



## Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

### November 1, 2012 – Oakridge/Mattbob

#### Present

Mark Mulligan, Chairman  
Megan Mahoney, Associate Member  
Robert Cadle, Member  
Bruce Eason, Associate Member  
Jay Prager, Member

#### Not Present

Alison Manugian, Member  
Cynthia Maxwell, Member

The meeting was called to order at 7:20 pm.

#### Meeting Minutes

Chairman Mulligan reconvened the Mattbob/Oakridge renewal request.

Atty. Doug Deschenes was present as agent for Mattbob, noting that in Dec. 2010 the board granted an extension to 11/11/12. He said the reasons point to legal and practical impediments regarding why the project has not yet been built and why an additional renewal is necessary. He said the economy has devastated the real estate market and has affected the ability to build projects, particularly 40Bs, noting that there are a lot of foreclosures, etc. He said banks don't want to issue financing, due in large part to the 55+ age restriction, noting that that area of the market has been one of the hardest hit. He said projects that have obtained financing aren't selling, noting that his clients haven't been able to obtain financing through conventional means. He said they sought the elimination of the 55+ age restriction and the litigation upheld the ZBA. He noted that that litigation ate up all but the last five months of the last extension, explaining that financing cannot be obtained when litigating. He said the State itself is not approving 55+ projects unless they have the full support of the community, because so many projects are struggling. He also noted that the State has enacted two permit extension acts that automatically extend all permits except 40Bs. He said the State is recognizing that the development world is in turmoil. He said one could ask why not 40B, noting that that 40Bs have separate regulations regarding extensions and that they should not be reasonably withheld. He said the board would have to show legitimate health, safety, environmental etc.

reasons for not granting an extension, noting that regulations imply that the board should grant extensions. He said the regulations are so well defined and liberal, which is why 40Bs are not in permit extension act. His clients have made efforts by talking to banks, noting that they are still building projects and have gotten financing so thus have relationships with financial institutions. He said that even so, they were told there is no money for this project, noting that it doesn't make sense to go back at this point to ask again. He said they have looked into partnerships with other developers and no one is interested. He said that some abutters have pointed out that his client has tried to sell the project, which is true, but that is just an effort to make this viable. He said there have been no offers and no interest, making them stuck between a rock and a hard place. He noted that the market seems to be changing and there is some more activity, and said if seniors can sell their existing house for a reasonable price, then maybe there could be some activity here. He said they are asking for an extension and will continue to try to make the project a reality. He noted that efforts over the last two years were somewhat curtailed by the litigation but that is finished and they will make good faith effort.

Member Prager asked whether the expiration date is for the start or completion of the project.

Atty. Deschenes said it is for the start of construction.

Member Prager asked whether they have actually tried to get financing.

Atty. Deschenes said they have.

Member Prager said he wants specifics.

Matt Field said he is very involved with North Middlesex Savings and had no luck. He said he tried Enterprise as well, noting that it takes 600 days on average to sell 55+ units.

Member Prager asked why they would want to build if the economy is so bleak.

Atty. Deschenes said his clients have sunk significant funds into this and they want the extension so the project can continue to have its current value.

Member Cadle asked about the issues brought up in the abutters' letters.

Atty. Deschenes said there are a few issues in the letter, including architectural plans, which have to be done before building permits are issued. He said his client would not spend that type of money for plans until the bank asks for them. He said all the other issues have been addressed. He said they will have water and the safe site distances have been addressed. He said his client will do whatever plans are required by the comp. permit. He also noted that the town of Littleton said they didn't need a permit from them.

Mr. Schulman said he heard there was a further appeal.

Atty. Deschenes said there has been no further appeal, noting that the Housing Appeals Committee was upheld, which upheld the board's denial.

Kristen McEvoy, abutter, said she wants clarification about whether the board can deny on health, safety and environmental issues only, noting that she thinks the verbiage doesn't say that. She said she also thinks the board should get clarification from someone other than the developer about the time frame of completion vs. onset of construction.

Chairman Mulligan said Town Counsel repeated the health, safety, etc. verbiage.

Mrs. McEvoy said that what is missing from Town Counsel's memo is what are reasonable grounds to deny. She said she is suggesting as an abutter, that since the developer hasn't been following the rules, the board should question whether construction will ever start. She said the Board needs to be incredibly clear about what the consequences are if there is an extension and the rules are still not followed. She said town counsel wasn't told that they hadn't submitted clear written reports.

Member Mahony said she reads that if the need for affordable housing outweighs any of the issues of non-compliance, etc., there is no standing for a denial. She also said that time frame is for the start of the project.

Member Easom said that if there is an issue with a time frame, the applicant can ask for more extensions. He also suggested that as in the Duxbury case, the extension could have criteria for starting the project.

Atty. Deschenes said that that is all related to the start of construction, noting that a new step would entail going to the State with evidence of financing before obtaining final building permits, etc. He said this project was approved prior to the adoption of this bylaw, but noted that the State now has a mini-final approval process for this. He said the State wants secure financing before a shovel is in the ground, noting that they can't get final approval from the State until there is a firm commitment of financing from a bank. He said they submit the final plans to the bank, get a letter for the State, obtain their approval, and only then come for building permits.

Discussion ensued regarding the ramifications of the Duxbury case on this application, and when the permit expired in Duxbury.

Member Mahony said she feels that according to the regulations, the inability to obtain financing should not be something that would cause a denial and is not something the board can even ask about.

Discussion ensued regarding what can be considered in a denial.

Member Prager said he felt that if there is not a significant change, then it is not reasonable to deny.

Member Mahony said this is only extension #2, asked for during very difficult financial times.

Chairman Mulligan said he feels the board bears some fiscal responsibility to the town and if this renewal is denied, the town will bear more litigation fees with no grounds for a denial.

Discussion ensued regarding whether conditions could be imposed on an extension.

Member Mahony said she feels that conditions wouldn't be able to hold up in court.

Chairman Mulligan said he feels that financial updates are a reasonable condition.

Atty. Deschenes said there is some question as to whether the reports are detailed enough. He said his clients have no problem with a more detailed report from banks, within six months, and can provide letters if needed from those banks. He said the Board has the right to condition any decision, noting that it is then up to the applicant to decide whether to appeal if unreasonable.

Member Prager said he feels this condition is a waste of time, noting that if they don't want to build the project, they could get a letter from any bank denying financing.

Discussion ensued regarding possible conditions.

Atty. Deschenes said that if his client didn't want to build the project, they wouldn't be here for an extension.

Chairman Mulligan said there is some process of fairness, both to abutters and developers, noting that the board can't keep granting extensions forever.

Atty. Deschenes said he gets the feeling from the board that if his client can't get financing, then the project should be stopped.

The board as a whole said that was not true.

Atty. Deschenes said the abutters have been trying to stop the project this way.

Member Prager said he thinks a permit is a permit.

Mrs. McEvoy asked about conditions and said that the site distance issues have not been resolved. She said the traffic study is old and should be readdressed. She also asked whether the board could put conditions on that make the permit more palatable to abutters, noting that the Squannacook Hill permit was changed for abutters.

Discussion ensued regarding whether the Squannacook Hill permit was changed, with the determination being made that the only issues related to site conditions during construction.

Mr. Schulman suggested that at any future hearings, the board should have legal counsel advising under a 593 account funded by the developer.

Member Easom said he is satisfied with the developers agreeing to submit a detailed report re: finances.

Member Mahony does agree that some of the reports done when permit was first granted may be outdated, noting that in the future the board could require updated studies.

Chairman Cadle said that at some point there needs to be an end to this process.

Member Mahony said that some of the issues may need to be re-addressed in a future permitting extension process.

Member Cadle suggested attaching the same conditions for an 18-month extension.

Atty. Deschenes asked whether the board thinks that within 18 months any of the issues will change significantly, noting that they want the two years as asked for.

Discussed ensued regarding the length of the permit.

Member Prager suggested a two-year extension with a hearing being held three months earlier to address health and safety issues.

Discussion ensued regarding how to handle getting information before the permit expires.

Atty. Deschenes said that as long as the hearing is opened before the permit expires, it is okay to continue as necessary, noting that this was one of the arguments in the Duxbury case.

Member Mahony said the board can look at health and safety issues at the next extension request.

Discussion ensued regarding how long ago the reports were originally compiled.

Mr. Schulman asked what criteria the board would use to determine that circumstances have changed.

Member Easom said the MRPC does periodic traffic reports that the board could look at.

Member Prager asked whether the board has the right to ask for another study to be done.

Atty. Deschenes said all modification requests are submitted to the board and the board can determine whether they are a major modification.

Discussion ensued regarding how to activate a public hearing and how to start new studies, etc.

Member Prager suggested a condition that the review starts two to three months before the permit extension is asked for.

Atty. Deschenes said that the Board is asking for too many conditions that are not acceptable, noting that the Board has the authority to make call that need to revisit traffic, etc., though.

Member Cadle said he disagrees that the board can address more than just the permit extension request.

Discussion ensued regarding how the board makes the determination to reopen as a major modification.

Atty. Deschenes said his clients would have the right to challenge that it is a major modification.

Member Prager asked what would happen if they start construction while the hearing process is ongoing.

Discussion ensued regarding that possible scenario.

Member Prager made a motion to extend the permit for 22 months with attached conditions. The motion was seconded and withdrawn.

Member Prager made a motion to extend for 22 months with the condition that every six months a detailed financial report, including discussions with specific banks and including all original conditions. Member Cadle seconded and the motion passed unanimously.

### **Other business**

A Squannacook Hill 40B construction update from LandTech was received, per condition.

### **Minutes and Bills**

Mr. Prager made a motion to adjourn at 8:45 PM. Mr. Easom seconded and the motion passed unanimously.

Minutes approved 1/30/13.