



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 May 25, 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, Matt Cote, B+T Peer Reviewer

PUBLIC HEARING – 40 B CONTINUED APPLICATION

Ms. Mellish called the ZBA meeting to order at 7:01 p.m. on May 25, 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.

- **Engineering Peer Review**

Mr. Cote stated he had forwarded a letter on May 20, 2022 and received a response from the Applicant this afternoon and has not had time to review the response. It was decided that Mr. Cote would provide recommendations with regard to Conditions.

Construction Management Plan (CMP)

- Sewer Pump Station will require a waiver because it is located in the setback. It is not yet fully designed B+T was provided standard details and are comfortable with DPW and the Building Inspector thoroughly vetting the design.

- Booster Pump Station related to water which is located next to the Sewer Pump Station will require a waiver and vetting by DPW and the Building Inspector. Also, capacity, pressure and testing is a recommended Condition for the Booster and Sewer Pump Stations.
- The sidewalk will put the building over 15% of impervious surface and will require a waiver. B+T takes no exception to this request.
- Earth Work around the removal of 100K yards, 3,800 plus or minus truck trips at 60 trips a day over several months will have an impact. Mr. Cote did mention the site is in close proximity to the highway and trucks will not be travelling through the center of Town. He added that due to the sensitivity of the Vernal Pools some kind of CMP would be appropriate, and the Applicant has committed to providing that. This too will be reviewed during the Building Permit process and is a potential Condition.
- Mr. Cote noted related to stormwater there were inconsistencies with ground water elevations and rainwater events he assumes he will see responses in the letter received today. The Applicant is moving in the right direction and trying to make the adjustment B+T requested. Mr. Cote added from where we were when B+T started to where we are now the design is a more viable. The Applicant has been receptive to concerns but there are still some outstanding issues as of May 20th. Stormwater will be reviewed further.
- Signage is reviewed at the Administrative level and is not an engineering area for review.

Board Comment

Ms. Mellish asked given there is no CMP what is logical for the Board to put into Conditions with respect to protecting vernal pools during construction. Mr. Cote replied, the project will still need to go before the Conservation Commission for permitting and if this Board puts in a Condition all Conditions will likely also be approved by the Conservation Commission and by that time there maybe a CPM in place.

Mr. Mitchell indicated many of his concerns were addressed by Mr. Cote, but he has a few outstanding questions and concerns.

- Page 4, item 3 – Applicant document adequate water pressure to service project.
- Page 7, section 7 – No modifications for E-car parking
- Page 8, section 7 – Electrical, telephone and data utility requirements there appear to be contradictions around overhead or underground utilities. Mr. Mitchell indicated given the size of the project if there is an option for all underground utilities that would be appropriate, and he asked if the Board could make that recommendation. Ms. Mellish indicated if the Board decides on Conditions and underground wires could be a defined Condition of the project.
- Page 15, section 9 – Mr. Mitchell stated, as a lay person, he does not understand in references to the ponds what free board design for 100-year storm event? It appears the Applicants response is using different calculations and data.
- Page 15, section 11 – diameter of pipes for stormwater management has the same response using different calculations.

Ms. Mellish asked Mr. Cote to clarify what free board is. Mr. Cote stated a free board is at an elevation suggesting 100' during a storm you want to know that water will not rise above 99'. He noted there is a spillway at a lower level and if the spillway is clogged the extra foot provides assurance that water will not overflow the basin. Originally the project proposed a free board in inches not the additional foot. Mr. Cote stated he will need to review the information on the diameter of the pipes more closely and get back to the Board.

Mr. Diedrich, Mr. Zahn, Mr. Binieris, and Mr. Sollosy had no questions and thanked Mr. Mitchell for addressing his and their concerns. Ms. Howe stated she wanted to add that the sidewalk is essential to the project and should not be contingent on the Town extending the sidewalk on School Street to the Development. Additionally, she would like the Applicant to be responsible for maintaining and servicing the Pump Stations for water and sewer.

Public Comment

Luke Legere, Counsel for CIMAH, asked to follow up on conditions to assure protection of the vernal pools. He requested the Board gather information from the Conservation Commission to ensure local interests are protected.

Mr. Hill, Counsel for MECT, indicated Mr. Chessia had provided a letter this afternoon and requested he be allowed to speak this evening regarding that letter.

Additionally, Mr. Hill is concerned about the Developer's proposed drainage design for a drainage connection to a culvert under School Street. The current pipe drains water from the wetlands to the culvert. Mr. Hill believes the development is proposing a new drainpipe under School Street that will drain onto Town owned parcel 43/21. He noted this is unprecedented under 40B and the Board nor the Housing Development Authority has any authority to grant easements over Town property. He asked why a private developer is proposing this and indicated the culvert is just south of the driveway entrance to the project.

Mr. Hill is also concerned about a recurring theme he is hearing from B+T to defer substantive issues to post permit review and approval. He believes that sewer, water, and CMP are being deferred and ZBA cannot impose Conditions post review. Mr. Hill stated he will forward a letter outlining case law on the subject. Mr. Hill also would like to see analysis from the Developer around critical extensions of public utilities and that these extensions be fully vetted during the Public Hearing to allow for mitigation and need for additional analysis.



Chessia Letter 5-25-22.pdf

Mr. Chessia spoke to the above letter.

Alan MacMillan, Rockport – Mr. MacMillan stated it appears to him that this is all about someone making a profit who has no vested interest in Manchester. He noted the stormwater plan presented had 40 deficiencies and the applicant is requesting 19 waivers to Town By-Laws,

he added in the Town of Rockport no applicant has requested more than 2 waivers. These are warning signs and to him none of this is appropriate or makes any sense.

Sarah Pierce, 9 Friend Street – Ms. Pierce asked the Board to refer to the 2008 40B Application where the application was denied because the public access was a single means of access on a steep slope with varied topography and was a jeopardy to public safety. Mr. Pierce requested that question be asked of the Applicant’s attorney. Ms. Mellish stated that was not an appropriate question to ask the Applicant’s attorney.

Jeff Cochand, 15 Pine Street – Mr. Cochand stated he has served on the Board of MECT for 17-years and leads the spring and fall walks in the conservation area under consideration for the 40B project. He indicated that the project while under construction and when completed will make it impossible for dedicated walkers to immerse themselves in nature. He believes that planting trees to hide a building and retaining walls will not shield the view and the impact on MECT activities will be forever changed.

Catlin Eppes, 26 Proctor Street – Ms. Eppes stated she is the mother of a handicapped child who uses a wheelchair and walker. Ms. Eppes asked how the building will be accessible to School Street with a single entrance and wondered if the entrance would be accessible to wheelchairs and walkers. She wanted to know if there would be an opportunity for her to review plans for elderly and disabled to move around and exit the building.

Mr. Engler stated SLV has submitted replies to all of Mr. Cote’s questions and he is confident that Mr. Cote will find the responses satisfactory. He added he appreciates all the work B+T has done and is hopeful to close out all outstanding issues soon. Mr. Engler addressed the following issues raised this evening:

- SLV will submit a parking plan and is sensitive to the need for electric car charging stations.
- Utility connections are a mandate from the utility company who hold all the leverage in allowing for overhead vs. underground wiring. He will ask the utility company to allow for underground wiring for the project.
- Asking the Conservation Commission for recommendations with regard to the Vernal Pools, Mr. Engler is obliged to meet the State standards but is moving beyond those standards to protect the Vernal Pools on the site.
- The CMP will be fully developed post ZBA 40B hearing process according to the State guidelines. However, Mr. Engler stated he will work to provide additional construction information for the Board.
- Mr. Engler stated he disagrees with Mr. Hill about post permitting Conditions adding post permitting Conditions are done all the time.
- Mr. Engler stated he has not had an opportunity to read Mr. Chessia’s letter which arrived late this afternoon.
- Mr. Engler replied to the mother with the disabled child stating he too has a child with severe disabilities and noted that the proposed building will be more livable for individuals with disabilities than most homes in the Town of Manchester.

Carleton Quinn, Civil Engineer, Allen & Major Associates – Mr. Quinn replied to Mr. Cote, the Board and Public comments.

- Mr. Quinn noted he had provided additional information on the sidewalk and a waiver request.
- Stormwater and rainfall calculations were estimated using a different method from B+T that is acceptable to MA Highway Division and is an acceptable method for the design of the project. Mr. Quinn added in his most recent letter he provide a PDF with the relevant information to B+T.
- Free board was less than one tenth of a foot under and has been raised.
- In response to Mr. Mitchell’s concerns, e-car parking and recharging station will be included and as Mr. Engler stated underground wiring is at the direction of the utility company.
- Diameter of pipes will be reviewed with the Town’s DPW Engineer over the next weeks when the study being conducted by Tata & Howard is completed. Mr. Quinn stated he will provide mitigation for sewer and water when the data measures are completed.
- In response to Mr. Hill, he noted every utility connection is through the public right of way. There is an existing pipe discharging water from the site into the culvert. The proposed design is mitigated to spread water out and protect the Vernal Pools.
- The sidewalk will be handicap accessible.

Additional Public Comment

Betsy Ridge-Madsen, 227 East Street, Essex, MA – Ms. Ridge-Madsen thanked the Board for their work and stated her issue is that State Regulations allowed for the 40B Project in an area that the Town does not agree with. She is opposed to the Board granting waivers without considering the environmentally sensitive area. She encouraged the Board to not allow for the project to go forward.

Becky Jaques, Acting Chair Manchester Select Board – Ms. Jaques clarified that the Select Board had committed to building a sidewalk across Route 128 to the site when the project is built.

Carey Almog, 69 Bridge Street – Ms. Almog stated she is a fifth generation Manchester resident and could not live with herself if she did not speak out against this project. She added the project does not belong here and will take away from the Town.

Ms. Mellish asked the Board if there were any additional questions. Mr. Mitchell, Mr. Zahn, Ms. Howe, and Mr. Binieris had no additional questions. Mr. Sollosy stated what the Town planned to do with the sidewalk on School Street was irrelevant, adding the Developer does not Condition the Town. Mr. Diedrich stated the sidewalk issue has been asked and answered and does not need to be discussed again.

- **Zoning Waiver Requests**

Ms. Mellish stated the building is within the walking zone for elementary aged children and there is no bus coming from Essex for the Memorial School. She asked if the Board would like to discuss the sidewalk further. Ms. Howe stated she was ready to vote, the Board agreed.

Ms. Mellish moved to approve an ADA compliant sidewalk from the proposed building to School Street whether or not the Town has extended the sidewalk on School Street; Mr. Sollosy seconded the motion. The motion passed unanimously by roll call vote.

Ms. Mellish stated that leads to the waiver requests from March 23, 2022, waiver request number 4 – 4.9.5.1 p requesting authority to increase the impervious surface to greater than 15%. Ms. Howe asked if the Board could grant a waiver only for the sidewalk, Ms. Mellish replied yes. Mr. Mitchell asked if the Developer could decrease the amount of pervious surface by 0.4% to allow for no waiver to be needed. Mr. Engler replied that he doubted the Fire Chief would support impervious surface at the top of the driveway adding it was a small concession for the addition of the sidewalk.

*Ms. Mellish moved to approve **Waiver Request 4.9.5.1 p** to increase the impervious surface by 0.4% to 15.4% for the purpose of building an ADA compliant sidewalk to School Street; Mr. Diedrich seconded the motion. The motion passed unanimously by roll call vote.*

Waiver 1 under 4.4 of the Zoning By-Law to allow multi-family dwelling in the LCD. The Board had no further discussion.

*Ms. Mellish moved to approve **Waiver Request 1** under 4,4 of the Zoning By-Law, Mr. Sollosy seconded the motion. The motion passed unanimously by roll call vote.*

*Ms. Mellish moved to approve **Waiver Request 5** under section 4.9.5.2 d under the Zoning By-Law to allow the Zoning Board of Appeals to act as the approving authority; Mr. Diedrich seconded the motion. The motion passed unanimously by roll call vote.*

*Ms. Mellish moved to approve **Waiver Request 8** under section 5.7.1 of the Zoning By-Law where the width of the lot is 500 feet, and this is a non-conforming lot at 291.2 feet; Mr. Diedrich seconded the motion. The motion passed unanimously by roll call vote.*

Ms. Mellish deferred voting on the height of the building and the accessory structure for further information.

Waiver Request 9 under Zoning By-Law 5.7.3 where the side setback is 150 feet, and the proposed back setback is 82.6 ft and the street setback is 20 feet was deferred to a time when the accessory structures related to the Pumping Stations were reviewed, approved, and Conditioned.

*Ms. Mellish moved to approve **Waiver Request 10** allowing for parking space dimension of 9' x 18' from 9' x 20 under the Zoning By-Law 6.2.2; Ms. Howe seconded the motion. The motion passed unanimously by roll call vote.*

Ms. Mellish added that under the proposed recodification by the Planning Board the size of parking spaces will be reduced to 9' x 18' which appears to be the State standard.

*Ms. Mellish moved to approve **Waiver Request 11** allowing for the number of parking spaces to be reduced from 383 to 235 which is 1.72 spaces per unit; Mr. Mitchell seconded the motion. The motion passed unanimously by roll call vote.*

Mr. Mitchell noted that the number of parking spaces is considered generous by industry standards.

Ms. Mellish proposed a Condition that the number of spaces at the front of the building be increased to provide for two box trucks to park simultaneously in front of the building for the efficient delivery of packages. Following discussion, the Board agreed that would be a management issue for the building staff not necessarily a Condition of the Board. Mr. Sollosy added that no delivery vehicles should be parked in the fire lane.

*Ms. Mellish moved to approve **Waiver Request 13** under the Zoning By-Law 6.2.6 requiring the planting of one tree for every five parking spaces and that this requirement will not apply to the underground parking lot; Mr. Diedrich seconded the motion. The motion passed unanimously by roll call vote.*

*Ms. Mellish moved to approve **Waiver Requests 14, 15 and 16** under Zoning By-Law 6.2.7, 6.2.5, and 6.2.9 for approval of the Zoning Board of Appeals to act on behalf of other Town Boards in the 40B process; Mr. Diedrich seconded the motion. The motion passed unanimously by roll call vote.*

The Board discussed that ZBA stands in the shoes of other Town Boards during the 40B process. Mr. Pucci confirmed that ZBA is required to exercise this authority and if the Board did not exercise this authority no other Board would have jurisdiction to represent the Town during the 40B process.

Mr. Pucci also clarified that the Conservation Commission has jurisdiction under the State Wetlands Protection Act and local By-Laws are not part of the 40B process. Ms. Howe asked if the Board had waiver requests for local environmental By-Laws. Ms. Mellish replied, the waiver requests had been received this afternoon and the Conservation Commission will weigh in on the requests.

Ms. Mellish deferred discussion and action on waiver request 17 for receipt of the Water and Sewer Feasibility Study.

*Ms. Mellish moved to approve **Waiver Request 18** an additional Administrative waiver to allow ZBA to grant a permit for the division of land and building of multiple housing units; Mr. Zahn seconded the motion. The motion passed unanimously by roll call vote.*

Ms. Mellish deferred waiver request 19 which addresses stormwater management. Waiver request 20 is a waiver request for signage. The local By-Law allows for a sign 3' x 3' and the

request is for a sign 6' x 6'. Motion to approve proposed signage was made, seconded and withdrawn. The Board deferred this request to review proposed signs from the Developer. Waiver request 21 was also deferred for additional information.

- **Site Access and Safety Conditions**

Ms. Mellish expressed concern around the number of truck loads of material leaving the site and suggested limiting the exiting vehicles to Route 128 and not allow trucks to go through Essex. Also, she would like to limit the hours in the morning and afternoon to allow for the school commute from the Middle High School. Conditions could be set by the Board around these considerations. Ms. Mellish has requested information from Superintendent Beaudoin for specific hours around students in cars and buses leaving for Essex and has not heard back. Both Ms. Howe and Mr. Zahn pointed out the Memorial Elementary School is a shared school and there are children attending from Essex. Ms. Mellish asked about police details, Mr. Engler stated there are not usually police details for regular construction. Ms. Mellish will discuss with the police. Mr. Diedrich agreed that the Board may want to add a Condition for police details.

Ms. Mellish asked about the Affordable Housing units and noted in the purchase and sale agreement there is an agreement that an affordable unit will be reserved for family of the seller. Ms. Mellish asked Mr. Engler if that unit was included in the Affordable Housing Unit count. He replied it is not.

Ms. Mellish asked about local preference and how that was managed. Mr. Engler stated SLV will hire a lottery agent and there are 4 or 5 categories that qualify for local preference usually residents, employees, and others. Ms. Mellish asked the Board if they would like to Condition a local preference for the SLV Development. The Board agreed.

*Ms. Mellish moved that the Board add a **Condition** that there will be a local preference at the greatest percentage allowed for the SLV Development; Mr. Sollosy seconded the motion. The motion passed unanimously by roll call vote.*

- **Next Meeting, Continue Public Hearing to 6/8/2022**

June 8, 2022 – Environmental Peer Review

June 22, 2022 – Municipal Water & Sewer Feasibility Study Review

Architectural Peer Review

Environment Wildlife Habitat Study

Preliminary Discussion of Conditions and Waiver

Mr. Hill asked if the Wildlife Habitat Study could be provided before the June 8, 2022 meeting. Ms. Mellish stated that has been established and is anticipated on June 1, 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 27, 2021 to June 8, 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, Mr. Sollosy, and Ms. Mellish voting affirmatively.

ADMINISTRATIVE MATTERS

- **Review and approval of meeting minutes:** There were no meeting minutes to approve this evening.
- **Any other administrative matters that could not reasonably be anticipated in advance of the meeting.** There were no additional matters to discuss this evening.
- **Adjourn --** *Ms. Mellish moved to adjourn the meeting; Mr. Sollosy seconded the motion. The motion passed unanimously by roll call vote.*