



ZONING BOARD OF APPEALS

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ROBERT W. LEVY, VICE CHAIRMAN
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DEREK B. REDGATE

March 31, 2020

7:30 pm

Remote Zoom Public Hearing

Zoning Board of Appeals Members Present: Robert W. Levy
David G. Sheffield
Derek B. Redgate
J. Randolph Becker

Present on behalf of the Town of Wellesley: Christopher Heep, Town Counsel
Present of behalf of the Zoning Board of Appeals office staff were Lenore Mahoney, Executive Secretary & Carol Richards, Technical Administrator

ZBA 2019-61, SEB WELLESLEY, LLC, 136-140 WORCESTER STREET

Present at the public hearing was Geoff Engler, SEB Wellesley, LLC.

Mr. Levy said that this is a continued hearing for a Chapter 40B project at 140 Worcester Street. He identified the Board members who are sitting at this hearing. He asked for the public's patience as this is the first public hearing that the Board has conducted via Zoom. He said that the Board received some emails from concerned citizens who objected to this hearing going forward. He said that it is his understanding that this is the process that the Board is governed by. He said that as a 40B project, the Board is required to close the public within 180 days after it was opened. He said that the hearing has passed the 180 days but the Applicant has given the Board permission to continue it. He said that today was the last day that it was continued to. He said that the Board is required under State Law to hold this hearing tonight and it was not done with the purpose of trying to prevent any members of the public from participating in the hearing. He said that under Executive Order, the Governor has permitted towns to hold hearings via Zoom in the manner in which the Board is doing so tonight. Mr. Heep said that in an Executive Order, dated March 12, 2020, Governor Baker issued an order modifying temporarily the normal procedures under the Open Meeting Law. He said that normally the entire Board cannot meet remotely but that was changed for the duration of the current state of emergency to allow the entire Board to meet remotely in the way that it is doing so now. He said that the normal rules for how this Board operates have been temporarily suspended and the Board is now able to conduct meetings in this fashion. Mr. Levy said that the public will be invited to speak via a Town Hall conference call line that they can dial into.

Mr. Engler said that it has been a while since the last public hearing. He said that the process has been going on for almost 10 months now but has been productive and the extensions have been fruitful. He said that the extensions were granted primarily to allow the Developer to move through the Conservation Commission

process under a Notice of Intent. He said that there was a lot of dialog and meetings with the agent and has been a lot of activity on that notice. He said that he fully expects the Order of Conditions to be issued this Thursday. He said that a draft of that order has been circulated. He said that there have been no changes to any technical or structural components of the application. He said that the building has not changed, nothing related to civil engineering or traffic has changed. He said that the Wetlands activity is the only thing that has been going on in the past six to eight weeks.

Mr. Levy said that, in connection with the conservation process, the building was moved. Mr. Engler said that he introduced that at the public hearing and it was discussed. He said that since then, none of the plans have changed.

Mr. Levy said that because Mr. Engler does not own the property yet, he may not be aware that there was an enforcement order issued by the Wetlands Protection Committee last week. Mr. Engler said that he is aware of it. He said that the owner, the agent and the wetlands scientist, Scott Jordan, Ecotech, have been in discussion and were supposed to meet last Thursday but Julie Meyer, Wetlands Protection Committee Administrator, was unable to make it. He said that she and Mr. Jordan met on the property today to discuss the order. He said that there was some confusion on the part of the town and the order will be refined and the owner has until June to execute upon that order.

Mr. Levy asked if there is anything else that Mr. Engler would like to enter into the record. Mr. Engler said that he did not have anything to add. He said that the final plans that were submitted are current and relevant. He said that he did not see any reason to grant additional extensions. He said that the Board can use the next 40 days to draft a decision.

Mr. Levy said that it is his understanding that there is legislation that is close to the Governor's desk which will extend out all permissible permits until 45 days after the state of emergency has ended. He said that legislation was signed last week extending all State permits. He said that because the pending legislation has not been signed by the Governor yet, the Board will have to close the public hearing tonight unless Mr. Engler chooses to keep it open. Mr. Engler said that there has been a good and collaborative process. He said that Town Counsel has already done the framework for the decision. He said that if Town Counsel asked for more time, he would be reasonable in considering the request. He said that he did not see a need to keep the public hearing open.

Ms. Richards opened the conference call line to caller number one. Kim Melton, 17Duxbury Road, said that the hearing is not showing up on the public channel yet. She said that it is a concern because if the public cannot participate in this and see the hearing unless they go onto YouTube, can this meeting go forward. Mr. Levy said that it can. Mr. Engler said that the link was provided on the town website. Mr. Heep said that the posted agenda of this hearing noted that it would be broadcast live on YouTube. He said that he believes that is sufficient. He said that he believes that Wellesley Public Access TV is recording the hearing and it should be available after the fact. Ms. Melton said that she was concerned that the hearing would be over and the public could not speak. Mr. Levy said that it is available on YouTube.

Ms. Melton confirmed that this is a 40B project. She said that she looked at the research for what a 40B should be for and it is supposed to enhance the community. She said that the property is nowhere near public transportation, stores or sidewalks, and it will increase the traffic. She said that she understands that the town has to have a certain amount of subsidized housing. She said that she believes that the town has already met its quota with another project in town. She said that putting this project where it is does not nothing that a 40B project is intended to do. She said that it has no sidewalks and is not close to public transportation or any stores. She said that it is located in the farthest part from town center, so will not enhance commerce. She said that traffic on Route 9 will be increased where it is already a crazy, dangerous place. She said that there is also the schooling issue that it will wreak havoc on the system. She said that she

was concerned about how she notified or not notified. She said that the 40B project itself does not meet the expectations of what a 40B is supposed or claims to want to do for the community.

Mr. Levy said that this is the last of several hearings. Mr. Heep said that sessions of this public hearing were held on June 18th, September 10th, October 15th, November 12th, December 10th, 2019 and January 9, 2020. Mr. Levy said that this is the seventh hearing that the Board has held on the petition. He said that there has been very little public input. He said that the Board devoted an entire hearing to just traffic issues. He said that the Applicant had his traffic engineer and at the Applicant's expense, the town had its own traffic consultant do a peer review and comment on it. He said that the proximity to downtown and stores is not criteria that the Board needs to consider. He said that notification went out according to the statute by publication in the Wellesley Townsman, by posting at Town Hall, and by mail to all abutters and abutters to abutters within 300 feet of the project.

Ms. Melton said that she was asking about the aspects of what the 40B was supposed to do. She said that it is not doing any of those things. She said that the town does not even need it. Mr. Levy said that it is true that with a recent project, the town has now met its ten percent of affordable housing stock. He said that at the time of this application, that project had not been approved, so the applicant was grandfathered and is allowed to present his project. Ms. Melton asked if 11 percent of the community has to be subsidized housing. Mr. Levy said that 10 percent is the objective. He said that the 40R project at Wellesley Office Park is irrelevant to this project. He said that all of the submittals are available on the town's website.

Ms. Melton asked how this project will enhance the community when it is not close to stores or public transportation, does not have sidewalks and there is a traffic issue. Mr. Levy said that the Board spent a whole meeting dealing with traffic. He said that public transportation is not a criteria under 40B.

Ms. Melton said that she is concerned that the 40B will not meet any of the criteria of what it is supposed to do.

Mr. Sheffield said that Ms. Melton's concerns and questions are similar to what the Board had discussed at the previous public hearings. He said that they are familiar questions and comments, many of which have been answered at the various hearings.

Diane Soderholm, 16 Duxbury Road, said that her connection was very poor. She said that she could only hear every third word and the hearing is not available on cable. She said that this is a public hearing in which she cannot participate. She said that just because the YouTube link was published does not mean that people have connection to it. She asked that the Board list the criteria for 40B and have Mr. Engler explain how his project meets that criteria. Mr. Levy said that the hearing is being conducted consistent with an Executive Order issued by the Governor of the Commonwealth. He said that the Board acknowledges that this is not as seamless as a public hearing at Town Hall. He said that it is also new to the Board and the Board is doing the best that it can. He said that this is the seventh hearing held on this project. Ms. Soderholm asked if she was supposed to attend the other six hearings.

Ms. Soderholm asked what the 40B criteria are and how does this project meet them. Mr. Engler said that any 40B needs to go through a two-step process. He said that the first step is to get site approval through a subsidizing agency and in this instance he chose to go to MassHousing. He said that it is the subsidizing agency's responsibility to evaluate the application on all of the 40B criteria before the applicant is allowed to move forward with the Zoning Board of Appeals. He said that the project meets all of the criteria because MassHousing issued a Site Approval Letter. He said that he is a limited dividend organization, the town is under 10 percent, he has the capabilities to do this project, he has project experience. Ms. Soderholm asked for the criteria for what a 40B project is supposed to be with respect to affordable and transportation. Mr. Engler said that 25 percent of the units will be affordable in perpetuity. He said that the DHCD website lists out all of the criteria that every 40B has to meet. He said that he cannot move forward with the Zoning

Board without meeting the criteria. He said that MassHousing made the determination that this project met the criteria and over the past ten months the Zoning Board has evaluated the project from a technical standpoint including stormwater management, grading, traffic, landscaping design. He said that all of the technical elements get reviewed before the Board. He said that the town hires peer reviewers. He said that Wellesley has a very good internal Engineering Department that reviews the project and makes sure that all of the technical elements are satisfied. He said that this project met all of the 40B criteria that is required under the statute, as determined by MassHousing, who issued the Site Approval Letter.

Ms. Soderholm asked what the Zoning has to make a decision on if it is already approved. She said that the property is located in a single residence district. Mr. Engler said that the Zoning Board has to make a decision on all of the technical elements. Ms. Soderholm said that this will be in a single residence district on top of a parking garage. Mr. Engler said that the Zoning Board will issue a permit that includes many conditions that the Developer needs to adhere to before, during and after the development of this project. He said that it is a very detailed and technical and legal document that will run with the land and it holds his feet to the fire on all of the technical, legal and regulatory requirements associated with 40B in general and this specific project. He said that the town has very capable counsel who has written many decisions, as well as a very capable Zoning Board that is familiar with these decisions. He said that this process has gone on for a long time. He said that the technical elements have been pushed and pulled, scrutinized and critiqued for 10 months. He said that he had to revise his plan fairly substantially over that period in order to satisfy those who were reviewing the application. He said that they have now arrived at the point where the town can say that the project works from a technical and regulatory standpoint.

Mr. Levy said that the Board has not made a decision on this application. He said that the Board will close the public hearing tonight, as required under State Law. He said that the Board then has a period of 40 days under which it can issue and deliver a decision. He said that there is no preconception of what the Board will do.

Ms. Soderholm said that none of her questions were answered. She said that this is a ridiculous farce that this is going forward and questions cannot be answered. She said that she could not hear what was going on and could not hear the Board very well. She said that she was embarrassed to be a citizen of this town.

Mr. Levy asked if there were any further questions or comments from the Board.

Mr. Sheffield said that there was a question from George Saraceno upon moving the building to the west. He questioned whether the DPW was substantially complete. Mr. Engler said that his understanding is that DPW did review the revised plan. He said that Bill Bergeron, Hayes Engineering, representing Mr. Engler, represented as much to Mr. Engler. He said that subject to a Building Permit, the town will have the right to review the detailed construction plans, so this is not the last stand. He said that his understanding is that because the design and infrastructure changed so minimally with moving the building that DPW reviewed it and was fine with it. Mr. Sheffield said that the Board generally asks for a letter from DPW stating that they are satisfied that all of their questions have been addressed. Mr. Levy said that if the Board closes the hearing tonight, there will be no more submittals. He said that the Board could condition it. Mr. Engler said that Mr. Heep can add language to the decision that the DPW comments must be satisfied prior to the issuance of a building permit. Mr. Heep agreed.

Mr. Redgate said that he thought that the Board had vetted this project well. He said that by January a lot of the Board questions were about getting the Conservation Commission and the Order of Conditions caught up to the point where the Board was at in reviewing. He said that now that is through the sequence, he is content that it has been done.

Mr. Levy asked for a motion to close the public hearing. Mr. Redgate moved, Mr. Sheffield seconded the motion to close the public hearing. Mr. Levy asked Mr. Sheffield if he approved closing the public hearing.

Mr. Sheffield responded, "aye." Mr. Levy asked Mr. Redgate if he approved closing the public hearing. Mr. Redgate responded, "aye." Mr. Levy said that he would also vote, "aye" to close the public hearing. The Board voted unanimously to close the public hearing. He said that the Board has 40 days in which to render a decision unless there is legislative intervention that permits additional time.

Mr. Levy apologized for the inconvenience caused by holding the public hearing remotely.

As there was no further business to come before the Board, the hearing was adjourned at 8:27 pm

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary

DRAFT