

WALPOLE ZONING BOARD OF APPEALS MINUTES OF MARCH 15, 2021

A meeting of the ZONING BOARD OF APPEALS was held remotely via Zoom on MONDAY, MARCH 15, 2021 AT 7PM. The following members were present on the Zoom Webinar:

Present on behalf of Town of Walpole: John Lee, Susanne Murphy, Bob Fitzgerald, Jane Coffey, Drew Delaney, Amy Kwesell (Town Counsel), Ashley Clark, Sean Reardon (Tetra Tech), Judi Barrett (40B Consultant)

Present on behalf of the Applicant: David Hale (applicant), Louis Levine (Counsel), Philip Macchi (Counsel)

Case No. 03-20, 55 SS LLC., 51-53-55 Summer Street, Comprehensive Permit:

Mr. Lee opened the hearing, and stated that the topics tonight will be to address the outstanding items mentioned in the memo dated 3/1/21, and any other relevant discussions. Mr. Lee also stated that Attorney Dennis Murphy (counsel of the abutters) will be addressing the board briefly. Mr. Lee stated that public comment will be taken, with the understanding that the input should be new and relevant to tonight's topics. Mr. Lee went on to explain that a draft decision has been made by Town Counsel, and the board intends to move forward with the draft decision tonight. Mrs. Kwesell agreed that Attorney Dennis Murphy of Hill Law should have an opportunity to speak on behalf of the abutters that hired him, and that the outstanding issue of building height should be addressed and clarified tonight.

Attorney Murphy introduced himself, and stated that he has been hired by Erica Burdon, an abutter of the project, and respectfully suggested that the ZBA take into consideration the height of the proposed buildings, and stated that he has not seen a project where a building height of four stories would render the project uneconomic, and referenced several 40B housing projects within different towns as examples. Attorney Murphy touched upon blanket waivers, department/ staff input and waivers relating to a use variance. Mr. Lee addressed the topics Attorney Murphy referenced, and asked if either Mrs. Barrett or Mrs. Kwesell had anything to add, in which Mrs. Barrett expressed that she doesn't agree with Attorney Murphy's interpretation, and Mrs. Kwesell echoed Mrs. Barrett's stance, and added that she does not see much traction with the points brought up.

Lee stated that on Friday, after Town Hall had been closed, Omni submitted additional information relating to roadway B, and that the Fire Dept. has not yet had a chance to review the submission. Mrs. Kwesell stated that she is at an impasse and needs to know from the board what the height is going to be since it impacts the draft decision relating to the number of units. Lee asked the board members what their thoughts on the height of the buildings were, which included the following;

Mr. Fitzgerald: does not feel comfortable suggesting a specific number of how many units to be reduced, however, would be in favor of seeing the heights of the buildings reduced to 5 stories.

Mrs. Coffey: expressed her grave concerns relating to density and building height relating to Fire Dept. access relating to backing up and the ability to turn around if needed.

Mrs. Murphy: project seems unsafe due to one access road, and without a pro forma, she cannot be sure about the financial economics of the project, and in general feels that the development is unsafe.

Mr. Delaney: requests that the developer look at the heights of the buildings and would like to see them lowered to four stories and at a height that the Fire Dept. is comfortable with.

Mr. Lee: also has concerns relating to the height of the buildings, and would like to have further deliberation by the board.

Mr. Levine stated that he understands the boards concern, and reiterated that during this entire public hearing process, there has not been any testimony from the Fire Department that specifically states that they cannot tend to a fully sprinkled and fire protected building, and referenced the Building Code of fire suppression that is required for all buildings over three stories in height. Mr. Levine stated that the size of the roads within the project are as big as, if not bigger than some Town roads within Walpole, and the subject has been discussed at length, and that the buildings meet the health and safety requirements. Mr. Levine expressed that he understood the concerns of the board, however nothing that they are qualitative concerns, with no evidence in the record of the project being deemed unsafe. With no further comments from the board, Mr. Lee opened the hearing up to the public for comment, which included the following commentary;

Bill Hamilton: mutual aid problems relating to Summer St. collision accidents

Dawn Freiburger: traffic concerns; excessive number of units creating too much density; safety issues; parking concerns

Erica Burdon: worsening of traffic; in favor of board requesting pro forma; project will not be uneconomic at 4-stories

JoAnne Mulligan: favor of downsizing project; traffic concerns; project is uncharacteristic of S. Walpole; safety concerns

Becky Litvak: concern relating to side roads being protected from construction vehicles; wants a decrease in stories and density

Mr. Hale stated that hearing the commentary is discouraging due to the original project plan being four-stories, which he was directed to re-design due to peer review and department concerns and comments. Furthermore, Mr. Hale stated that the redesign of the project has cost him a considerable amount of money and time, and expressed to the Board that if the Comprehensive Permit is conditioned to a limit of four-stories, he will appeal the Decision. Mr. Hale also stated that he is amenable to a height reduction to five stories, and would not appeal the Comprehensive Permit should the board condition the project to five stories.

Mark Major: project will negatively impact the neighborhood; in favor of reduction of bldg. height and redesign of intersection to prevent the creation of gridlock during high traffic volume times.

Sharon McCarthy: health and public safety concern, in favor of a reduction in number of units and bldg. height; concern relating to offsite automobile and pedestrian traffic; project is too dense; site is not appropriate for project

Phil Michaels: project does not fit in with the existing character of S. Walpole; against the redesign of the Common; in favor of the reduction in size of the project

John Kaselis: in favor of reduction in bldg. height

Andrea Black: would be in favor of the reduction in project size overall and bldg. height

Walter Decker: concerned over the project density and public safety relating to minimal project entrance/exits

Chrissa Kaselis: project is too large and dense; in favor of the reduction in bldg. size relating to height and units; traffic and safety issues; would like the start time of construction to be pushed back; question regarding assoc. bd. member Dave Anderson relating to being a voting member or not on this case; concern over site contamination

Julie Lowry: project impacts the health, safety and welfare of the residents of the project; opposed to size of project; in favor of project to be reduced in size

Bill Hamilton: protection of aquifer is necessary due to water supply

Erica Burdon: sight and privacy issues relating to the height of the proposed 6-story bldgs.

Andrea Black: doesn't think the applicant has made sufficient compromises relating to project

Mr. Lee asked Town Counsel what she recommends relating to how the board should proceed with the public hearing. Mrs. Kwesell stated that the newly submitted plans that addressed Fire Dept. concerns relating to Roadway B still need to be reviewed, with expected changes to be made, and that she is comfortable writing a draft decision that calls for less than six stories, however, requests that the board give her more direction relating to whether the Comprehensive Permit will condition the project to four stories or five. Mr. Lee stated that he would be comfortable with a reduction to five stories, and asked the other board members their stance relating to building height, which included the following;

Mrs. Coffey: still has concerns relating to the safety of the project and that the project is far too dense for the area regardless if it is four, five or six stories in height.

Mrs. Murphy: stated that the project is awful, and expressed that the applicant has zero compassion for the surrounding neighborhood; stated that she is willing to settle on 5 stories

Mr. Fitzgerald: has safety issues relating to the Fire Dept.; stated that a compromise could be 5-stories, and explained that if the project is conditioned to four-stories that the town is at risk for an appeal. Expressed that the board should encourage a discussion about the economics of the two four-story buildings or to compromise on five stories

Mr. Delaney: stated that the density of the project is not easy to look past, and echoed Mr. Fitzgerald's comments

Mrs. Kwesell stated that final comments from the Fire Dept. need to still be submitted, and recommends that she revise the draft decision, send it over to the applicants counsel, and then allow them to comment on that decision. Mrs. Kwesell also recommended that at the next public meeting the board can start to check off the resolved issues, and make decisions. Mrs. Barrett expressed that she is on board with Mrs. Kwesell's recommended steps moving forward. Mr. Lee expressed that he would like to keep the public hearing open for the time being in order to allow the Fire Dept. to submit comments relating to the newest submitted plans, along with allowing Town Counsel to have conversation with the applicants Counsel. Mr. Hale agreed with Mr. Lee to keep the public hearing open, and at the request of the applicant Mrs. Murphy motioned to continue the hearing to 3/29/21 at 7PM via zoom, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Delaney-aye; Coffey-aye. The motion carried 5-0-0. Mr. Hale stated that he will submit to the board a written extension to allow the board to keep the public hearing open to 3/30/21.

Minutes: no minutes were accepted at this time.

Murphy motioned to adjourn, seconded by Coffey, the vote was 5-0-0, the motion carried.

The meeting adjourned at 9:45 PM

Accepted 6/16/21