

WALPOLE ZONING BOARD OF APPEALS MINUTES OF OCTOBER 26, 2020

A meeting of the ZONING BOARD OF APPEALS was held remotely via Zoom Webinar on MONDAY, OCTOBER 26, 2020 AT 7PM. The following members were present:

John Lee (Chair), Susanne Murphy (Vice-chair), Bob Fitzgerald (Clerk), Drew Delaney, Dave Anderson, Ashley Clark (Community Development Director)

Absent: Jane Coffey

Also Present: Judi Barrett (40B Consultant); George Pucci (KP Law); Cliff Boehmer (Davis Sq. Architects); Sean Reardon (Tetra Tech)

Lee opened the meeting at 7:00 PM

Status update on Burns Avenue 40B Comprehensive Permit RE: Notice of Project Change/Request for Modification:

Attorney Pucci of KP Law provided the Board with an update regarding the Comprehensive Permit and the status of where it is in the appeals process. Pucci reiterated that the Board granted a Comprehensive Permit that was appealed by the applicant. After the initial appeal of the project, the applicant requested changes to the project, in which the Board at that time deemed the proposed changes substantial, that then required the applicant to file a formal request for a Modification to the Comprehensive Permit, which as of yet, the public hearing has not been opened due to the COVID legislation currently in place. Pucci reiterated that the intention of the Board was to open the public hearing on the Notice of Project Change within forty (45) days of the termination of the State of Emergency. Pucci stated to the Board that the applicant has since filed paperwork with the HAC seeking to proceed with his appeal of the original Comprehensive Permit decision, and retained counsel to represent him in the HAC Appeal. The presiding officer has asked Pucci to provide an update regarding whether or not the Board would reconsider opening the public hearing on the Notice of Project before the State of Emergency is lifted, since remote hearings will most likely remain in place for the foreseeable future. The Board was made aware that the applicants attorney advised the HAC that he intended to go forward with a motion to seek to have the HAC maintain jurisdiction over the project change, with his intended grounds being that the project change improves the project and the effect on the neighborhood, even though there is a proposed increase in units. The deadline for the applicant to file this motion is 11/12/2020, and therefore an update from the ZBA is needed regarding whether they are inclined to open the public hearing on the requested project change by 11/12/2020. Pucci explained to the Board that if they want to maintain their current position of not wanting to open the public hearing on the notice of project change, it would trigger the applicants attorney to file the motion with the HAC to maintain jurisdiction over the notice project change. Pucci provided the Board with two updates, which included the following;

1. A guidance document issued by the Dept. of Housing and Economic Development stating that if they see evidence that a particular Board is hearing other types of applications but refusing to go forward with 40B's, they may consider that a violation of a regulation which requires the Boards to treat 40B's the same as other applications.
2. The governor recently filed 9/30/20 a fiscal year 2020 supplemental budget Bill to the House and Senate that proposes amendments to Chapter 53, the Acts of 2020, specifically: replaces State provision of time period of 45 days following the termination of the State of Emergency, by substituting the language with a date of 12/1/2020.

Pucci recommends that the Board keep the jurisdiction of the Notice of Project change to allow the Board and the Public to continue to have input on the project. The Board unanimously agreed that they would like to maintain jurisdiction of the Notice of Project Change, and date to open the public hearing will be discussed in the near future.

Case No. 05-20, Wall Street Development Corp., Dupee Street (Map 35; Parcel 380-1), Comprehensive Permit:

Lee opened the hearing, and stated that the goal of the night's meeting is to go over the two peer reviews by Davis Square Architects and Tetra Tech. Cliff Boehmer of Davis Square Architects was present and stated the following comments from his peer review letter, dated 10/19/2020;

- small and tightly packed site that creates difficulty trying to move buildings, very limited usable open space
- level of density is excessive due to the number of units proposed (twelve), unit count is too high to achieve basic expectations (adequate parking, sufficient turn-around space, abutter privacy)
- number of units and the size of the buildings is problematic and creates issues that extend to the impact on the neighbors, with no opportunity in the current scheme to maintain any screening (mature tree growth, etc.)
- Site would most likely have to be clear-cut in order to develop due to spacing, density
- Proposed swales located in a number of the proposed backyards of the units create difficulty in privatizing rear yards
- concern over lack of parking spaces which is problematic for people visiting the units and the surrounding neighborhood re: street parking that would create further narrowing of street
- 20 ft. roadway provided into the site is minimum width that would be considered acceptable for E-911 apparatus, and creates difficulty with turning around of emergency vehicles
- proposed building design is not congruent with existing surrounding neighborhood housing due to the closeness "clustering"
- inconsistencies between the civil and architectural drawings made reviewing the project difficult
- stormwater and environmental issues
- other ways of developing this site that would be improvement include:
 1. reorient the buildings with front entries facing each other and sharing a common driveway – this would cut down on the density, provide privacy and optimize outdoor space;
 2. changing to a different townhouse type to a more urban style of townhouse (the proposed 11 ft. of distance between buildings isn't optimized) where there was no space between buildings with clusters having parting walls- this could potentially broaden the roadway
- proposed architecture, open space and livability on site is impeded by fundamental issues that overlap in safety issues
- proposed parking spaces of a total of 24 is unusually limited for the number of units being proposed
- potential building code issues on plans

Sean Reardon of Tetra Tech (civil and traffic engineering review) was present and stated the following comments from his peer review letter, dated 10/19/2020;

- Dense site with a drastically reduced ROW. Dupee St. is 20 ft. in width vs standard street is 26 ft. in width
- Building sizes shown on the site plan seem to be small than the buildings shown on the architectural plans- issue needs to be r
- site is currently all wooded, proposed development would make the site all developed land- creates large amount of stormwater that was not generated under the current conditions that needs to be mitigated
- proposed development will have a large amount of water located directly above the surrounding existing homes in the neighborhood- proposed detention pond is multiple sizes bigger than the houses below it, however, from a safety standpoint, this creates a large amount of water that potentially spills over the retaining wall and onto the road when it exceeds its capacity, with no space around it for maintenance or adjustment – mitigation is not practical.
- unsure if the site can be constructed in a practical way due to limited space. Construction phasing plan needs to be submitted to determine feasibility, specifically with proper drainage during construction

- given the density of the site and the limited access, placement of a sidewalk is not seen as a must.
- if density was reduced, some issues brought up could be less severe
- site distances look mostly comfortable in both directions
- top and bottom of detention wall elevations need to be included on plan
- two tables on stormwater report do not match the plans submitted- this needs to be addressed

Judy Barrett: important aspects of 40B review to focus on: impact of the development on public health, safety, environmental, and if there is a way to mitigate the impacts. The Board should be deciding if there is a way to successfully mitigate the impacts that were addressed in the peer review, or whether the impacts of the development outweigh the need for housing. If the number of units proposed is causing too much of the detrimental impacts addressed, the Board should ask the applicant to reduce the number of units in order to reduce the impacts. The next step in the hearing process is now for the applicant to respond to the peer review letters and the items of concern.

Petrozzi to review the engineering peer review letters submitted by Tetra Tech, and agreed with Clark and the Board that a continuance to 12/2/2020 would be an acceptable date. Pucci recommended against getting an extension of time from the applicant to 12/2/2020 due to still being under legislature. Murphy motioned to continue the hearing to **10/28/2020** at 7PM via Zoom Webinar for the purpose of taking public comment only, seconded by Fitzgerald, roll call vote: Lee-aye' Murphy-aye; Fitzgerald-aye; Delaney-aye, Anderson-aye. The motion carried 5-0-0.

Minutes: Murphy motioned to approve the minutes of 8/19/20; 8/26/20; 9/16/20; 9/21/20; 10/5/20; 10/7/20, seconded by Fitzgerald, roll call vote: Lee-aye' Murphy-aye; Fitzgerald-aye; Delaney-aye, Anderson-aye. The motion carried 5-0-0.

Murphy motioned to adjourn, seconded by Fitzgerald, roll call vote: Lee-aye, Fitzgerald-aye; Murphy-aye, Delaney-aye, Anderson-aye, the motion carried 5-0-0.

The meeting adjourned at 8:50 PM

Accepted 10/28/20