

**HOUSING APPEALS COMMITTEE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

SLV SCHOOL STREET, LLC)	
)	
Appellant)	INITIAL PLEADING
)	DOCKET NO.
v.)	
)	
MANCHESTER-BY-THE-SEA)	
ZONING BOARD OF APPEALS,)	
)	
Appellee)	

INTRODUCTION

This is an appeal by the Appellant SLV School Street, LLC (“SLV”) pursuant to Massachusetts General Laws, Chapter 40B, sec. 21-23 and 760 CMR 56.00 from a decision of the Manchester-By-The-Sea Zoning Board of Appeals (the “Board”) dated August 25, 2022 and filed with the Manchester-By-The-Sea Town Clerk on August 30, 2022 (the “Decision”, attached hereto as Exhibit A). The appeal is from the Board’s Decision to deny a comprehensive permit for a 136-unit rental, affordable housing project located at) School Street in Manchester-By-The-Sea, Massachusetts commonly known as “The Sanctuary at Manchester-By-The Sea” (the “Project”). The Project is located on Assessor's Map 43, Parcel 18 (the “Property”). The Application for the Project is attached hereto as Exhibit B.

THE PARTIES

1. SLV School Street, LLC is a Massachusetts limited liability company with a principal address of 257 Hillside Avenue, Needham MA 02494.

2. The Appellee Manchester-By-The-Sea, is a duly constituted Zoning Board of Appeals with an address of 10 Central Street, Manchester-By-The-Sea, MA 01944.

THE PROPERTY AND THE PROJECT

3. The Property is located at 0 School Street in the town of Manchester-By-The-Sea and consists of one undeveloped parcel totaling 23+/- acres. The Property is located in the Town's Limited Commercial Zoning District.
4. There are no residential properties abutting the Property or in close proximity thereto. A non-profit conservation trust owns property next to the Property. Prior to SLV's agreement to purchase the Property, such conservation trust negotiated for purchase of the Property but ultimately chose not to purchase it.
5. The Property is significantly upgradient from School Street and contains some wooded areas and pathways. The Property also has a limited area of wetlands including limited Riverfront Area, Bordering Vegetated Wetland (BVW), and vernal pools.
6. The Project will develop approximately 8 acres of the Property and the remainder will be maintained in an open undeveloped state.
7. School Street is a typical secondary roadway and provides a 12-18-foot wide travel lanes that are separated by a double yellow centerline with 2 to 12-foot wide marked shoulders.
8. The Property is located approximately 1,800 feet from the interchange of Route 95, a major interstate highway. Travel to and from the Property to Route 95 does not require travel through or past any residential neighborhoods, villages, or congested areas.

9. The Project consists of a single primary building which will include all 136 apartment units, twenty-five (25%) percent of which will be reserved for lease to low or moderate income households.
10. The Project will be connected to the municipal public water supply.
11. The Project originally proposed an on-site waste treatment facility but has been revised so that it will be connected to the Town's public sewer system. This connection positively addressed a number of environmental issues identified by the Town during the public hearing process
12. The Project will be served by an access driveway that carefully addresses grade and emergency access issues. Emergency vehicles will safely access the site and fire trucks will have multiple points along the driveway from which to fight fires.
13. Parking will be on site and primarily under the building. The number of parking spaces is consistent with, or exceeds standards and thresholds for similar developments.
14. At the request of the Board, the design of the Project was modified to allow the development of a sidewalk to School Street.
15. The Project's stormwater management system utilizes a variety of facilities to allow for the collection, treatment and infiltration of stormwater, consistent with the Mass DEP Stormwater Management Guidelines.
16. The Project poses certain limited impacts to wetlands that are subject to the local jurisdiction under the Town's wetland bylaw. The design of the project has been modified to address potential wetland impacts.
17. SLV submitted a comprehensive waiver list, a copy of which is attached hereto as Exhibit C.

JURISDICTIONAL PREREQUISITES

18. SLV has an interest in the Property by virtue of a purchase and sale agreement dated November 26, 2019.
19. SLV is a limited dividend entity as supported by its articles of organization and its pledge to be bound by a complying Regulatory Agreement.
20. With respect to project eligibility, the Project was initially proposed as a Local Initiative Project and received strong initial support from the Select Board. Ultimately, however, agreement on the terms of the LIP could not be reached and, on September 16, 2021, SLV received a Project Eligibility Letter from MassHousing.
21. At the commencement of the public hearing, the Board claimed that it was entitled to a *safe harbor* under 760 CMR 56.03. Upon SLV's challenge, DHCD summarily rejected the Board's claim and the public hearing resumed accordingly.
22. The Subsidized Housing Inventory for the Town of Manchester-By-The-Sea was at 5.05% as of the date of the submission of SLV's application.

THE BOARD'S PROCEEDINGS

23. SLV applied to the Board on September 27, 2021. The public hearing commenced on October 26, 2021 and was continued to fifteen additional sessions, with SLV granting multiple extensions so as to complete substantial review and peer review of the Project. The public hearing was closed on June 27, 2022.
24. SLV provided expert plans and reports on traffic, engineering, wetlands, site planning, sewer, water, architectural and emergency access issues. The Town was provided with peer review from a variety of sources, including Environmental Partners on traffic issues,

Beals & Thomas (B&T) on wetlands and engineering issues, the Town's DPW on water and sewer, Davis Square Architects on architectural/site issues and the Town's fire chief on emergency access issues.

25. Based upon its decision denying the Project, the Board has decided to ignore favorable of approvals by its consultants and the Town's own professional staff and, instead, relies upon the discredited opinions of consultants retained by opponents to the Project. Such opinions cannot be construed as expert opinions and cannot be relied upon in administrative proceedings conducted by the Housing Appeals Committee.
26. The Board's decision makes several findings regarding emergency access to the Project. In making these findings, the Board misstates the facts pertaining to emergency access. Moreover, the Board mischaracterizes and then rejects the assertions and conclusions of its own fire chief who, both in writing and testimony to the Board, concluded that emergency access was adequate and acceptable and compliant with all applicable State building and fire protection codes. The Board relies on no expert analysis to support its disagreement with the Town's own fire chief.
27. The Board's findings regarding a lack of adequate snow storage are also belied by the facts that the Town's own consultant B&T noted that SLV adequately addressed their request to confirm the viability of the proposed snow storage locations.
28. The Board's decision also devotes a substantial number of findings to vernal pool impacts. The Town's local bylaws provide substantially enhanced protection for vernal pools. Such protections supplement the protections that are afforded under the State Wetlands Protection Act. The local bylaw expands the scope of vernal pools and provides enhanced performance standards with respect thereto.

29. SLV seeks waivers of portions of the local wetlands bylaw as it applies to vernal pools.

To support the request for such waivers, SLV performed substantial analysis of the existing vernal pools and buffer zone thereto and also analyzed impacts that may be posed by the Project. Several rounds of review and peer review ensued and ultimately both SLV's environmental consultants and B&T concluded that the Project was designed in a way to preserve vernal pool function and the interests to be protected under the bylaw. Additionally, SLV established, and B&T agreed that the project would not be feasible or buildable without waivers from the vernal pool bylaws.

30. The Board's decisions ignore their own consultants' conclusions with respect to vernal pools and, instead, rely upon the biased opinions offered by opponents to the project. Those opinions were thoroughly discredited during the Board's hearing.

31. In its analysis of vernal pools, the Board also misapplies the applicable standard regarding waivers.

32. In addition to findings related to vernal pools, the Board also makes several impacts relating to impacts to the Sawmill Brook. However, the applicant addressed these impacts to the satisfaction of B&T.

33. The Board also made several findings relating to the sewer connection although, curiously, it did not conclude either that the Town lacked sufficient capacity to accommodate the Project or that the proposed sewer infrastructure was inadequately designed. Indeed, the Town's own DPW concluded that there was adequate capacity and that the initial design was suitable for construction of a connection to the municipal system. These conclusions are ignored by the Board and, instead, the Board relies, without any detail, on a letter written by counsel representing opponents of the project.

34. The Board's decision also includes a single paragraph that finds that the stormwater management design of the project is inadequate. In making this finding the Board again rejects the conclusions of B&T and, instead, relies upon the opinion from a consultant to an opponent to the project.
35. The Board's decision also incorrectly states that the Project site is inconsistent with the Town's Master Plan and Open Space Plan. Indeed, the Town's Master Plan expressly includes a goal of development of residential uses in the Limited Commercial District where the Property resides. The Select Board acknowledged this during negotiations with SLV for a LIP project. Furthermore, this project is in close proximity to major commuter routes and will foster the regional development of affordable housing. The Board's decision cites to promotion of open space in this area but fails to note that: (a) the Town is negotiating for a large commercial development directly across School Street from the Property; and (b) the Property was made available for purchase by the abutting conservation trust; and (c) the Town earnestly entered into negotiations with SLV for the development of the Property.

CONCLUSION

36. The Board's reasons for denial stand in contradiction to the factual and technical evidence submitted during the public hearing process, including, with particularity, evidence, reports and testimony offered by the Board's own technical consultants and town officials.
37. The Board's Conclusions and Reasons for Denial are subjective and based primarily upon personal opinion and not sufficiently supported by any technical evidence, plans, reports or testimony submitted during the hearing process.

38. The Project complies with federal or state statutes or regulations, and with generally recognized standards as to matters of health, safety, the environment, design, open space, or other matters of Local Concern.
39. The Board's decision fails to establish that there is a valid health, safety, environmental, design, open space, or other Local Concern which supports the denial.
40. With respect to any Local Concern cited by the Board, the Board has failed to establish that such Local Concern outweighs the Housing Need.

REQUESTS FOR RELIEF

WHEREFORE, the Applicant requests that the Housing Appeals Committee:

1. Reverse the decision of the Board denying the Project and direct the issuance of a Comprehensive Permit for the Project, as proposed by SLV; and
2. Enter such further relief as the Housing Appeals Committee deems necessary.

**APPELLANT,
SLV School Street, LLC,
By its Attorney**

/s/ Jason R. Talerman

Jason R. Talerman, Esq. (BBO 567927)
Mead, Talerman & Costa, LLC
730 Main Street, Suite 1F
Millis, MA 02054
(508) 376-8400
jay@mtclawyers.com

September 15, 2022

EXHIBIT A

DECISION OF BOARD OF APPEALS

EXHIBIT B

**APPLICATION TO BOARD OF
APPEALS**