



# 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 May 11, 2022

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

**Member Not Present:** All members were in attendance.

**Staff Present:** Town Planner, Sue Brown, Administrative Assistant, Gail Hunter

**Guests:** Geoffrey Engler, SLV School St. LLC., George Pucci, KP Law, Patrice Murphy, Executive Director, METC, Dan Hill, METC, Counsel, Cliff Boehmer, Davis Square Architecture (Peer Reviewer)

#### PUBLIC HEARING – 40 B CONTINUED APPLICATION

Ms. Mellish called the ZBA meeting to order at 7:02 p.m. on May 11, 2022 and introduced the Board.

Ms. Mellish opened the Continued Public Hearing on the 40B 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 27, 2021.

- **Discuss Architectural Peer Review**

Ms. Mellish asked if images provided MECT had been posted to the Town's 40B website. It was confirmed the images had been posted. Ms. Mellish thanked MECT for hiring an architect to provide the images from multiple vantage points.

Mr. Engler asked why METC was being given the opportunity to speak before the Peer Review Consultant. Ms. Mellish replied, Mr. Boehmer, the Architectural Peer Reviewer, has not had the opportunity to review the images provided by MECT and he is being given the opportunity to review the images prior to commenting as part of his review.

Mr. Engler stated he believes the images submitted by MECT are factually incorrect and a misrepresentation of the project. Adding the architectural images proved by SLV were developed using photographs of the property with the building overlaid on existing landscape. Mr. Engler requested his objection to the MECT images be reflected in the record. The objection is so recorded.

Mr. Engler also requested that the architect who developed the images be identified. Ms. Murphy stated the Trust would not provide the name of the Architect indicating she did not want any pressure from outside firms and at this point the Trust is not required to identify the Architect.

Ms. Murphy presented the images developed by MECT.

- The first image is a side-by-side view from the Utopia Farm parking lot depicting the current view and the view with the proposed building.
- The second image is the view coming down School Street again current and with the project.
- The third view is from the kiosk parking lot adjacent to the parking lot looking north to the project.
- The final view is south bound on School Street near the Manchester Essex conservation area.

Ms. Mellish turned to Mr. Boehmer for his comments. Mr. Boehmer stated he was seeing the renderings for the first time and noted the concern of residents, and the community was the view from the public realm as he had stated in his letter of March 6, 2022. Mr. Boehmer added the project is in the development stage and is very large and uncharacteristic for the community. The views provided are images from the project architect and other stakeholders and are a tool for refining the design of the development. He views the images as tools and mechanisms to engage with the development team.

- Mr. Boehmer stated he has reviewed 21 new documents related to the project. And regarding the view from the public realm, he asked is the building framed in such a way that it fits in. Understanding that the building is not totally screened but does it fit in?
- Mr. Boehmer added the images provided today are without the help of a Landscape Architect and that will push the project forward another step.
- His other concern was the inadequate use of outdoor space and that has changed and been facilitated by connecting the development to Town sewer creating the opportunity for more usable outdoor space.
- He added the programming for the new space is not detailed. He estimates the space is approximately 3K sq. ft. and would like to have additional information on programming, and to see the space integrated into the renderings.
- Mr. Boehmer would also like to understand the accessible path and have that reflected in the renderings.
- He suggested pushing ahead with more accurate views from the public realm with additional recommendations from the Landscape Architect.

- Mr. Boehmer expressed concern for the turnaround area at the top of the driveway noting that 20-foot mounted poles are likely not needed in that area and would prefer to see the use of mounted poles cut back to reduce the impact of lighting during the night hours.
- He would also like to see spaces on site for electric vehicles.
- Mr. Boehmer believes this project needs a comprehensive Transportation Demand Management Plan and the Developer has worked on other projects that needed this type of plan and understands what he is proposing.

### Board Discussion

Ms. Mellish stated she had a couple of questions. She believes the building looks very light in color to her and asked if there were materials that could be used to make the building look less bright. Additionally, she estimated the number of residents at 350 to 450 with a single driveway down. Looking at the images she asked if there was any way a staircase could go down the side of the retaining wall.

Mr. Boehmer replied to the staircase question, noting that he has brought up the need to create a sense of connectivity with the community. He does not believe a staircase is a substitute for a truly accessible path for both able bodied and handicap residents. Mr. Mellish stated she was thinking that both a path and staircase could be incorporated into the project. Mr. Boehmer agreed that was possible.

Mr. Mitchell stated he had questions and observations:

- In section one – the Developer’s reuse and redistribution of cut, and fill material has not been addressed.
- In section five – play and open space has been added but there is no programming defined.
- Sidewalk construction – the Developer has stated he will build a sidewalk if the Town extends the sidewalk from School Street this needs to be confirmed.
- In section four – slack has been provided with the elimination of the Wastewater Treatment Plant. Mr. Mitchell noted that is a good thing.
- In sections five and six – there has been more detail added for bike, storage and school bus that too is a good thing.
- However, Mr. Mitchell would like to additional detail information around sustainability.
- Car sharing has not been addressed, there is no evacuation plan and no construction management plan.
- Mr. Mitchell concluded additional information is needed around the retaining walls. Adding the site is isolated from the rest of the community and there is no means of integration with the community except by car, Mr. Mitchell would like to see this addressed.

Mr. Boehmer thanked Mr. Mitchell for addressing the additional outstanding questions and responded:

- Mr. Boehmer stated that the materiality of the retaining walls maybe the most important part of the development given the huge visual element this is to the development and is the first thing you see.
- Cut and fill analysis – the primary reason for this is the amount of truck traffic that will be generated during construction.
- Play space programming needs to be defined.
- Slack space has been created with the elimination of the Wastewater Treatment Plant and however, storm water management and programable space for play needs to be addressed.
- Sustainability is in everyone’s interest and components should be integrated into the development.
- Evacuation Plan is not in the architect’s area of expertise and should be addressed by the Fire Chief.

Mr. Binieris asked if the most recent letter from Mr. Boehmer was his final letter to the Board? Adding that the renderings affirmed the scale of the project and there is nothing like this in Town. The renderings also affirmed the isolation of the project; Mr. Binieris added the renderings had more of an impact on him than anticipated.

Mr. Boehmer responded by stating that the renderings can help all of us engage in a review of the project and indicated the importance of the opportunity for the developer to engage a landscape architect. The renderings provide an opportunity to further engage in advancing the design project and he will continue to work with the Board to define conditions.

Mr. Sollosy and Mr. Zahn indicated their questions had been addressed by Mr. Boehmer. Mr. Diedrich thanked Mr. Boehmer and MECT adding he now knows what the building will look like and believes it was fairly represented. Ms. Howe added that she was most impressed with the views from the conservation areas that were not seen this evening and believes the impact in that area is an important part of the project.

Mr. Engler thanked Mr. Boehmer for the thoroughness of his review and stated he would provide a formal reply to Mr. Boehmer’s letter. He added he looks forward to continuing communication and agreed there are parts of the plan not developed and parts that will not be developed during the current process. Mr. Engler again took exception to the MECT representations of the project adding he asked about the architect who prepared the images to understand their credentials.

Mr. Engler also informed the Board that the color of the building had been changed in response to a request from the Board of Selectmen during the LIP process. He is not opposed to the building being grey. Mr. Engler asked the Chair if Leslie Fanger of Bohler could address the proposed landscape designing for the project. Ms. Mellish asked Ms. Fanger to continue.

Ms. Fanger highlighted the following areas for design and landscaping.

- There are two types of blocks proposed for the retaining walls. Granite blocks which are a large block and a less granular smaller block design. The firm is open to the Town’s recommendation.

- Along School Street Ms. Fanger stated the plan is to maintain existing vegetation and views from School Street will include meadow grass and shrubs which will eventually drape over the retaining walls to soften the look of the walls.
- At the top of the hill a wall of arborvitae trees is planned. The arborvitaes will grow to a height of 30 to 40 feet and additional conifer trees will be added to help soften the look toward the developed area.
- From Old School Street and the conservation area the plan calls for adding evergreen and conifer trees which will reduce the view of the building from walking paths.
- Ms. Fanger noted in response to Mr. Boehmer's concern that a 4-foot fence around the playground area was not high enough a 6-foot fence will be encircle the play area.
- She indicated bike racks have been added to the main area in response to Mr. Boehmer's recommendation.
- Additional buffering has been added between the units facing the amenity space and will include plants in planters and an architectural privacy screen.

Ms. Mellish asked about the height of the building and the additional structure on the top of the building. The additional structure on the top of the building is a roof deck amenity space towards the back of the building that will not be seen from School Street. Ms. Mellish is concerned that the structure will exceed the 35-foot height restriction for which a waiver had not been requested. Mr. Engler stated he will follow up with the architect.

Mr. Binieris asked if trees other than arborvitae had been considered. Ms. Fanger stated the area at the top of the hill is a narrow level space and trees with larger root balls would not do well in that location or on the slope. She added that the slope of the area did not allow for planting larger trees and there would be little impact on screening the building given the slope. Ms. Mellish agreed with Mr. Binieris and would like the area to have a more natural appearance. Mr. Sollosy agreed with Ms. Mellish and Mr. Binieris. Mr. Boehmer supported the Board's comments. Mr. Engler stated he heard the comments and recognized MECT concern around invasive species and will take that into consideration in the next iteration of landscaping.

### Public Comment

Karen Kirsch – Ms. Kirsch does not believe that common sense was part of deciding to build a development on the top of an environmentally sensitive hill. Adding her understanding of 40B projects is that they fit into a neighborhood. She strongly believes that the site needs to be kept open for people to enjoy and placing the development on the top of a hill is destroying the natural beauty of the location. She expressed concern about retaining walls, storm water runoff, schools, and safety.

George Davis, 23 Woodholm Road – Mr. Davis referred to the 40B Handbook where the site of a 40B project needs to be located in a generally appropriate area. He does not believe the topography of the site is appropriate nor does it fit into any residential development. He recommended the Board use this as a reason for rejecting the Application.

Luke Legere, Counsel for CIMAH – Mr. Legere stated he appreciated Mr. Boehmer's letters adding the sidewalk is not optional. Mr. Legere added the current sidewalk information is

sketchy and more information needs to be provided around the sidewalk. He agreed with the need for additional information on retaining walls and cut and fill proposals.

Matt Plumb, MECT Board President, 130 Rocky Hill Road, Essex – Mr. Plumb believes the application of Mr. Engler does not fit into the area stating there are no other buildings in the area. The topography of the site will require extensive cutting and blasting. He cautioned that the Board needs to consider this application carefully.

Allana Stewart-Bell-Jaques, 25 Masconomo Street – Ms. Stewart-Bell-Jaques is concerned that people who live and work in Manchester will not be able to afford the “affordable units” proposed. She understands rents will be \$2,000 a month. She would like to see more affordable units created in the Town. Ms. Mellish pointed out that 25% of the units will be affordable based on 80% of the AMI of the community.

Sarah Pierce, 9 Friend Street – Ms. Pierce agreed with all of Ms. Kirsch’s statements adding she did not understand how the Board could vote on a project without finished plans.

Mory Creighton, 37 Proctor Street – Mr. Creighton, asked that both ZBA and the Select Board carefully consider the request for SLV to hook up to municipal sewer. He mentioned several areas in Town that have been waiting to hook up to Town sewer while the Town worked hard with the support of taxpayer funding to improve the capacity of the Sewer Plant and does not understand why SLV should be permitted to go to the top of the line.

Dan Hill, MECT Counsel – Mr. Hill took exception to Mr. Engler statements that his renderings were superior to the renderings submitted by MECT because Mr. Engler used photographs. Mr. Hill showed images of Mr. Engler’s project in Winchester, MA noting the images were similar to the renderings he submitted for School Street. He added believing the renderings will look better when landscaping is included assumes all landscaping will survive. Mr. Hill believes MECT renderings are superior because they provide more realistic views from relevant vantage points.

- **Environmental Peer Review Waiver Requests**

Stacey Minihane, Andrew Gorman, and Matt Cote from B+T joined the meeting. Ms. Minihane stated in early April B+T issued their first review letter with an additional letter later in April. She indicated there were a few items still outstanding and Ms. Minihane reminded the Board B+T had visited the site several times with the Wildlife Life Study consultant and that study will also impact the waiver review and requests.

- Ms. Minihane acknowledged the project is now connecting to the municipal sewer system. The current review is based on that information.
- B+T reviewed the conceptual sidewalk but has not yet seen the design of the sidewalk. The sidewalk is not included in the current B+T engineering review and needs to be reviewed to analyze storm water, impervious surface and other factors related to the sidewalk.
- One more vernal pool was found and needs to be added to plans.

- Additional information is required around how the project will not impact the hydrology of vernal pools.
- B+T asked for construction management information specifically mentioning there are a couple of places where the ledge out crop is above the Wetlands A Series and above several vernal pools where construction will be coming over the crest of the hill. B+T has questions around removing ledge with the pools at the base of the slope. More detail is needed.
- B+T had requested isolated land subject to flooding (ILS) calculations around the Wetland C Series featured resource area. Although not all wetlands areas are defined it is believed some areas need to be investigated and ILS calculations are needed.
- Aline shows FEMA Zone A on the plans provide documentation to confirm new State resource area for the Administrative Record B+T is asking the Applicant to provide information around why a study to define the base line elevation is or is not needed.

Ms. Minihane concluded these are the only outstanding remaining comments from B+T. Mr. Engler stated he would provide a response in the next several days with most of the information and clarifications requested. He added he could not complete a Construction Management Plan but has spoken to a General Contractor who will provide some guidance on how to approach blasting on the site while not impacting the vernal pool series A. SLV will be submitting a comprehensive response to B+T indicating SLV had submitted update Civil Engineering Plans today.

Ms. Mellish asked when the Wildlife Habitat Study would be completed. Applicant's Wildlife Habitat consultant Goddard Consulting stated they hoped to submit the Study around June 1, 2022.

Ms. Mellish asked if there were any waiver requests the Board could address this evening. It was concluded that the Applicants responses to the outstanding questions would factor into the analysis and at this time there were no waiver requests to be reviewed. Additionally, Mr. Gorman from B+T asked if it would be possible for the Applicant to comment on the waiver requests and identify which of the requests were essential to the project. He noted that if the standards of the By-Law were to be applied what would be the impact on the project.

Mr. Engler responded all of the waiver requests are essential to the project and it is not the building it is access to the building that is critical and without the waivers the project cannot be built. If SLV cannot build the road there will be no building.

- **Next Meeting, Continue Public Hearing**

Ms. Mellish noted the Board will also discussion Traffic and Safety and confirmed with Mr. Engler that no additional information was required from SLV around Traffic and Safety.

Following scheduling discussion, it was concluded:

May 25, 2022 – Civil Engineering – Final Review

June 8, 2022 Environmental – Wildlife Habitat Study

June 22, 2022 Architectural – Final Review

Mr. Hill expressed concern that there are only three sessions remaining and that is not enough time to review the Wildlife Habitat Study, sewer capacity analysis and other outstanding issues. Additionally, Mr. Hill added MECT would like to provide a summation. He noted that usually in a 40B process the last couple of meetings include a discussion of conditions. Ms. Mellish pointed out the Applicant has not provided an extension and the Board will make their decisions based on the information received by the close of the Hearings.

Ms. Mellish confirmed with Mr. Pucci, Town Counsel, that in Open Meetings following the close of the Public Hearing the Board can discuss and consider waivers and conditions. Mr. Pucci confirmed that was correct and encouraged the Board to gather as much information as possible prior to the close of the hearing. Mr. Pucci agreed with Mr. Hill that is preferable to have draft conditions available to discuss during Open Meetings to continue to gather information and feedback.

Ms. Murphy, MECT, asked if any of the Affordable units would include Section 8. Ms. Mellish replied that would have been a condition of the Applicant's application with Massachusetts Housing Finance Agency it is not a part of the 40B process. Mr. Pucci confirmed that Ms. Mellish was correct.

*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 27, 2021 to May 25, 2022 at 7:00 p.m. Mr. Diedrich seconded the motion. The motion passed unanimously with Mr. Binieris, Ms. Howe, Mr. Mitchell, Mr. Zahn, Mr. Diedrich, and Ms. Mellish voting affirmatively. Ms. Sollosy was not available for the vote.*

## **ADMINISTRATIVE MATTERS**

- **Review and approval of meeting minutes:**

*Ms. Howe moved to approve the meeting minutes of March 9, 2022 and April 5, 2022; Mr. Diedrich seconded the motion. Mr. Mitchell, Mr. Binieris, Mr. Diedrich, Mr. Zahn, and Ms. Howe voted affirmatively by roll call vote. Ms. Mellish abstained; Mr. Sollosy was not available for the vote.*

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

Ms. Howe asked if Town Counsel would be assisting the Board with drafting the Board's Decision? Ms. Mellish stated Town Counsel would be assisting with the process of reviewing all conditions and waivers.

- **Adjourn -- Ms. Mellish moved to adjourn the meeting; Ms. Howe seconded the motion. The motion passed unanimously by roll call vote.**

