



# 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 March 9, 2022

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

**Staff Present:** 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 ZBA meeting to order at 7:02p.m. on March 9, 2022 and introduced the Board.

Ms. Mellish opened 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.

- Beals & Thomas (B&T) Environmental and Engineering Preliminary Report



B&T Engineering  
Peer Review.pdf



B&T Environmental  
Peer Rev..pdf

Ms. Stacy Minihane, Senior Associate at B&T and Professional Wetlands Scientist presented the overview of the Preliminary Environmental Peer Review.

Ms. Minihane stated in general multiple waivers were requested and several of the requested waivers could benefit from additional information to refine and/or to inform the request.

- Vernal pools, it is difficult to determine the necessity of the request

- Section 9 waiver request is very broad and could be refined, it covers a very large section of the By-Law
- The way the waivers are framed it would result in a waiver of the By-Laws
- There is limited work outlined for the treatment plant and further outline of the plant is requested
- The second leeching field requires crossing wetlands, and the outline of the location is not defined
- Additional information on directional drilling to access the area of the second leeching field is not included
- Critical areas including vernal pools and Sawmill Brook and the impact the development will have on these areas is not discussed
- Ms. Minihane stated a Flood Study is warranted to evaluate if the elevation is or is not in the flood plain.

Mr. Matt Cote, Sr. Civil Engineer at B&T reviewed waiver requests for engineering. He noted that there were several administrative requests that were pretty standard in this type of project and there were none that were concerning. He did note the following information that was requested, and the Applicant had indicated the requests for additional information would be addressed in upcoming iterations of plans.

- B&T did have questions around the water system extending from School Street under Route 128 and ending at a significant elevation and how the water pressure would work. Overall, the water system plans were vague, B&T is requesting additional information and the Applicant stated the issues will be addressed in upcoming plans.
- Snow removal and storage was vague, and B&T is concerned the plans propose storing snow on a steep slope away from the road, it is unclear how the snow gets to the site.
- Trash room in the garage area and how trash would be serviced by large trucks was unclear. There was mention of external dumpster pads, but the pads were not shown on the plans.
- Storm water management, there are inconsistencies in storm water design, but these things can be addressed and corrected at some point.
- Test pit information has been requested and B&T looks forward to seeing that.
- B&T would also like to see a seasonal ground water elevation report
- Vernal pools on site require special consideration around storm water management. The Applicant has indicated that will be coming.
- Landscape design is adequate and robust again there are inconsistencies between plants referenced and depicted.
- Geo technical consideration for storm water requires more information.
- Additionally, there is a lack of deep boring analysis that would be required for a building this size and B&T would like to see better characterization of those plans.
- Construction Management Plan around trucking out blasted materials and removal. Applicant indicated it was premature for that kind of analysis.

Ms. Mellish asked about the need for results around deep boring as that relates to the size of the building on the site. Mr. Cote stated B&T had hired Northeast Geotechnical to evaluate the site

and they concluded there was not a lot of analysis to support the size of the building given the topography. It is hard without rock evaluations and B&T echoes the Chair's concern.

### Board's Questions

Mr. Diedrich thanked Mr. Cote and stated most of the Board members are not familiar with construction issues and there is significant information to absorb. Mr. Diedrich is concerned the Board will need to decide based on incomplete information. Mr. Cote stated this is typical of 40B projects because the cost of acquiring information is substantial and applicants hold off until they get a better sense if the project will be permitted. He indicated the Board would need to define conditions for permitting the project.

Mr. Wilson, Town Moderator, had a statement as a resident not in his official capacity. He stated it was imperative that the Town has complete information on the environmental impact of the project prior to issuing a permit.

Mr. Binieris stated the Board has not seen a Geotechnical Report and that is needed to analyze conditions around soil and ledge to determine what can and cannot be built. In reading the reports requested from B&T and Northeast Geotechnical the site is challenging, and stormwater design is missing. The information is also lacking models that represents the conditions and what will work. Mr. Cote stated B&T echoes those concerns.

Ms. Howe stated B&T requested a number of clarifications on items and recommended the Board adopt all recommended items and request clarification for each item. Mr. Sollosy stated the Board does not know what questions to ask based on incomplete information and he would like to see more.

Mr. Binieris stated the Board has spent time on the number of parking spaces, the length of the driveway and more. At this point the Board is starting to discuss the environmental impact on the wetlands by blasting and the Board will require documentation to measure the impact. Mr. Diedrich agreed with Mr. Binieris indicating we are now discussing the most serious issues of the building and the blowing off of the top of an environmentally sensitive hill and the Town does not want to end up with an environmental disaster.

Mr. Engler acknowledged that B&T had completed a thorough review of the project and he is not contesting their requests for additional information and every item will be responded to. Additionally, he reiterated the project is passed on 30-page schematic plans which will be developed into 300-page construction plans. There are details that will not be provided during the permitting process.

Ms. Mellish responded the Zoning Board of Appeals has the right to request information on each waiver requested and the Board will not be signing off on waivers without additional data. Mr. Engler replied, the Board can request information, but he is confident that the information he will provide is within the context of the 40B Law and changes to reduce the environmental impact are low and clearly stated in the Law.

Mr. Binieris asked if there was something the Board had requested that was unreasonable. The Board has taken the consultants lead on the preliminary work and B&T will post the permitting review analysis and requests for additional information.

Karen Bennet, 28 Lincoln Street – Ms. Bennet expressed concern around blasting and drilling and the possible impact that will have on neighboring buildings. Ms. Bennet indicated that she lived in proximity to the Middle High School and when that project was built there was significant damage to adjacent homes.

Mr. Hill, Attorney for MECT stated he had a few comments.

- Mr. Hill noted the Applicant is requesting significant waivers to the Town By-Laws and the Board needs data and evidence on the impact to wetlands.
- Mr. Hill added if the Board defers judgement on decisions until after the permit is issued the decisions will likely be struck down as decisions have been in a number of similar cases.

Mr. Pucci, Town's Legal Counsel, stated it is very clear that the Board needs significant information to act on permitting waiver requests including a Geotechnical report. Mr. Pucci suggested providing the Applicant the opportunity to provide all requested information. He expressed concern around the lack of information provided so far adding the Board needs sufficient information to make a meaningful decision on this particular site.

Mr. Pucci added information has not been forthcoming specifically citing a request by the Conservation Commission for a Wildlife Habitat Study that should have been initiated on March 1, 2022. The Applicant had shifting views on allowing the Town to fund and pay for a consultant to complete a non-invasive study at the site. Even after the Town provided a comprehensive scope of work. The Applicant refused to allow the Study to go forward leaving the Board deprived of a Wildlife Habitat Study. Now the information is forever lost, and the Board will not know how the waiver requests will impact vernal pools. It is now too late in the process because requested deadlines to get a decision have passed.

Mr. Pucci believes this is the time to request an extension to allow the Board to gather and discuss information with additional Town Boards, Committees and Peer Reviewers. Mr. Pucci stated the Board is at a critical point and because of inadequate information it is realistic to extend the deadline while the Board goes through the information needed and to follow up on meaningful responses. The Board will not grant blanket waivers without specifics.

Ms. Mellish asked the Board if it was the consensus of the Board that the Board would like all the information requested from B&T to be provided. The Board unanimously agreed. Ms. Mellish asked Mr. Engler how long it would take to provide the information requested by B&T with written responses to each item. Mr. Engler stated it would take two weeks.

Mr. Engler informed the Board he is working on a Wildlife Habitat Study and has hired Goddard Consulting to conduct the study. Mr. Goddard is here this evening and can speak to the Study. Mr. Goddard introduced himself stating he is a wetland and wildlife consultant and will be

conducting an environmental review to assess the projects compliance with Massachusetts Wetland Protection Act. He and his team will:

- Identify locations of vernal pools
- Provide a revised set of plans identifying vernal pools
- Study pools, species, and breeding movements and patterns

Mr. Goddard understands the information that was previously requested and stated the work is underway. He added he will be working through the B&T recommendations point by point.

Mr. Pucci requested confirmation that Goddard Consulting will specifically respond to the scope of work outlined by the Conservation Commission provided outside of the Public Hearing. He stated the request is time sensitive and separate from all other items the Board has requested. Mr. Engler stated it would not be possible to complete the environmental analysis by April 13, 2022.

Ms. Mellish stated the Board is working in good faith and cannot complete the Public Hearing by May 24, 2022. Ms. Mellish is requesting an extension to September 8, 2022. Mr. Engler stated he can grant an extension at any time. Following additional discussion Mr. Engler agreed to a 30-day extension to June 23, 2022.

Mr. Talerman, Attorney for Mr. Engler stated that the Applicant does not take direction from the Conservation Commission, and he would not provide a report for the Commission to justify waiver requests. He noted that Mr. Engler will be providing a report to justify the waiver requests. Mr. Pucci stated Mr. Talerman was misrepresenting the record and strongly suggested the Board require Goddard Consulting and the Applicant to state when the study commenced and what the scope of work is.

Ms. Howe stated she agrees with Town Counsel stating the Board has the right to be clear on what is being done and what is being committed to. She added there have been a lot of misrepresentations and suggests the Board take Mr. Pucci's advice and be very clear as to exactly what the Applicant has agreed to around the Wildlife Habitat Study.

- Beals & Thomas Requests for Information from Applicant

*As previously stated*, Ms. Mellish asked the Board if it was the consensus of the Board that the Board would like all the information requested from B&T to be provided. The Board unanimously agreed. Ms. Mellish asked Mr. Engler how long it would take to provide the information requested by B&T with written responses to each item. Mr. Engler stated it would take two weeks.

- Review Status of ADA Compliant Sidewalk Design by Applicant

Ms. Mellish asked for additional information on the ADA compliant sidewalk. Mr. Engler stated at huge expense the sidewalk has been designed and will be built only when the Town has built a sidewalk on School Street on the project side of the street. Ms. Mellish stated she does not believe the sidewalk needs to be built on the project side of School Street. The Town will build a

sidewalk on the east side of the street with a motion activated crosswalk and light opposite the entrance to the development.

Mr. Engler asked if Mr. Cote had received the test pit memo. Mr. Cote confirmed that he had received the memo.

- Review Responses from Applicant and Items Outstanding
  - Prior test pit data logs did not contain water level readings, that information is being requested
  - Certification Letter has been received
  - Conservation waivers requested prior to February 9, 2022 are still outstanding. Mr. Engler stated they will be provided by March 23, 2022 at the same time as the revised schematic plan is provided. If he cannot meet that date, he will inform the Board.
  - Driveway length no alternative designs were provided. Mr. Engler stated other options were considered but none of the other options worked.
  - Driveway maintenance and snow removal will be provided with updated engineering.
  - Total parking spaces for guest and overflow parking. Mr. Engler will provide 10 additional spaces in the garage for guests. Mr. Binieris asked if the spaces were being taken from residents. Mr. Engler indicated they were, but he had provided ample parking for residents. Ms. Mellish asked about an evacuation plan Mr. Engler stated he has never developed an evacuation plan and such a plan is not required by 40B.
  - Summer Traffic and MBTA parking – Mr. Engler noted that information is contained in the updated Vanasse report, forwarded on March 28, 2022.
  - Ms. Mellish is requesting a Hydrology Report

Mr. Engler asked if it would be agreeable for his team to work directly with B&T. Ms. Mellish prefers all requests go through Ms. Brown, Town Planner.

Mr. Hill asked about water pressure and requested a Water Capacity Analysis. Mr. Engler stated he was meeting on that issue the next day and will provide additional information. Mr. Hill also suggested a B&T representative participate in the Wildlife Habitat Study. Mr. Engler indicated he has no issue with that request.

Sarah Pierce, 9 Friend Street – Ms. Pierce stated many residents are very concerned and asked about other projects Mr. Engler worked on that were as environmentally sensitive. Mr. Engler stated he had worked on two similar projects one in Winchester and one in Scituate.

Mr. Zahn asked about the timeline for the Wildlife Habitat Study. A representative of Goddard Consulting stated that the team was well into the study and breeding season is from now to the end of April. Mr. Pucci reiterated that the Board needs details on exactly what is being done and when. He suggested that the peer reviewer provide confirmation of the scope of work as earlier requested.

- Next Meeting Continue Public Hearing

Following a brief discussion, the Board, Applicant and Town Council agreed to schedule the next meeting on April 5, 2022.

*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 April 5, 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 meeting minutes: January 13, 2022 and January 26, 2022

*Mr. Zahn moved to approve the minutes for January 13, 2022; Mr. Sollosy seconded the motion the motion passed with Mr. Binieris, Mr. Sollosy, Ms. Howe, Mr. Mitchell, Mr. Diedrich, Mr. Zahn, and Ms. Mellish voting affirmatively.*

*Mr. Diedrich moved to approve the minutes for January 26, 2022; Mr. Zahn seconded the motion the motion passed with Mr. Binieris, Mr. Sollosy, Ms. Howe, Mr. Mitchell, Mr. Diedrich, Mr. Zahn, and Ms. Mellish voting affirmatively.*

- Any other administrative matters that could not reasonably be anticipated in advance of the meeting.

There were no additional administrative matters discussed this evening.

- Adjourn

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