

**ZONING BOARD OF APPEALS**

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November 12, 2019

7:30 pm

Juliani Meeting Room

Town Hall

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

Present on behalf of the Town of Wellesley: Christopher Heep, Town Counsel

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

Present at the public hearing was Geoff Engler, SEB Wellesley, LLC, the Petitioner. He said that he submitted items since the last hearing including a plan that responded to requests made by the Engineering Division. He said that the response to the Engineering Memo indicates that all of the items have been closed up. He said that the P & S agreement for 140 Worcester Road was submitted. He said that they submitted a Preliminary Construction Management Plan (CMP) and hard lined Landscape Plan.

Mr. Engler said that materials submitted tonight include updated Architectural Plans, inclusive of Mr. Boehmer's requests and response to his peer review letter, and a memo prepared by legal counsel regarding the Developer's rights of access.

Mr. Engler said that his intention is to discuss design changes, primarily to the exterior of the building. He said that they have had several exchanges with Mr. Boehmer since the previous hearing and it is his belief that Mr. Boehmer likes what was done and is satisfied with the plan.

Mr. Engler said that also present at the public hearing were Brian Kusum, Cube 3, Architect, and Matt Mrva, Landscape Architect.

Mr. Levy confirmed that the revised plans are dated October 17, 2019.

Mr. Kusum displayed elevation drawings and discussed the revisions that were made in response to Mr. Boehmer's comments. He said that they focused on the exterior. He said that nothing changed on the upper floors. He said that the building shape and the layouts have not changed. He said that his conversations with Mr. Boehmer mainly concerned that base level of the building where there was a masonry brick façade that was brought up higher at prominent corners and at the main entry and on the west elevation. He said that above that, some locations have fiber cement lap siding, some bays, and at the main entry, fiber board and batten. He said that the top will be mansard style with architectural shingle. He said that they discussed a traditional louver on the open air garage with Mr. Boehmer. Mr. Sheffield confirmed that the louvers sufficiently overlap so that headlights will not shine out of the building.

Mr. Kusum said that they are working on making the main entry canopy more prominent.

Mr. Kusum said that the west elevation was changed slightly. He said that they adjusted the plans to make more of a tower at the front entry, removed the box bay and moved the masonry higher. He said that there will be significant horizontal banding above the parking level and added pilasters to add some depth at the first floor level.

Mr. Levy asked if there will be any mechanical equipment visible that is not shown on the plan. Mr. Kusum said that there will be a relatively small parapet. He said that they were going to cluster the mechanical over the center so that you would not see them driving down Route 9. Mr. Engler said that they will submit a roof plan to be added to the plan set.

Mr. Sheffield discussed the view from Cedar Street east on Route 9. He said that screening from different angles may be required. He said that mechanicals tend to be shiny and there could be glare from the western sun at certain times.

Mr. Levy discussed the view corridor. He said that it is a heavily mature wooded area and it is his understanding that it will remain so. He asked what will it look like coming east on Route 9. He asked how much of the building will be visible and how close you will have to be to see it. Mr. Mrva said that there is quite a bit of vegetation right up to the road. He said that heading east, you will be right at the property before seeing it. Mr. Sheffield said that it is a long downward slope from Cedar Street and you might be able to see the building over the top of the trees. Mr. Mrva said that the trees are approximately 40 to 60 feet tall. Mr. Sheffield asked that a section of Route 9 looking south from Cedar Street be generated that shows the slope of the road, the mass of the building and the assumed height of the trees to see how much work will have to be done to conceal any mechanicals. Mr. Redgate said that a rendering of the height of trees in relation to the building would be helpful. Mr. Levy discussed a 40B project on Great Plain Avenue where the heavily wooded site was cleared. He said that he would like to get a better idea of what this will look like. He said that people are used to driving by and seeing a wooded lot. He said that they will now see what will probably be one of the tallest buildings on Route 9 in Wellesley. Mr. Engler said that they can do a good representation of what the Board is asking for.

Mr. Mrva discussed the Landscape Plan. He said that there will be a mix of deciduous and evergreens along the foundation of the building and along the street edge. He said that there will be some ornamental trees along the street edge as well. He said that they are proposing five new deciduous shade trees in the parking lot. He said that they will be setting the building into the forest, so existing vegetation will surround the building. He said that they will plant a lot of flowering materials, four new evergreen trees, several upright evergreen shrubs for lush planting at the foundation and the perimeter of the site. He said that he spoke with Mr. Boehmer, who liked the plan. He discussed changes that Mr. Boehmer had asked for regarding replacement of shrubs with ornamental grasses and area for snow storage. He said that both the outdoor seating and small play area will be fenced in. He said that they will provide conservation seed mix along the back of the property. He said that people will be able to cross from the property onto the Town Land, which is a nice amenity for the residents.

Mr. Engler said that since the previous hearing, they officially filed a Notice of Intent (NOI) with the Wetlands Protection Committee (WPC). He said that they had a site walk today and the first hearing is upcoming. He said that Chris Lucas will review the NOI on behalf of the WPC.

Mr. Heep said that the deadline to close the hearing is December 15, 2019. Mr. Engler said that it is unlikely that the project will have completed WPC review by the deadline for closing this hearing. Mr. Levy discussed concerns about competing Boards issuing conditions that may be in conflict with whatever permit the Zoning Board may grant. He said that the Zoning Board generally likes to be the Board of last stop. Mr. Heep said that the WPC will be reviewing the project under the Wetlands Protections Act (WPA) and this

Board has been to waive three or four of the Town's local wetlands regulations. He said that the wetlands review of the project is split between the two boards. Mr. Levy discussed having a peer review to consider both aspects.

Mr. Heep said that there is some value in having the same reviewer look at both the NOI and review it under the bylaw. He said that he has a scope of work from Chris Lucas, who is ready to do the work on behalf of the Zoning Board and the WPC under the WPA. He said that the Board should have Mr. Lucas' report before the next hearing.

Mr. Engler said that the first hearing was held on June 18, 2019. He said that nothing much was done over the summer. He said that it would be a benefit to the Board and a benefit to him as the Applicant to review the draft decision together, so there is opportunity to have collaboration. He said that it would be helpful to review a draft decision while the Board is waiting for the wetlands peer review. He said that he will provide the renderings that the Board has asked for.

Mr. Levy asked if this is planned to be a spring project. Mr. Engler said that it was planned for summer.

Mr. Redgate asked about keeping the hearing open while drafting conditions. Mr. Heep said that he can produce a draft while the public hearing is still open. Mr. Engler said that he prefers the collaborative approach of reviewing the draft decision together while the hearing is open and having the ability to submit any additional materials that the Board may want.

Mr. Levy discussed the site control issue. He said that the Applicant previously submitted an assignment of Purchase and Sale agreement for the Cartwright property. He said that the agreement expired on September 1, 2019. He said that if site control is prerequisite for the Board to issue a decision, the Board will need to see something that shows that the agreement has not expired. Mr. Engler said that he will submit something to show that.

Mr. Levy said that on the issue of the paper street, the Board got a letter from an attorney from Freeman Law Group. He said that he did not find that analysis very persuasive. He said that read the published case that was cited and was still not convinced that the Applicant, as a matter of right, has the ability to use the whole width of the paper street to access the contiguous parcel, which was not meant to have access from the paper street. He said that the Applicant is using them by combining them, which is the classic definition of overburdening.

Mr. Heep said that the memo, as submitted by the attorney thus far, was not persuasive. He said that the concern is that if the property abuts a road, it is generally deemed to have access over the road for the full length and width. He said that the portions of the development parcel that abut Alpine Street have right to use Alpine Street for access. He said that the other record lot on the far side by Echo Road that is a concern. He said that lot does not abut Alpine Street and does not appear to have ever been intended to be accessed by it. He said that the comment in the legal memo is that no portion of that lot is accessed over any portion of Alpine Street that is not owned in fee by the Applicant. He said that, in looking at the plans, he is not sure if that is factually accurate. He said that there seems to be a small area that is owned by the town that is covered by road that is used to access the parcel. He said that memo as submitted does not satisfy him that the matter that Mr. Levy raised has been disposed of. Mr. Levy discussed a classic example where a private way end in a cul de sac, where somebody owns a lot at the end of the cul de sac and decides to put a road to the lot behind it, which was not contemplated at the time the cul de sac was built. He discussed overburdening the private way. Mr. Engler said that if Town Counsel wants to put the question in writing, he will relay it to his counsel. He asked how the land will ever be used. He said that they are getting an Order of Conditions that has been designated as a resource area. He said that nobody is ever going to use this land. Mr. Levy said that he worked on another project on Route 9 where the paper street was abandoned and the abutter now own the fee in the way, not subject to any restrictions. He said that the burden is on the Applicant to show the Board what the legal rights are to it.

Mr. Sheffield discussed Plan A600, Typical Unit Plan. He said that there is a detail at the entrance door. He said that he assumed that the straight shot corridor will be articulated with lighting and other things. He said that graphically it would help to have those things shown. He discussed Plan A101. He asked about an elevator lobby. He said that the garage will be a different temperature than they will want in the elevator. He said that there is an easy way to have a lobby there without encroaching on any parking. He asked about amenities space. Mr. Engler said that it is located on the second floor, shown on Plan A102 on the western portion of the building. Mr. Sheffield asked roof access on a different floor. Mr. Engler said that Mr. Boehmer identified that as something to look at but it did not work. He said that it made more practical sense to have it lower.

Mr. Sheffield said that the effort that the Architect put in to make the material adjustments to accentuate various aspects of the building has greatly improved the façade. He asked about architectural asphalt shingles. Mr. Kusum said that detail was about different shapes and coloring.

Mr. Levy said that there is reference in the CMP to blasting. Mr. Engler said that there will be no blasting. He said that he left it in the CMP because he thought it was standard practice. Mr. Levy confirmed that construction parking will be on site. Mr. Engler said that they can accommodate it all on site. He said that there will not be a lot of excavation on the site so there will not be a lot of 18 wheelers stationed there for long periods of time. He said that there will be some at the beginning but it will be quick and then it will be mostly trades people.

Mr. Levy said that the Board typically requires a sign that posts the name and phone number. He discussed not requiring that a website be included on the sign. Mr. Heep said that was included as a condition for two recent 40B project approvals because there was a large number of abutters in the neighborhood who wanted to be kept apprised of what was going on at all times.

Mr. Levy discussed the issues remaining. He said that Wetlands is ongoing and there are a few more submittals for the Board. He discussed the need for one or two more hearings. Mr. Engler asked that the hearing be continued to the beginning of December to give them time to meet with the WPC.

Mr. Sheffield asked if the mailroom will be alcoved or enclosed. Mr. Kusum said that the boxes will be exposed to the lobby. He said that they did not get to level of package storage.

Mr. Engler discussed a continuance date of December 10, 2019, with the understanding that an extension will likely be necessary for another hearing. Mr. Levy said that he would prefer to not continue to December 10<sup>th</sup> without an extension because it would leave the Board with five days after that, which is short time. Mr. Heep said that the Board could accept a 30 day extension from the Applicant now and schedule the hearing on December 10, 2019 as a placeholder, which would give the Board another month, if it needed it. Mr. Engler said that if he agreed to a 30 day extension from December 15<sup>th</sup>, he would need the promise of a draft decision for December 10<sup>th</sup>. Mr. Heep said that he can provide a draft decision by December 10<sup>th</sup>. Mr. Engler said that he will submit something in writing.

Mr. Sheffield moved, Mr. Redgate seconded the motion, and the Board voted unanimously to continue the hearing to December 10, 2019.

As there was no further business to come before the Board, the hearing was adjourned at 8:17 pm.

Respectfully submitted,

Lenore R. Mahoney  
Executive Secretary