



# MANCHESTER-BY-THE-SEA

## ZONING BOARD OF APPEALS

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

Telephone (978) 526-1410

### MINUTES

#### ZONING BOARD OF APPEALS – 40B

#### ZOOM Meeting February 9, 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, Town Planner, Sue Brown, Administrative Assistant, Gail Hunter, Fire Department Chief Cleary, Police Department Chief Fitzgerald

**Guests:** Geoffrey Engler, SLV School St. LLC., George Pucci, KP Law, Ezra Glenn, MassHousing Partnership Consultant, Daniel Hill, Counsel for MECT, Luke Legere, Counsel for Citizens Initiative for Affordable Housing (CIMAH, Inc.)

#### PUBLIC HEARING – 40 B CONTINUED APPLICATION

Ms. Mellish reconvened 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 at 7:03 p.m.

Ms. Mellish reminded those planning to participate in the meeting that if you wish to speak raise your hand and wait to be recognized by the Chair. Ms. Mellish asked Mr. Engler to speak only when called on. She added this is a very tedious process and the Board must consider every aspect of waivers and decide to approve, deny or to impose conditions.

Ms. Mellish asked Mr. Pucci if he had anything to add. Mr. Pucci replied he did not, however, he did request that participants be respectful of the Chair while she is maintaining an orderly process. He asked the applicant to wait until Ms. Mellish called on him. He noted this is a Comprehensive Permit process, the public is aware of the project and will be allowed to ask questions through the Chair. The Board is developing sufficient evidence to act on waivers and considering compelling concerns.

Ms. Mellish indicated there had been a site visit this morning with Beals & Thomas (B & T) the Board's Peer Reviewer for Environmental and Engineering. Mr. Binieris and Ms. Howe were on

site for the initial review, however, did not remain for the several hours B & T planned to spend at the site.

- **Overview of Environmental Partners Peer Review Memorandum dated 2.3.2022**

Environmental Partners (EP) received and responded to comments from Vanasse Associates the applicants reviewer. Mr. Lucas stated he would provide a brief overview:

- Site Driveway far longer
- Fire Chief's opinion on emergency access. Ms. Lucas stated the Fire Chief has authority and jurisdiction with the driveway noting the driveway is not in compliance with the By-Law
- Parking Space size – while not in compliance with the By-Law it is within common size (9' x 18') for other residential developments in the region
- Number of spaces are not in compliance with the By-Law; however, it is unknown if the number is comparable to sites with no public transit. This need to be confirmed.
- Massachusetts Access Board advisory opinion provided an opinion that per State Law the site would require a sidewalk from the building to the road. The peer reviewer does not take exception to this opinion.

Ms. Mellish asked if Mr. Black who provided a review for MECT would like to add to EP review. Mr. Black stated overall he agreed with Mr. Lucas's comments. Noting the on-site absence of a sidewalk was significant indicating it was long walk from the building to the single access point. He added the accessibility issue was addressed noting there is a need for a Transportation Management Plan addressing different modes of transportation, mentioning bike racks and free MBTA passes. He added the traffic studies addressed weekday traffic suggesting consideration be given to weekend traffic especially in the summer. His final point was around parking spaces indicating the proposed number of spaces exceeded the standards for Institute Transportation Engineers (ITE) which is based on the number of units and bedrooms.

- **Review each comment with input from public, Police Chief, Fire Chief and DPW, Director and determine desired action.**

Ms. Mellish stated the Board would go through the sections highlighted and ask questions.

Existing Traffic Data: Mr. Mitchell asked about information around existing traffic data and the need for some intersections specifically on and off of Route 128 to be improved. His question is how the applicant would provide for the improvements. Mr. Pucci replied through a Fair Share Contribution from the Developer.

Mr. Sollosy agreed with Mr. Black that summer and weekend traffic needed to be accounted for. Additionally, consideration around parking at the Commuter Rail needs to be considered given parking was already maximized pre-Covid. Ms. Mellish noted Vanasse did not include parking at the Commuter Rail as part of their review and that review will be requested.

Mr. Binieris and Mr. Zahn did not have any additional questions at this time. Mr. Pucci suggested the Board keep a list of action items for the end of the meeting. Ms. Howe stated she is keeping that list.

Ms. Mellish asked Mr. Lucas about the possibility of gathering summer and weekend data. Mr. Lucas stated the data would likely not show depth of delays and operational concerns indicating data is based on a typical month not analyzing summer. Mr. Lucas added information around the Commuter Rail and Covid is the great unknown and difficult to provide meaningful analysis. He stated there maybe data from MBTA, and his expectation is the Applicant would review the data.

Mr. Diedrich asked about the impact of traffic relative to Singing Beach and the increase in the number of residents from 136 apartments. He stated it was difficult to get to the Beach now and asked how the Town would deal with the issue. Ms. Lucas stated it is within the Board's purview to ask the applicant to look at the issue and in the absence of a qualitative assessment what will be the impact on the Town.

Ms. Howe asked about crash data indicating she had not seen anything related to pedestrians and bicycles in the data. Mr. Lucas stated the data included all types of crashes.

Traffic Operations: Ms. Mellish asked if there were any questions around traffic operations given intersections are at or near capacity. Mr. Diedrich stated he believes the Board needs further confirmation around mitigation. Mr. Lucas stated to confirm mitigation additional studies would determine recommended improvements and what measures should be taken. Mr. Sollosy asked if the State was responsible for the ramps off Route 128. Mr. Lucas replied that is the jurisdiction of the State but not always with State funding. Mr. Glenn noted this is a common situation with a project and the community works with the Developer to come to a reasonable agreement.

Ms. Howe stated it would be good if the applicant offered to study and design a plan with a commitment to fund improvements. Mr. Pucci stated funding might be a condition and at a proportionate share which can also be imposed as a condition. Mr. Binieris stated at a minimum additional information is needed. Mr. Zahn stated he uses the intersection every day and with no mitigation traffic is backed up on the highway.

Site Access: Ms. Mellish stated she heard Mr. Lucas indicate the length of the road is greater than allowed under the By-Law and asked why it needed to be that long. Mr. Lucas replied for suitability of emergency access, due to characteristics of the site the Board may ask for justification why. There are wetlands at Atwater limiting the driveway location at northern edge of site. The Fire Chief requested an improved Property Maintenance Plan for snow removal.

The Board requested the Fire Chief speak to his decision. Mr. Diedrich indicated he had read the Chief's letter but was not satisfied with single access to 136 homes at the top of a hill with a 1/3-mile driveway. He believes we are putting lives in jeopardy. Ms. Howe concurred with Mr. Diedrich. Mr. Binieris stated when there are 136 units in one building everyone is impacted when there is a fire. Ms. Mellish stated she is concerned beyond fire to medical emergencies like a heart attack when there is limited time to respond. Mr. Mitchell stated the proposed building is

not comparable to a wood frame residential home. He noted the roadway poses some problems specifically citing water pressure.

Mr. Engler indicated he cannot fit a second road egress stating the proposed building would be the safest building in Town. He has provided full Operations and Maintenance Plans. He knows there is an opposition group. He worked with the Fire Department to make sure the Board would be satisfied.

Mr. Sollosy echoed concerns with single access stated by other Board members. Mr. Zahn stated the road exceeds Zoning By-Laws with no justification or alternative design. Mr. Binieris expressed concern around a panic situation for multiple people leaving the site and blocked by fire apparatus.

Ms. Mellish asked Chief Cleary to reply. The Chief corrected a few misconceptions around the fires at Old Essex Road and University Lane speaking to the inadequacy of water pressure and scale, weather and staffing related issues. He clarified that the length of the road under consideration is not covered by the Fire Code. Indicating the grade, width and fire lane turning radius at the front of the building are covered by the Fire Code. All other issues regarding the building sprinkler system, smoke, and carbon monoxide alarms, building materials, standpipes, and water access on every floor of the building were addressed. He added sprinklers and alarms proposed for the building work automatically.

Ms. Mellish asked about ALS covered services. The Chief replied response times can depend on the amount of staffing in the Department. He concluded he does not believe the Board can require another road based on what he has seen.

Mr. Sollosy asked about turning radius for mutual aid departments and was that enough to meet mutual aid equipment. Chief Cleary does not know of a larger ladder truck than the Department has in mutual aid Departments.

Public Comment on Site Access: Mr. Hill, attorney for MECT, noted the issues were being raised by the Board not the opposition to the project. He cited the Waltham, MA project that was denied and upheld by Housing Appeals Court with similar facts. This project has an 1,800-foot driveway that winds up a hill with steep grades on both sides any obstruction in the road makes it impossible for responders to reach the top of the hill.

Mr. Legere, attorney for CIMAH, stated the Board has hit on a legitimate issue that will impact the health and safety of residents.

Mr. Talerman, Lawyer for SLV agreed with Mr. Hill and added the Fire Chief has spoken artfully. He noted another case in Sunderland, MA more applicable to the SLV project where the application was approved.

Gina Beinecke, 3 Masconomo – Ms. Beinecke replied to Mr. Engler's statement that he simply cannot fit a second egress. As a small-town Manchester residents are relying on the Board to

represent us and between traffic off Route 128 and a development shoehorned onto a hill side, the Town needs representation.

Sarah Pierce, 9 Friend St. – Ms. Pierce stated the traffic issues are out of scale with the Town and believes the Town should be working incrementally on Affordable Housing. Ms. Pierce pointed out; Mr. Talerma had previously worked against a 40B project on Summer St.

Mr. Diedrich asked the Chief what the worst-case scenario at this site would be. The Chief replied all prevention measures will be in place including Knox Box and BDA radio connections inside the building. (Knox Boxes contains access keys and BDA radios are used inside large structures to assure communications among responders.) The Chief stated the Department deals with emergency situations as they develop. Ms. Mellish stated the Board will likely not resolve the access issue this evening and moved the discussion to Parking.

Parking Section: Ms. Mellish asked if the number of spaces and the number of guest spaces (16 for guests, deliveries, and house cleaning) were sufficient. Mr. Binieris stated with friends visiting and going to the Beach not having adequate spaces appears challenging. Mr. Zahn asked about the number of spaces for the location and questioned if the location would not require additional spaces.

Mr. Sollosy asked Police Chief Fitzgerald if parking along the roadway would fall under the Town's jurisdiction. Chief Fitzgerald stated his understanding was the Town would have no parking jurisdiction with the exception of handicap parking. Mr. Sollosy stated with overflow parking for guests and tenants and nothing the Town could do he was concerned about parking and access. Mr. Mitchell asked for clarity around the number of guest spaces. Ms. Mellish agreed the number of guest spaces appears light.

Mr. Diedrich asked how ITE developed specifications for parking, stating he does not understand how the determinations are made and if access to public transportation is reasonable. Mr. Lucas stated based on published data for comparable residential sites parking is figured on bedrooms and units and the generally accepted estimate is 1.78 parking spaces per unit. He suggested the Board ask for comparable sites and how close the sites are to transit. The Board concluded it would require additional information.

Ms. Howe expressed concern around sidewalks and ADA compliance for sidewalks. Her focus is on school age children walking and biking to school and the adequacy of lighting. She would like to have the opinion under MA regulations from the Police Chief around the full issue of compliance for sidewalks to and from the proposed development. Mr. Sollosy asked if there were any waivers to State or Federal Laws. Mr. Pucci replied this issue has come up and the Board must comply with all State and Federal regulations when issuing a permit.

Mr. Engler asked to speak to the sidewalk issue stating he will need to confer with his team. He added the State was not provided with all the information when they ruled on the need for sidewalks into the development. Mr. Engler stated there are no sidewalks on School Street. Mr. Engler requested 30 days to speak with his technical team and to respond to the request and provide a plan for sidewalks. Ms. Mellish asked about the other information requested. Mr. Dirk,

Managing Partner of Vanasse & Associates stated his firm will strive to answer all questions raised this evening and confirm the recommendations are sound. He does not believe the requests are unreasonable.

Ms. Mellish summarized the lists of requests from the Board discussed in the meeting.

- ADA Compliant Sidewalk Design – Mr. Engler agreed to provide by March 9, 2022
  - Driveway Length – Explanation of need for an 1,800-foot-long driveway with no emergency egress, curvature to the road, including alternative designs considered
  - Driveway Maintenance & Operation Plan, Including Snow Removal Plan
  - Total Parking Spaces – For each property in the list of comparable properties with respect to total spaces, provide number of bedrooms, proximity to transportation and other services, such as grocery stores and restaurants
  - Guest Parking – Explain adequacy of 16 guest spaces, overflow plan and evacuation plan for all vehicles on the property
  - Traffic Improvements Design and Cost – Route 128 ramps, other congested intersections, motion activated pedestrian lights on School St. at development and Route 128 ramps on east side of School St., streetlights, and potential mitigation plan
  - Summer Traffic Analysis – impact of the project on traffic heading to the beach through downtown MBTS and beach parking
  - MBTA Parking Analysis – impact of the project on parking available at the MBTS commuter rail station
- **Review waiver requests with public input and determine desired action**

Mr. Engler asked for a written request, stating responses to the requests will be imbedded in the list. He noted that information for weekend and summer trips are all anecdotal and outside normal traffic studies, but he will see what can be done. He added the parking ratio of 1.8 is high. He also noted that parking on the driveway will be clearly marked no parking and a tow zone clearly defined. Mr. Engler will provide a narrative on how and why the length of the driveway was established. He also stated there is no waiver request because the driveway is not part of a subdivision it is a private driveway.

Mr. Engler continued Beals & Thomas is evaluating the wetlands waivers and some waivers may not be necessary and waivers submitted for the record have not been provided a full rationale in anticipation of the need for the waiver to be deemed unnecessary.

Around proposing a to do list of potential mitigation with preliminary cost. Mr. Engler proposes working with Vanasse, EP and Mr. Black to define a Fair Share Contribution. The timeline for that will likely be two weeks and shared with peer reviewer. Ms. Mellish expressed concern about the sidewalk request taking 30 days to develop a plan and the impact that might have on the Environmental Engineering Review. Mr. Engler stated that is not a big undertaking the building footprint and road are not moving.

Ms. Mellish asked Mr. Pucci if this was a reasonable time to request an extension. The Board is just getting into substantive discussions and Environmental & Engineering and Architectural

Review will likely spill over and a 90-day extension would provide a date certain. Ms. Mellish further stated thinking of the timeline she does not believe the Board can reasonably complete discussions while in a Public Hearing. Mr. Engler understands the request but with three months remaining he is not ready to consider an extension, although he frequently does grant extensions.

Ms. Howe indicated the ADA compliant sidewalk is essential and the Board will follow the letter received from the State as it applies to the sidewalk. That will certainly be a condition of any Permit granted.

Ms. Mellish followed up on requests for information not yet received by the Board.

1. Test pit poring logs referenced in the Geo Technical Report dated 7/29/2020 appendix 1 Mr. Engler stated the test pits were informal and not typical. However, recognizing that more test pits have been requested of the area of interest and will be completed next week. Mr. Engler stated he is not withholding test pit logs it was many months ago.
2. Ms. Mellish stated the Board had received the Certification Mr. Engler provided to MassHousing, however the Board had requested a Certification specific to the project in Manchester. Mr. Engler stated that Mr. Pucci had spoken to Mr. Costa, and he will follow up on that request.
3. Ms. Mellish also noted the Board had requested confirmation that the Property lines did not change nor did the survey change. Mr. Engler suggested asking the Planning Board to provide that information.

Ms. Howe stated she heard Mr. Engler state his willingness to provide copies of the original informal data logs. Mr. Engler stated he would speak to his team.

- **Discuss and Select Architectural Peer Reviewer**

Mr. Binieris stated he would recommend the Board select Davis Square for the Architectural Peer Review indicating they had a strong professional presence in the area and were more experienced. Ms. Howe concurred with Mr. Binieris. Mr. Mitchell stated he reviewed both proposals and was swayed by the graphic presentation of Tobias, adding that many residents have expressed concern around the size and style. Mr. Mitchell believes both proposals were equal in overall capabilities.

Mr. Zahn indicated he was inexperienced but was leaning to Tobias. Mr. Diedrich is willing to support Mr. Binieris and happy to go with his recommendation. Mr. Sollosy was also leaning toward Davis and believed they would be better able to answer questions raised by the community and suggested they add a massing component to their report.

Ms. Mellish concluded it appears Davis Square will be accepted as the Architectural Reviewer.

*Ms. Howe moved to approve Davis Square with the inclusion of a Massing Study and Diagrams as the Board's Architectural Peer Reviewer and a request from Mr. Engler to submit \$11K for support of the review, Mr. Sollosy seconded the motion. The motion passed unanimously by roll call vote.*

- **Schedule next meeting and continue public hearing**

Following a brief discussion, the Board and Applicant agreed to schedule the next meeting following School Vacation week.

*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 March 9, 2022 at 7:00 p.m. Mr. Sollosy 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.*

#### **ADMINISTRATIVE MATTERS**

- Review and approval of 40B meeting minutes will take place at the next meeting.
- Any other administrative matters that could not reasonably be anticipated in advance of the meeting
- Adjourn

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