



ZONING BOARD OF APPEALS

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February 4, 2020

7:30 pm

Juliani Meeting Room, Town Hall

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

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

Present on behalf of the Town of Wellesley were Christopher Heep, Town Counsel and Julie Meyer, Wetlands Administrator.

Present on behalf of SEB Wellesley LLC was Geoff Engler. Mr. Engler said that it has been a rigorous process before the Wetlands Protection Committee (WPC). He said that Lucas Environmental submitted a letter earlier today. He said that there are a couple of items that have not been resolved yet but are close to being resolved. He said that the Chairman made it clear that he would be more comfortable closing the ZBA hearing after the process is closed with the WPC. He said that he is willing to extend the next hearing with the WPC to February 20, 2020. He said that they will respond to Lucas Environmental so that they can appear on February 20th to say that they are satisfied.

Mr. Engler said that they have not done anything since the last hearing when they announced that they had shifted the building seven feet. He said that they resubmitted a full plan set last week to the ZBA office. He said that he did not anticipate the need for any changes. He said that some things may be addressed as conditions to the Order of Conditions.

Mr. Engler said that he was hoping that after tonight Town Counsel can circulate the continuation of the draft decision to the Board.

Mr. Engler said that a good amount of work has gone on by EcoTech and his landscape architect who are working with Lucas Environmental to address a lot of the issues.

Mr. Levy said that the Board received the letter from Lucas Environmental late this afternoon and he has not had time to read it. Mr. Heep said that he reviewed the letter. He said that most of the comments relating to local bylaw regulation are at the back of the letter. Mr. Levy said that one of the reasons to keep the hearing open is to see if there are any conditions that the WPC recommends that the Board insert in the Comprehensive Permit vis-a-vis the local bylaw. Mr. Heep said that the Board could meet again after

February 20th but before the issuance of the Order of Conditions. He said that there is a quick turnaround from when the WPC closes the public to when it issues an Order of Conditions.

Mr. Engler said that the Applicant will have to adhere to any conditions in the Order of Conditions. Mr. Levy said that the Board wants to see if there are any conditions in the Order of Conditions that are appropriate as conditions to the Comprehensive Permit. Mr. Engler questioned the necessity of that. He suggested putting a blanket condition in the Comprehensive Permit stating that the Applicant must comply with the Order of Conditions. Mr. Levy said that is beyond the Board's jurisdiction under the State statute. Mr. Heep said that after February 20th and before issuance of the Order of Conditions, by working with staff, the Board can get a good idea of the magnitude of any project changes that might have to follow the action by the WPC. He said that the Board can meet again to discuss it. He said that the Order of Conditions will have to issue and go final while the ZBA is still within its 40 day window to finalize its decision.

Mr. Engler said that he would find it unusual and discouraging if they were to receive an Order of Conditions and then the Board chose to not grant the waiver and effectively not allow them to build the project. He said that nothing has been raised at any of the public hearings that would rise to such a level of health and safety that trumps the need for affordable housing.

Ms. Meyer said that the WPC is just learning about the riverfront and redevelopment. She said that the WPC may draft an Order of Conditions on February 20th and vote to close the issue on March 12th or March 15th at the earliest.

Mr. Levy said that the ZBA is sitting as the WPC for the local bylaw under the Comprehensive Permit. He said that the WPC's jurisdiction is under the Wetlands Protection Act. He asked if there is anything under the local bylaw that Ms. Meyer thinks that the Board should impose a condition for in its permit. Ms. Meyer said that the Board may want to look at the waiver of the performance letter for the buffer zone where there is a good increase of impervious cover as compared to the present state. She said that even if the Board accepts the waiver, they can still request a wildlife habitation evaluation. She said that because it is so important to have a buffer zone in a pretty good chunk of a wildlife corridor there, the Board could ask for that. Mr. Levy asked if that is something that the WPC typically requests pre-permit or as a condition. Ms. Meyer said that they always request it. She said that it can be a condition. She said that the Board can accept the waiver for meeting all of the performance standards which only change to the state of the buffer zone by a certain amount. Mr. Levy said that since that would be post-permit, it would be mostly informational. Ms. Meyer said that it would typically come up during the review process but the WPC was not reviewing the buffer zone for this project.

Ms. Meyer said that the Riverfront Act and the bylaw are similar to each other. She said that the bylaw cares about recreation as an interest. She said that in looking at the riverfront, the first determination is whether the alternatives analysis is sufficient. She said the review moves on to impacts to the riverfront. She said that she did not have a lot of time to review the letter from Lucas Environmental. Mr. Engler said that they submitted a full alternative analysis and Lucas Environmental said that they were satisfied with the analysis.

Ms. Meyer said that it is important to make sure that the alternatives analysis is complete and accurate. She said that it has to be analyzed in consideration of what the impacts will be to the area itself. She said that she did not see the information from the project representatives or Lucas Environmental about what they analyzed. Mr. Engler said that they did a thorough alternatives analysis because his consultant knew that Lucas Environmental would expect nothing less. Mr. Levy asked why the waiver is needed if the project meets the criteria. Mr. Engler said that some of the waivers are for specific components.

Ms. Meyer said that once the Order is closed and voted to issue, there is a 21 day turnaround. Mr. Redgate said that they do not close the hearing until they have done draft conditions. He said that deliberations will be done but the WPC has two weeks before they close it and another 21 days after that.

Mr. Heep said that the requested waivers are discussed on Page 9 of the new letter from Lucas Environmental. Mr. Levy said that he would need time to read the letter. Mr. Engler said that Lucas Environmental stated that they had no further comment. Mr. Heep said that Lucas Environmental has no further technical comments. He discussed comments between EcoTech and Lucas Environmental.

Mr. Engler said that he has been involved in a number of 40B projects and has never been involved in a project that received an Order of Conditions from a Conservation Commission and then a Zoning Board refuses to grant waivers under the local bylaw. He said that they have talked about the project and all of its elements for nine months. He said that engineering, traffic, etc. have been vetted and then this came up at the eleventh hour. Mr. Levy said that the ZBA sits as the local WPC under the local bylaw and he feels that it is appropriate for the Board to vet the issues and look at the waivers. He said that one of the requested waivers was for notification of the abutters within 300 feet. He asked how that would make the project uneconomic. Mr. Engler said that waivers are not requested strictly for economic reasons. He said that everyone was notified as part of this hearing and everyone was notified as part of the WPC hearing.

Mr. Levy asked Mr. Engler how he would like to proceed. Mr. Engler said that wetlands are a small part of the overall project. He said that he saw no reason why the Board and Town Counsel could not start circulating a draft decision. Mr. Levy said that it is not his policy to negotiate decisions with applicants. He said that Mr. Heep distributed a draft decision that has not been commented on by the Board members. Mr. Engler said that sometimes the language that the Board and Counsel intend to put in is a little bit incorrect. He said that by engaging him, he can point those things out. He said that it would be a tragedy for everyone if this ends up at the HAC because all of the time that has been spent on the project would have been wasted and it would cost the town a lot of money to retain counsel to fight a case that it has no chance to win. He said that if everyone can work collaboratively through the finish line, it would be to everyone's benefit.

Mr. Levy asked for a continuation date. Mr. Engler said that the first week in March will give enough time after February 20th.

Mr. Engler said that there were no members of the public present at the public hearing. He said that the Board acts in the best interest of the town. He said that there is no one from the public present nor has there been since Day 1. He said that if people were concerned, they would be here. Mr. Levy said that he recalled a few members of the public had been present. Mr. Redgate said that the Board suggested early in the process that the WPC be involved. He said that the WPC process has taken longer than Mr. Engler anticipated. Mr. Engler said that his strategy was correct. He said that they would never have been able to do WPC first.

Mr. Sheffield moved, Mr. Redgate seconded the motion, and the Board voted unanimously to continue the hearing until March 3, 2020.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary