



# MANCHESTER-BY-THE-SEA

## ZONING BOARD OF APPEALS

Manchester-by-the-Sea, Massachusetts 01944-1399

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### MINUTES

#### ZONING BOARD OF APPEALS – 40B

#### ZOOM Meeting January 12, 2022

**Members Present:** Sarah Mellish (Chairperson), John Binieris, James Mitchell, Brian Sollosy, James Diedrich, Kathryn Howe, and Sean Zahn

**Staff Present:** Town Administrator, Greg Federspiel and Town Planner, Sue Brown, Administrative Assistant, Gail Hunter

**Guests:** Geoffrey Engler, SLV School St. LLC., George Pucci, KP Law, Ezra Glenn, MassHousing Partnership Consultant

#### PUBLIC HEARING – 40 B CONTINUED APPLICATION

Ms. Mellish called the Public Hearing on the 40B Continued Application of Geoffrey Engler of SLV School St. LLC, to be known as The Sanctuary at Manchester-by-the-Sea, for a comprehensive Permit under M.G.L. Chapter 40B, Sections 20-23 to construct a 136-unit apartment complex for which the Massachusetts Housing Finance Agency issued a Project Eligibility Decision on September 16, 2021, at School Street, Assessor's Map No. 43, Lot No.18 filed with the Town Clerk on September 26, 2021.

Ms. Mellish stated the first item on the agenda is a Traffic Circulation & Parking Peer Review by Environmental Partners (EP).

- **Traffic Circulation & Parking Peer Review**



2022-01-10  
EP\_MBTS Sanctuary

Greg Lucas introduced himself stating he is a Professional Engineer in MA, Professional Traffic Operations Engineer and Road Safety Professional. He indicated that the TIA conducted by Vanasse and Associates was prepared in a professional manner consistent with standard engineering practices. EP provided a review of transportation, traffic, parking, and circulation.

- Traffic data upon further review there were no different adjustments at peak hours and no exception to number of trips.
- Operations there were some concerns at ramps in the 7-year projections of traffic growth, This is a known problem that will get worse.
- The site provides for 242 parking spaces. The Town's Zoning By-Law requires 383 parking spaces. The study provided no justification for fewer parking spaces.
- Circulation at the site presents challenges and explains why the driveway is as shown going up and wrapping around the building. The driveway is 1,800 feet and exceeds the Zoning By-Law requiring driveways of 500 feet or less.
- In reviewing correspondence, it is EP's understanding the Architectural Access Board indicated pedestrian access to School Street should be added. EP takes no exception to this finding.
- EP agrees with the architectural Access Board that there are no details around what accommodations are proposed for pedestrians and bicyclists.
- Proposed parking stalls are 9-feet by 18-feet Zoning By-Law size is 9-feet by 20-feet a waiver was requested for the size and number of parking spaces. Some waivers are typical while others seem to be requested to accommodate the size and density of the building resulting in the need for smaller parking spaces.

Ms. Mellish stated she understood part of a Traffic Circulation & Parking Study would need to also include proposed buildings near the site. It is her understanding there is a corporate campus proposed for up to 500 employees across from the SLV project site before the Planning Board and would that need to be taken into consideration. Mr. Lucas replied that such a project would need to be formally proposed and the impact defined by the proposed applicants traffic engineer.

Ms. Mellish asked about the second egress given the length of the driveway. Mr. Lucas stated it would be beneficial to have a second access to the building. Mr. Diedrich asked is the second access could be restricted to emergency vehicles. Mr. Lucas replied it is not uncommon for second access roads to be gated and restricted in use, however the roads need to be constructed with the same standard design elements as other access roads.

Mr. Sollosy asked if the Developer went with the 9-feet by 20-feet parking spaces defined in the Zoning By-Law would that mean the number of parking spaces would be reduced to fewer than the current number which is less than the number of spaces defined in the Zoning By-Law. Mr. Lucas stated it is not abnormal for parking spaces to be 9-feet by 18-feet especially in a structured garage.

Mr. Mitchell stated the size of the parking spaces although not abnormal is 63% less than what is defined in the Zoning By-Law. Mr. Lucas replied in both cases justification for not meeting the standards needs to be provided. And other data around typical parking space ratios for parking within walking to services is not provided and is required.

Mr. Mitchell asked if it was viable for a second egress for fire equipment to be built on the site. Mr. Lucas replied to meet the standards there needs to be a certain width, grade, and slope and that would be challenging. Mr. Binieris, Ms. Howe, and Mr. Zahn indicated their questions had been asked and answered.

Mr. Sollosy asked about the impact of the project on commuter rail parking. Ms. Lucas stated his study went down School Street to the intersection of Route 127 and did not include the commuter rail site and parking. Mr. Sollosy asked if it was safe to assume 10% of the cars on the site would be parking at the commuter rail. Mr. Lucas stated that was a reasonable assumption.

Ms. Mellish asked if intersections are already stressed will the Development coming in stress the intersections even more. Mr. Lucas stated the intersections already stressed will continue to be stressed, specifically mentioning the intersection of School and Pleasant Streets.

Mr. Glenn asked if it would be possible for the Town to ask for a Fair Share Contribution to address the impact the Development would have. Ms. Lucas stated a developer road safety audit would be a reasonable request. He added there are more problems in need of a contribution mentioning the need for pedestrian focused solutions.

Ms. Mellish asked Mr. Engler for his reaction to compliance regarding the sidewalk, small spaces, number of spaces and intersection issues. Mr. Engler stated he was not prepared to respond at the moment; however, he will provide a comprehensive written response for the next meeting. Mr. Engler did have a few preliminary statements.

- He is comfortable with the size of the parking spaces at 9-feet by 18-feet for a residential parking garage.
- He believes the parking ratio, after completing a number of like projects, is high at 1.5 to 1.6 spaces.
- In the parking garage all proposed lanes and aisles are industry standard.
- He is happy to discuss mitigation ideas there are some areas where he could provide help.
- He indicated that Mr. Lucas was not aware of the second egress discussions Mr. Engler has had with the Town's Fire Chief who has signed off on the safety of the single access road.

Ms. Mellish stated it was her understanding that if there was a sidewalk in the public way the development was required to add a sidewalk and that was part of the State's Complete Streets Policy. She further stated the Town has committed to extending the sidewalk as part of utility extension to the development. Mr. Engler stated there is currently no connectivity to consider. When and if the Town builds a sidewalk, he will comply with the addition of a sidewalk to the development. He asked for documents in the public record for plans and funds appropriated to build a sidewalk and requested Ms. Brown or Mr. Glenn provide that information.

Mr. Engler asked for the EP traffic study to be provided in a word document and with that his comments will be added to the document along with responses from EP and all back and forth around the Traffic Circulation & Parking Peer Review will be contained in one document. Mr. Glenn supported this suggestion and stated it was good practice for all peer reviews to follow this format.

Mr. Glenn requested all information on file from the Manchester Fire Chief be forwarded to the ZBA for the Board's public record. Ms. Diedrich asked if it would be appropriate for the Fire

Chief to appear before the Board to talk about the issue and address the Board's public safety concerns. Ms. Mellish indicated the Fire Chief will be invited to discuss his recommendations.

- **Safe Harbor Denied, No Appeal Filed**

Ms. Mellish stated the Safe Harbor Appeal had been denied and the Board had determined not to file an appeal on the basis that the Town had not made progress on the Housing Production Plan for 11 certified SHI units during the calendar year prior to the filing of the SLV 40B Application. In addition to not meeting the SHI standard in time the sense of the Board was the Town did not want to irritate the Committee with a frivolous lawsuit and it would be better to move forward and work with the Developer. If the Board had appealed the ZBA would not be allowed to work on the SLV Application during the appeal process. Mr. Mitchell requested that the decision was made under advice of Counsel for the record.

- **DHCD Letter to Developer Suspending Future 40B Applications**

On December 10, 2021 MassHousing forwarded a letter to Mr. Engler suspending his ability to pursue additional 40B Applications. Additionally, MassHousing required Mr. Engler to certify with respect to current projects that there were no misrepresentation in his project applications. Ms. Mellish respectfully requested a like certification specific to 40B project in Manchester and for Mr. Engler to provide copies of all correspondence between MassHousing and himself.

Mr. Pucci, Town Counsel will request the specific certification and all correspondence to and from MassHousing. Ms. Mellish asked if the issues with MassHousing would impact Mr. Engler's financing of the Manchester Development. Mr. Engler stated there would be no impact on his financing of the project. The issue MassHousing had was not around Mr. Engler's participation in the Winchester project it was around Mr. Barron's participation through the permitting process which was not allowed. Mr. Engler admitted he was aware of the restriction around Mr. Barron, and he accepted responsibility for his oversight.

Mr. Diedrich asked for clarification around existing projects vs. new projects in the MassHousing letter. Ms. Mellish indicated the letter barred Mr. Engler from submitting new applications and requires Mr. Engler to certify there were no other misrepresentations in existing applications. Mr. Engler is authorized to continue working on existing projects but is suspended from applying for new projects from 12/10/2021 forward.

Mr. Pucci added he does not disagree with Mr. Engler's representations, the letter speaks for itself and listed a number of projects pending among them the Sanctuary project in Manchester. Ms. Mellish requested a certification specific to the Manchester application. Mr. Pucci will recommend Mr. Engler's attorney email a copy of the certification with further specificity regarding the Manchester project.

- **Comprehensive Permit Application, ZBA Questions**

Ms. Mellish stated she was not familiar with the application process and asked if there were differences between the application submitted to ZBA and the application submitted to

MassHousing. Mr. Engler stated they are two different applications the one to MassHousing and the Comprehensive Permit Application. The application to MassHousing was for site approval and the application to the ZBA was the Comprehensive Permit Application. He asked if Ms. Mellish was asking if the plans were different. Ms. Mellish confirmed that was her question she is asking if there were any differences between the specific plans submitted.

Mr. Engler stated the material components of the plans were unchanged although there may be additional details to a set of plans it is customary to enhance the plans as the project progresses, but those enhancements are not material to the review. Ms. Mellish noted in her review of the projects there were differences in the number of parking spaces and the square footage of the central amenity area. Mr. Engler stated those types of changes are typical in the development of a projects, but the plans did not indicate a significant change indicating there was no change of use or an addition of a new story to the building.

Ms. Mellish also asked about the Land Survey submitted noting there were 8-10 amendments to the Land Survey. Mr. Engler stated he did not remember what the changes were, but he can provide that information. Ms. Mellish asked for that information to be provided with an explanation for each change to the Land Survey.

Ms. Mellish also noted the application seemed to have a lot of picture but was sparse on details. She asked if the expectation was that the ZBA would request additional details. She noted there was no environmental report, no geo tech report, no wastewater treatment plan report, no blasting documentation, and no infrastructure information. Mr. Engler stated those reports are not required in the 40B application and are usually requested during the Public Hearing process. The ZBA can condition the Special Permit on the provision of those reports. Mr. Engler added there is a Phase I environmental report, and he will provide that report. Mr. Engler stated under 40B the Developer is required to provide schematic plans not full construction plans. He stated schematic plans are 36 pages while full construction plans are 250 pages.

Mr. Engler added that the environmental review during the Friendly 40B discussions with the BOS was extensive and all material is a matter of record. The Conservation Commission completed, and initial ANRAD review which is on record.

Mr. Binieris stated given concerns around the limitations of the site it would be difficult without a full geo tech report to site the location of the building. He asked how extensive were the preliminary plans vs. a full report? Mr. Engler stated extensive enough to know the project can be constructed as presented. His team tested the site and conducted an evaluation of the site. The design plan as presented, and the schematic plan were developed over a lengthy period of time although a full geo tech report was not completed.

Mr. Pucci clarified for the Board that certain milestones and final plans follow the peer review process. The Board will seek further clarification prior to granting a Special Permit. Ms. Mellish asked about written justification regarding waivers. Mr. Pucci stated that comes later in the process. He noted as an example that in the Traffic Circulation & Parking review the dimension and ratio of parking spaces and By-Laws will be a consideration around the requested waiver. And the request needs to be considered in light of protecting local concerns. The Board will

review, weigh the issue, and decide about the waiver. Mr. Glenn agreed with Mr. Pucci stating is important to get peer reviewers on board.

- **Environmental Peer Review Proposals Received**

Ms. Mellish stated the Board has received three Environmental proposals and has requested the Conservation Commission to review and determine if additional information was needed. The Board will review proposals and select the reviewer at the January 26, 2022 meeting. Ms. Brown note the RFP due date for Civil Engineering is January 17<sup>th</sup> and the reviews would likely take between 3 and 5 weeks to complete.

Ms. Mellish asked if it was possible to have responses to the Traffic Circulation & Parking review completed for the January 16<sup>th</sup> meeting. Mr. Engler stated he would need three weeks to provide a full written response. Ms. Mellish stated the traffic review will be scheduled for the February 9<sup>th</sup> meeting.

Mr. Hill asked if Ms. Mellish would consider taking Public Comment. Ms. Mellish is not accepting Public Comment this evening. Mr. Hill requested to ask one question. He stated he had requested in October 2021 that the test pit logs, and ground water elevation be provided, and he is requesting that data again. He knows the Developer has this data and it has not been provided. Mr. Hill stated this data is necessary for many of the peer reviewers. Mr. Engler asked Mr. Hill if he had reviewed the 300-page Storm Water Management Report. Mr. Hill stated he had but the information was not in the report. Ms. Mellish will ask for the information.

- **Discuss Upcoming and Continue Public Hearing**

*Ms. Mellish moved to continue the Public Hearing on the application of Geoffrey Engler of SLV School St. LLC, to be known as The Sanctuary at Manchester-by-the-Sea, for a comprehensive Permit under M.G.L. Chapter 40B, Sections 20-23 to construct a 136-unit apartment complex for which the Massachusetts Housing Finance Agency issued a Project Eligibility Decision on September 16, 2021, at School Street, Assessor's Map No. 43, Lot No.18 filed with the Town Clerk on September 26, 2021 to January 26, 2022 at 7:00 p.m. Mr. Diedrich seconded the motion. The motion passed unanimously with Mr. Binieris, Mr. Sollosy, Ms. Howe, Mr. Mitchell, Mr. Diedrich, Mr. Zahn, and Ms. Mellish voting affirmatively.*

Following the vote, the Board discussed the Mullin Rule which states each member in order to vote on the Comprehensive Permit application is allowed to miss only one hearing and is required to certify they have reviewed all materials related to the missed hearing.

The Board discussed the Public Hearing schedule and reached no conclusion.

## **ADMINISTRATIVE MATTERS**

- Review and approval of meeting minutes: December 8, 2021

*Mr. Zahn moved to approve the meeting minutes as presented; Ms. Howe seconded the motion the motion passed unanimously with Mr. Zahn, Mr. Sollosy, Mr. Binieris, Ms. Howe, Mr. Diedrich, Mr. Mitchell, and Ms. Mellish voting affirmatively.*

- Any other administrative matters that could not reasonably been anticipated in advance of the required 48-hour posting.

Ms. Mellish requested the “chat comments” from the meeting saved noting she will disable chat in future meetings.

*Mr. Diedrich moved to adjourn the meeting; Mr. Binieris seconded the motion. The motion passed unanimously by roll call vote.*