in the management area (i.e., IDA, LDA or RCA) or an increase in the number of permitted dwelling units (i.e., density limits) in which the property subject to the variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Upon consideration of the facts, testimony, record, contents of the Applicant's application, and amendments thereto, and law included within this opinion and all other relevant law not expressed herein but reviewed and considered, the Board of Appeals does find that The Eagle Point Club, LLC is a private club and that the granting of the variance will be in harmony with the general purpose and intent of the Zoning Ordinance and the criteria of the Town of Charlestown Zoning Ordinance § 175-40 has been met. Therefore, the Applicant's application requesting a variance from (1) Zoning Ordinance § 175-26(B) requiring that a private club

provide one off-street parking space per one hundred (100) square feet of gross floor area for each building erected; and (2) Zoning Ordinance § 175-26(C) requiring that a private club provide parking on the same or nearby premises is **GRANTED** such that the Applicant is not required to provide forty (40) parking spaces at 125 Conestoga Street or parking within one hundred feet (100') of 125 Conestoga Street. Instead, the thirty-four (34) overflow parking spaces will be satisfied by parking available at the Wellwood restaurant parking lot, and the parking lot is permitted to be eight hundred (800) feet from 125 Conestoga Street. The variance is granted with the following conditions:

1. Parking for events hosted by the Applicant is permitted at the Wellwood restaurant parking lot, and no parking is permitted on the street;
2. The Applicant shall provide jitneys for transportation to and from the wedding event from the Wellwood parking lot to 125 Conestoga;
3. The Applicant shall ensure that attendants with walkie-talkies are to be positioned both at the Wellwood parking lot and 125 Conestoga to aid and accommodate transportation, and to reduce congestion and ensure all jitneys are not present at 125 Conestoga Street at one time;
4. The Applicant shall provide club members with maps and specific directions identifying that parking is at the Wellwood only and said maps are to be included within invitations; and
5. The Applicant shall host only rehearsals and wedding ceremonies.

[signatures on following page]

11/18/20
Date


Richard Mahan
Chairperson

3/18/2020
Date


Ursula Boudart

3-17-2020
Date


David Jarmko