

**Town of Groton**

**Zoning Board of Appeals**

173 Main Street

Groton, Massachusetts 01450

Tel: (978) 448-1121

Fax: (978) 448-1113

August 9, 2023 - 6:30 PM - Second Floor Meeting Room

**Members Present and Voting for Public Hearing**

Bruce Easom, Chairman

Jay Prager, Full Member

Dan McLaughlin, Clerk, Full Member, *via Zoom*

Jack Petropoulos, Full Member

Thomas Peisel, Full Member

**Other Members in Attendance**

Russ Harris, Associate Member

Veronica O’Donnell, Associate Member

**Others Present**

Larry Hurley

Cathy Burse-Hurley

Chris Alphen

John Amaral

Leslie French

Greg Roy

Jarrett Zube

Paul Alphen

Jeffrey Brem

Judi Barrett,*via Zoom*

Members of the public

**The meeting was called to order at 6:30 PM by Chairman Easom and stated that the meeting was being recorded for later broad cast. There will be video and audio for viewing.**

**Chairman Easom read aloud the agenda for this meeting.**

**Meeting Minutes**

**315 Lost Lake Drive, Special Permit Application #2023-4**

**Chairman Easom opened the public hearing. This is the first hearing in the process for this special permit application.**

There was brief discussion on who would be the voting members who would sit on this special permit application. These were determined to be Bruce Easom, Jay Prager, Jack Petropoulos, Tom Peisel, and Russ Harris.

Larry Hurley, along with wife Cathy, were the presenters for this special permit application. Mr. Hurley said that they are proposing to build a garage on top of their hill. In relationship to the garage and the house, the house is at the bottom of the hill and the garage is being proposed to be at the top of the hill. He also states that this garage will be away from wetlands but for this he is asking for the compliance to Zoning Bylaw Section 218.6.38H, which means that the setback would only have to be 24.4 feet. He explains that the reason for this is because he is on a hillside at this location and as it is, he will be building 6-foot walls to get a 4-foot frost wall on the end of the building and putting large footings in there to avoid this structure from going down the hill and would prefer to not put 16-foot walls if it can be avoided. This garage will only be 24ft by 30ft where the 30ft length will be back into the hill.

Member Prager asked if his house was on Lot 44 and Mr. Hurley said he wasn’t sure but that it probably was. Mr. Prager also asked if Lot 43 and Lot 44 were the same lot and Mr. Hurley said that they were different lots and also mentioned how he owned multiple lots in the area. Mr. Hurley said that they are proposing to build this garage on Lot 43 and Lot 44 is further towards Valley Rd and is the marsh between his house and Valley Rd. Member Prager brought up how Mr. Hurley quoted Blacks Law Dictionary but how the definition of “adjacent” was left out. Mr. Prager said that he looked this definition up and that “adjacent” sometimes means connected together and how there is no acceptable legal definition of “adjacent”. This is a term that is typically defined by the user in the definition section. Mr. Prager also noted how Mr. Hurley quoted the section of the Bylaw but left out the part that says “adjacent lots that are empty should be counted as 50-foot setback” and said that it appears there are a number of adjacent lots in relation to the proposed lot where the garage will be built. One of these lots is Lot 42, in which the Town owns. Another is Lot 44 where the applicants house is, but this is considerably further back. Mr. Prager said that these were not taken into account in the calculations and believes that they should have been. Mr. Hurley asked why he would take his house into consideration when he wouldn’t be building near his house and Mr. Prager said how he was going to build on Lot 43, which means Lot 44 is adjacent to Lot 43 and therefore the setback of a house counts towards these calculations, as does Lot 42, which is an empty lot, so the applicant should be taking into account the structures across the street, which are closer to the road, and these other lots. However, according to the calculations in their letter, these are not taken into account. Mr. Hurley said that this letter was put together by his engineer, Dan Wolff and David Ross. Mr. Prager said that their letter doesn’t take these into account. Member Petropoulos wanted to clarify that the question that was being asked was whether or not the pre-existing conditions of the buildings being close to the road is accurately done.

**Chairman Easom read aloud the public notice into the record**:

The Zoning Board of Appeals will hold a public hearing on **Wednesday, August 9, 2023 at 6:30 pm at the Groton Town Hall, second floor meeting room**, to convene the hearing for the application of Laurence J. Hurley and Cathy Berse-Hurley, **315 Lost Lake Drive, Groton, MA 01450**, for a special permit to seek relief from the setback of 50 feet from the street line as stated in 6.3-H on Lot 129-44, 315 Lost Lake Drive, Groton, MA. Please refer to Section 218-5.7- E (1) and any other applicable section of the Groton Zoning By-Law.

Mr. Hurley said that the letter from Mr. Wolff says that his definition of “adjacent” from Blacks Law is “lying near or close to or continuous”. Mr. Hurley also mentioned that all of these lots are continuous to his property. Mr. Prager pointed out how he left out this line from Blacks Law Dictionary that says “sometimes adjoining”, meaning adjacent can mean many different things, such as close to or touching. There are numerous examples of this in GIS mapping and they all show different definitions of “adjacent”. Mr. Prager also noted that a sentence from the Groton Bylaw was also left out, which was that “adjacent lots that are empty shall be counted as 50-foot setbacks”. The calculations should be re-run and the lots that are on Lost Lake Drive that are adjacent should be included in this. These lots include, but may not be limited to, Lot 42, Lot 44, Lot 156 and Lot 157.

Member Peisel asked that if the applicant were to come back with an updated, adjusted and accurate calculation, would it give the Board a better understanding of where the average is of where the other adjacent lots are and then could make a decision based on this. It was agreed that the answer to this question was yes.

Associate Member Harris agreed that this was a reasonable approach.

Member Petropoulos asked about the opportunity to increase the set-back, but how it would require a larger retaining wall to be built. Mr. Hurley said that it would require a significantly large retaining wall and explained that there is a steep hill that drops off from this property, which is on Lone Lane, and how this goes down about 100 feet and then it is flat and then goes down approximately another 100 feet where there is a camp and this camp sits on top of a knoll. To get the garage away from the wetlands on his property, he decided to put this garage at the top of the lot so he could avoid having to put up a huge retaining wall foundation in. He also explained that this will just be a slab on grade. Mr. Petropoulos wanted to verify that it was possible to do this with a larger setback, just that it was a more expensive method and the applicant agreed with this assessment.

Member Prager asked what the size of Lot 43 was and if they were certain these lots haven’t been joined because that would make a major difference. Off the top of his head, Mr. Hurley was not sure about the size of the lot but did not believe they had been joined.

Chairman Easom asked Mr. Hurley to point out on the map where he exactly planned to put this garage and Mr. Hurley proceeded to do so and from where he did, it appeared to be located on Lot 44, which is 6.1 acres according to the Assessors Map. Member Prager mentioned that according to the application, it will be located on Lot 43.

There was further discussion on whether the applicant should resubmit this application and submit an accurate location of where the garage will be located with the appropriate calculations.

Member Prager read Zoning Bylaw Section 218.6.38H into the record and explained that there were vacant lots adjacent to the proposed lot, and in this bylaw, it says that these lots should be included in the calculations.

Mr. Hurley asked if it mattered if these adjacent lots were not buildable and it was answered that the bylaw doesn’t mention this so it does not matter. It was mentioned that if these lots were adjoining, it would be a different story. Mrs. Berse-Hurley asked if these lots all needed to be on the same deed, and there was not definitive answer that could be given at this time and recommended that they seek an attorney for this answer. Mr. Hurley wanted to verify that even though he owns these adjacent lots, they still have to average these in and it was answered that he does according to the bylaw. It was also mentioned that while he owns a majority of these adjacent properties, he does not own all of them. Mr. Bursey asked if a couple of the adjacent properties came in at under 50 feet, would he have to include these in the calculations and it was answered that this wasn’t the case here.

It was agreed that this special permit application should be continued to August 16th, 2023 so that the math can be corrected by merging properties or making a formal argument on whether or not a parcel is included on the adjacent parcel language. Town Counsel to be sought out for an opinion on this as well.

***Member Prager made a motion to continue this special permit public hearing to the 16th of August, 2023. Member Peisel seconded this motion and it was carried unanimously.***

**500 MG LLC - 500 Main St, The Groton Farms #2-23**

**Chairman Easom opened the public hearing. This is the eighth hearing in the process for this comprehensive permit.**

**John Amaral and team began this presentation:**

John Amaral began this meeting by reminding everyone that the hope for this meeting is to get the final sign off from the peer review engineers and then possibly move on to the waiver list and start working on those.

Chairman Easom read the letter from the Sustainability Commission, dated June 22nd, 2023, into the record. This letter explained some clarification from their previous letter that they submitted. This included, but was not limited to, the potential use of solar hot water systems. Mr. Amaral read their response to this into the record, dated July 19th, 2023. In sum, the applicants will not commit to the use of solar hot water heaters as a part of the 40B decision but will work with their mechanical engineer during the preparation of construction documents to determine if these are a viable option for the project.

Chairman Easom said the two main topics for this meeting was the updated waiver list and the final closure between the applicants’ engineers and the peer reviewers. He reminded everyone that the peer reviewers are Nitsch Engineering and MDM Transportation.

John Amaral mentioned that Ken Cram, their engineer from Bayside Engineering, was unable to attend the meeting. However, from reading the MDM Transportation final response, they noted that all of the sections that were addressed throughout their review that there were no further comments. While Bob Michaud, MDM Transportation engineer, was not in attendance either, it appeared from his last review letter from July 18th, each one had a statement saying that the applicants have addressed all of the issues that he has raised and agrees that each one had no further comment from them as well, which further indicates that the applicants have appropriately addressed any outstanding comments on the review that he performed. However, there was a comment on EV locations on July 20th 2023 and the applicants responded shortly after and as of July 21st, there were no further comments. Chris Alphen agreed that this was an accurate assessment from the transportation report. Mr. Alphen also said that he can follow up with Mr. Michaud and confirm with him that he doesn’t see any other issues that he needs to provide public testimony to. Otherwise, Mr. Alphen can take his comments and incorporate them appropriately into a draft decision. There were no other comments from the board regarding the transportation plan regarding 500 Main St/The Groton Farms.

Nitsch Engineering, who performed the stormwater and comprehensive permit peer review for this comprehensive permit, was the next topic of discussion. Greg Roy, from Dillis & Roy, said that on June 16th, a letter was issued in response to Nitsch Engineering. This letter was in response to both the stormwater review and the comprehensive permit review parts of Nitsch’s peer review. There were revised drainage calculations as well as a completely revised site plan set, both dated June 16th. Shortly after, there was a follow-up letter from Nitsch Engineering and it appeared that the civil related items relative to stormwater and site plans had been addressed as necessary. At that point, there were a couple questions relative to the lighting, which have been since sent in. Along with this, Nitsch indicated that there was not an updated waiver list, and landscaping plans and all three of these were addressed on July 25th, 2023. These included hours of operation for the dimming of the lights and what capacity they would be dimmed to, which would be 11PM to 6AM at 70%, and the updated waivers were submitted on July 13th.

Member Petropoulos wanted to note that he had asked Nitsch about the reliance on an increase in capacity of the Nod Road sewer pump station and if this was going to mean a cost to taxpayers and Nitsch came back and indicated that there was going to be a modest increase in capacity in the pump station but that the cost increase was effectively negligible. He said that from what he can tell, residents are more concerned about the potential costs rather than the capacity and he did want to make it known that Nitsch said that there wouldn’t be a meaningful cost to residents to increase the capacity. The applicants agree with this assessment and from an earlier correspondence with the Chair of the Sewer Commission, it was under the understanding that this project would not cause enough of a major addition that would make it necessary for this to be upgraded or for the Nod Road pump station to be replaced. In fact, any repairs or updates were expected to having to be done anyway due to the growth over the last 20 or so years.

On July 30th, the ZBA received a question from Rick Muehlke in the form of an email. Chairman Easom read this email into the record. In sum, Mr. Muehlke asked what “2-year” and “10-year” meant and what these results are based on. Mr. Roy read his response to this into the record, which was dated August 7th. Mr. Roy said that these terms are a way of expressing the probability of exceeding the given rain fall depth within any given 365-day period. For instance, the run off depth for a 2-year storm has the probability of 50% chance of occurring in any given year. Similarly, a 10-year storm has a 10% chance, 25 years has a 4% chance, 50 years has a 2% chance and 100 years has a 1% chance. He also said it is a common misconception that the 100-year storm will only statistically occur once in one hundred years. Statistically speaking, each storm event is a mutually exclusive event, which means that if you have a 100-year storm in a given year, you have the same probability of having one the following year. In response to Mr. Muehlke’s second question, Mr. Roy said that these results come from the required TR-20 and or TR-55 methods that are performed by the state and town. The TR-20 method is hand-calculated and the TR-55 method is a computer-based calculation. The TR-55 method was the method that was used for this project and it was based on the rainfall atlas that has been published by Cornell University, which is based on newer and more conservative information. Member Petropoulos asked for better clarification on these answers and Jarrett Zube, Nitsch Engineering representative, explained that this would be the “worst storm”. Further explaining that the 2-year return interval would be assumed that you would not exceed the storm intensity or volume for 2 more years. The probability is the same, however per rainfall data, the return interval is the worst storm. Mr. Petropoulos asked if it would be similar to the saying “that storm was bad, we haven’t had one like that for 2 years and we won’t probably get another for another 2 years”. Mr. Zube agreed that percentage wise, yes. Mr. Amaral said that from much of the work that has been done, they have taken a conservative approach, which is concurring with this information and they have done everything per state and local code and have gone above these measures in some circumstances.

John Amaral asked if there was a final agreement with Nitsch Engineering for the traffic peer review and civil peer review and since there was not yet, Jarrett Zube stated that Nitsch Engineering said that the applicants have satisfactorily addressed all items.

**Discussion:**

**Chairman Easom opened the floor for public comment:**

Phil Fransico from the Sustainability Commission, thanked the applicants for the response to their follow up question and said that this was that best that they could hope for. He also applauded them for going that extra mile on their proposal in regards to being sustainable.

Mr. Amaral brought up how throughout this process, they have been meeting periodically with an abutter, the Franzek family, who they share a boundary with and that this has been a good relationship and they have had good discussion back and forth. He stated that they have a final agreement that will be sent to them, which addresses everything on their list on their latest correspondence. This agreement includes the iron rod boundary markers on the back portion of their land. This will also be recorded at the registry and can and should be used as a part of the Boards decision. Mr. Roy then explained these iron rod boundary markers and gave an idea of where they would be placed. Mr. Roy also said that an ANR plan was just submitted to create the parcels they are proposing in this project and these monuments are memorialized on this ANR plan.

Chairman Easom asked Chris Alphen if it was important to read the updated waivers into the record. Mr. Alphen said that they could be read at this meeting and go over them to make sure the Board understands what is being requested and they don’t need to vote on them, yet, but they would at least be put into the record. Another option would be to wait to go over these in their entirety until there is a draft decision drawn up, which will include these waivers and then will be read into the record at this time. The Board agreed to wait for the draft decision to be drawn up for these to be read into the record and for this public hearing to continue to stay open while they go over this draft decision.

Following this, Mr. Alphen then proceeded to ask how to draft this decision and asked for an idea of how this Board was leaning in regards for an approval, approval with conditions or denial. The Board agreed that they were leaning towards an approval with conditions so that Mr. Alphen could begin to draw up a draft decision for this comprehensive permit. The conditions are not currently made up, but as they go through the waivers, they will be made then.

Chairman Easom said that the intention so far is to leave this public hearing open until the end of the 180 days plus the 2 additional weeks that were requested, so that the applicants and the public can comment on the draft decision for this comprehensive permit.

Mr. Anctil brought up the “outstanding items” list that was created and noted that all of these items have been completed. Mr. Amaral read this list, as well as the responses, into the record. These outstanding items, according to this letter, have all been completed. Mr. Amaral did note that the intersections at Main Street and Mill Street and Main Street and Champney Street require more testing as this process moves on and these results will be reported to the peer review engineer and the commission members. If this meets the requirements under the MassDOT regulations that warrants a signal, they will prepare the necessary engineering for this, but the cost for this construction would not be on the applicants. However, they do not see this being the situation but they do agree to do this if it comes to it. Another item that was brought up was the cost of the additional fire hose and Mr. Amaral said that the Fire Department did not ask for reimbursement and that the applicant didn’t offer to pay, however they will consider offering to pay for this. He also noted that all of the plantings for this project have been confirmed as non-invasive. They have also created as much impervious area as they were able to when appropriate. Mr. Amaral also read a letter into the record regarding the trash disposal question that was brought up. This letter explains why they decided to keep the trash/recycling where it is, explaining how they asked for the guidance of a company who they have worked with before, and how the proposed location for this would be a respectable location. There was further discussion on the trash/recycling location and in sum, it was agreed that there might be the possibility to add a condition in the decision that will help make this concern more accessible for those that need it.

There was brief discussion about the next meeting date and it was agreed upon with the Zoning Board of Appeal members and the applicants that September 6th, 2023 would be a reasonable time for this. In the interim between now and this meeting, the applicants will speak to the Accessibility Commission. The applicants also expressed that if they were working cooperatively, they are willing to extend the 180-days for the public hearing again to get the publics input.

***Member Prager made a motion to continue this public hearing to the 6th of September, 2023. Member Peisel seconded this motion and it was carried unanimously via roll call vote 7-0.***

**Cow Pond Brook Road, Heritage Landing #3-23**

**Chairman Easom opened the public hearing. This is the fourth hearing in the process for this comprehensive permit. Mr. Easom read aloud the public notice into the record**.

Chairman Easom mentioned that Judi Barrett, the technical assistant for this application, was present via Zoom.

Chairman Easom started this meeting off with a few answers to a few questions that were brought up from the previous meeting. The first question was about the Mullen Rule and about members missing meetings and if these missed meetings include after the public hearing portion has closed. Town Counsel replied to this question and said that under Chapter 39, Section 23D, “members are eligible to vote on a matter that have missed no more than a single session hearing at which testimony or other evidence is received” and they have complied with the certification process for the single missed session. While Town Counsel hadn’t seen a case specifically like this, he believed that after the public hearing is closed, the Board is no longer taking testimony or evidence but instead deliberating the decision and conditions with no further input from the public or applicant and the board member may miss such meeting and still vote on the matter. However, Town Counsel recommended talking to the applicants should this scenario happen, as it prevents some vulnerability with respect to the ultimate decision given the lack of case law on point. The applicant(s) will come back with an opinion on this. Mr. Alphen said that he would normally recommend that the meeting remain open and if a member missing a single meeting during the entire hearing process that can be remedied through the Mullen Rule, but believes that they would rather the public hearing be left open through the writing of the decision. Ms. Barrett said that keeping the public meeting open to draft the decision is common practice.

The second question that was asked was if the ZBA can make a determination that an application for a comprehensive permit that is insufficiently complete and subsequently determine that the application should be withdrawn without prejudice and refiled when the complete items have been resolved. Town Counsel said that if the application has been accepted and that there has been a hearing noticed, it might be difficult to determine that the application is incomplete at this stage. However, if the Board requests reasonable information and the applicant declines, there may be a basis to deny the application for lack of information. Town Counsel also said that the Board is free to ask the applicant to withdraw without prejudice so that the issues outside the Boards control but germane to the design or viability of the project are resolved, but the applicant may decline. Otherwise, more details would need to be given about what the application is missing before he provided additional guidance in regard to this question. It was also asked what other actions may the ZBA take relative to determine specific critical items are insufficiently addressed in the application. This question had a similar response as the previous question. However, if critical items are missing, there may be a basis to deny the application for lack of information, but Town Counsel would need more details about the application’s missing items before providing additional guidance on this question.

The fourth question pertained to the status of the water line grant application. Town Manager, Mark Haddad, answered this by saying that the applicant submitted a MassWorks application to the Commonwealth and on the day that these were due, he received an email from the State that said only the Town could apply and not a private entity. There was not sufficient time to prepare an application so as of now, there is no grant application before the State for a water line for this project. Mr. Alphen commented on this and mentioned that this application still shows as “active” on the follow up response from Mr. Haddad. As a follow up question to this, it was asked that if this grant was not awarded, does the town plan to re-apply the following year and Mr. Haddad said that at this time, there were no plans to apply for a grant for this purpose and that the Select Board will have to direct otherwise. With these responses, it appears this water line status is in flux and hopefully by the next meeting, more will be known.

Another question that was asked was that if a comprehensive permit is issued by the ZBA, whose responsibilities is it to ensure that the conditions of the permit are followed. Town Counsel said that enforcement is primarily the charge of the Building Commissioner but that certain conditions regarding affordability and other non-zoning or non-building issues may fall to other Town of state entities.

The final question that was asked was what the mechanism of ensuring that conditions of the comprehensive permit are complied with and Town Counsel replied by stating that the building permit process, the issuance of certificates of occupancy, and zoning enforcement are primarily mechanisms for ensuring compliance.

Associate Member Harris mentioned that there were two hypnotical questions in this email but there were more specific questions regarding the water line and the nitrogen loading and if these weren’t resolved and it wasn’t established if the applicants would be able to do 2- or 3-bedroom units, if this would be defined as an incomplete application. At this point, could the ZBA ask to withdraw if it was deemed as incomplete. Since the answer to the two questions regarding an incomplete application status was given an indefinite answer due to lack of examples, a more specific question including the water line and the nitrogen loading issues will be brought up to Town Counsel to get their input. Ms. Barrett said that short of denying the application, another option would be to extend the hearing until such time the information that is needed is filed. She mentioned that it is not uncommon for the applicant to extend the public hearing process under the assumption that by the extended date, such needed information is retrieved. Ms. Barrett also mentioned that this would not affect the applicant’s legal status from the day that they filed. The applicant would be the one who would request an extension of the original 180 days, if they want to do so. Mr. Alphen and Mr. Brem said this would be a likely possibility for them in the near future.

Associate Member O’Donnell asked if there was any information about when the applicants might hear about both the grant for the water line and the nitrogen loading issues. Mr. Alphen said that last year the grants occurred at the end of October, beginning of November, so they might need to extend their public hearing until this time. As for the nitrogen loading concern, it is a matter that has to do with a lot of moving parts. Ultimately, this will need to be brought to Town Meeting but before that, there are a handful of other items to be accomplished or resolved, such as getting a recommendation from the Park Commission which then would go to the Select Board, but all of this depends on Natural Heritage. Mr. Brem however did remind everyone that this does not change the plan at all, it just changes the number of proposed bedrooms.

Chairman Easom mentioned that the Town received a letter which explains how close the Town is to the 10% of affordable housing. This would impact the applicants if they did decide to withdraw their application. Fran Stanely, Housing Coordinator, had sent a memorandum with DHCD’s updated number for the state housing department and because of this we now know how close the Town is the that 10%. Ms. Stanley said that while we aren’t close to that now, at 5.25%, if Groton Farms gets approved for 200 units, then the Town would get credit for these units for affordable housing, which would reach the 10%. Also, there are a few more units in the near future that will be added on, so if for any reason this application has to get filed again, the Town might be able to claim Safe Harbor.

**Paul Alphen and Jeffrey Brem began this presentation:**

Paul Alphen said that the previously discussed website modifications have not been completed yet, due to vacations, however once they return, they will be addressed. Mr. Alphen also said that funds have been delivered for the purposes of peer review. A letter dated July 31st was submitted by Mr. Alphen, which restates what was said at the previous meeting regarding the subdivision standards to the road construction, stating that he believes that the peer reviewer and project engineer could work out the details of which planning board roadway standards that are applicable and which ones are not and with the approval of the board they could reach some consensus. Mr. Alphen also submitted a letter dated August 2nd which responds to the construction timeline, which should take roughly 16 months once construction begins and 2-4 years for the final housing, painting and landscaping but this is variable because of availability of contractors, materials, the weather and costs. There was an additional letter that was submitted August 8th, which is the applicants comments on in the past they have said the award of the grant for the water line was critical for the project and stated how the applicant is evaluating alternatives if this water line grant does not get approved. This also includes why they believe the submitted application is complete, with the exception of a few outstanding issues. The applicants have also submitted the soil tests that were completed and stated that according to the Code of Massachusetts Regulations, percolating test results may be deemed valid for an indefinite period of time, provided the soil within the site that had been evaluated remain undisturbed and unaltered. Mr. Brem mentioned that as a part of this, they submitted a plan that shows where all of these test pits are located as well. Finally, Mr. Alphen said that they have gotten a response from Bob Michaud on the traffic study proposal that was sent in and that he stated the scope that was proposed is in line with typical 40B application protocols and is consistent with the applicable industry practices for a project of the scope/project proposed.

Chairman Easom recommended that some time be given for the Board to look over and review the proposed scope of the traffic study. He also recommended that the public also get a copy of it so that they can give their input. Mr. Brem said that these proposed hours were adjusted so that they can get a more accurate traffic study and that this traffic study was created specifically for this project. The public can find a copy of this proposed traffic study on the ZBA website and it was recommended that anyone who would like to give their input on this to come to the next meeting to do so.

Associate Member Harris mentioned that the soil tests that were submitted were done quite some time ago and recalled another similar site and believes that the soil testing for this site was done a number of years prior as well and how this site ended up having major flooding issues. Mr. Harris expressed his concern for this older soil test because of this site that presents similar aspects in terms of soil and gravel. Associate Member O’Donnell concurs with these concerns and recommended that these soil tests be re-done. A peer review and Town Counsel will be needed to determine if these results are still accurate and up to date and if the Board can require new soil testing to be completed. Member Prager wasn’t sure why the applicant would not agree to have at least some of these sites re-tested and Mr. Brem said that they did not see the need for them as the site has not changed since these last soil tests were completed. There could be a number of reasons how and why this site could have changed over the last decade. Member Peisel mentioned that from a letter of the law perspective, if the state or the local regulations do not have a set time frame for when these soil tests expire, there must be a reason for that.

Member McLaughlin asked the applicant if they are still planning a waste water treatment plant since they are over the 10,000-gallon threshold and Mr. Brem said that it is a nitrogen credit land. So, they are allowed under the state to get credit of land to exceed the 440 gallon per day per acre. In response to this, Mr. McLaughlin asked who the permitting authority was for this and Mr. Brem said that it was the state, DEP. Mr. McLaughlin mentioned that the state might have their own rules about testing and Mr. Brem agreed with this and that they will have to apply for a groundwater discharge through them.

Judi Barrett said that she has been doing similar projects for a long time and has never seen a project proposed based on soil tests as old as the ones the applicants submitted. She recommended asking Town Counsel and getting input from the peer reviews for the soil testing that was completed. Ms. Barrett said that the jurisdiction is clearly laid out in the statue in regards to public health, public safety, environmental impact and building and site design and open space and said how Board is well within their right to ask for asking because this is the window in which the Board operates. Ms. Barrett brought up how when an application is submitted to Mass Housing or a Mass Subsidizing Agency, and they get a Project Eligibility Letter, this is not the permit plans and that this determination is that if the Town approved that project, they will fund it. Member Petropoulos said that given this and the outstanding issues that are not resolved, he is concerned about the completeness of the application that was submitted. Ms. Barrett offered to speak to Town Counsel and Chairman Easom said that would be acceptable and to CC those necessary to be included on this correspondence.

**Discussion:**

Chairman Easom proceeded to bring up the topic of peer review. Mr. Easom, Mr. Tada and Ms. Urmann spoke to Ms. Barrett the day prior to get her up to date on the application process and to get some guidance from her on how things have been proceeding so far and what else needed to get done. From his understanding, we have received the check for the peer review proposals that were received by MDM Transportation and Nitsch Engineering. Takashi Tada said that there is a sort of structure in the Town with the Accountant and Treasurer that allows to turn these checks over to set up the escrow accounts and now that these have been received, the contracts with MDM and Nitsch can be finalized. Currently, there is not much for peer reviewers to review, so right now there is not much of a time restraint on the incompleteness of this process.

Annalisa Bhatia, MIT representative presented their concerns with this project and their research that is being done at the abutting property of MIT. Along with Ms. Bhatia, there was also Colin Longsdale, Director of MIT Haystack Observatory, and Michael Person, Director of MIT Haystack Observatory, in attendance. It was unsure if the Board would have any say based on the information that MIT shared, but it was agreed that the Board should get MIT’s input so that they could potentially try to mitigate any impact the project could have in a way that they legally could, if at all. It was also recommended that MIT meet with the applicants of Heritage Landing outside of the public hearing to come to an agreement of sorts with the concerns they have laid out. MIT’s main purpose of their presentation included how this project will impact their research and how even a light bulb being turned on affects this research. The representative of MIT also said that this interference from Heritage Landing will happen immediately, unlike a gradual increase which means they will have no time to adapt to the change on top this proposed project affecting further research at this site. While Groton is a better location than most in terms of dark sky, this project will greatly decrease the amount of dark sky availability. Member Prager asked if their presentation were based on the best practices that could be performed and MIT said that they had previously discussed best practices with the applicant and went through a number of things that could be done and at the time were preparing to write them into their application to the state but it was coupled with the agreement that MIT would not speak up at any of these meetings and MIT decided they did not want to do that so they removed those items. It was agreed that if they did agree to use the best practices that it would make these concerns a lot smaller; it would not eliminate them but it would help. Member Petropoulos asked what MIT was asking for the Board to do and they answered that given the location of this development, they are asking for them to deny this application and if that isn’t possible for various reasons, then they are asking for there to be significant conditions that would allow them to mitigate some of their problems. Mr. Petropoulos recommended that MIT come together and come up with potential conditions that they can recommend so that the Board knows exactly what they would like and the Board can see what they are able to do in regards to these. Member Prager asked why MIT did not purchase this land back when this issue first presented itself in 2005/2006 and since none of the MIT representative were either at MIT or directors at this time, they did not have the answer for this. Mr. Prager also asked what MIT could do to mitigate the problem. MIT did say they knew about the land this entire time, but over time there has been other houses that have been built over this time and mentioned how this is the first 40-unit development that has been built, which is why they are bringing up their concerns now. MIT was recommended to return at a future date with concise and ZBA focused information in regards to their concerns about this proposed project.

There was brief discussion about the next meeting date and it was agreed upon with the Zoning Board of Appeal members and the applicants that August 23rd, 2023 would be a reasonable time for this.

Approval of the traffic study to be a main topic for this meeting. A member of the public recommended that this traffic study be done during the sports season and to get the schedule with the Park Commission to confirm when events will be going on. Chairman Easom recommended for the public to submit anything or attend this meeting so that their input can be considered for this.

***Member Petropoulos made a motion to continue this public hearing to the 23rd of August, 2023. Member Prager seconded this motion and it was carried unanimously via roll call vote.***

**General Business**

**Approval of Minutes from July 26th, 2023**

*The Chair will entertain a motion to approve the meeting minutes from July 26th, 2023 as drafted. Member Peisel made a motion to approve the meeting minutes from the 26th of July 2023. Member Prager seconded this motion and it was carried unanimously. (1 Abstain vote.)*

**Approval of Invoice from the Groton Herald:**

*The Chair will entertain a motion to pay the Groton Herald invoice in the amount of $85.10. Member Prager made a motion to approve Groton Herald. Member Peisel seconded this motion and it was carried unanimously. Roll call vote 6-0-1 (1 abstention vote)*

**Approval of Invoice from MDM Transportation for Groton Farms (Invoice #1281-02)**

*The Chair will entertain a motion to pay MDM Transportation invoice #1281-02 in the amount of $5,120.00. Member Petropoulos made a motion to approve the MDM Transportation invoice #1281-02. Member Peisel seconded this motion and it was carried via roll call vote 7-0.*

**Member Peisel made a motion to adjourn. Member Prager seconded the motion and it was carried unanimously via roll call vote 7-0.**

A motion to adjourn at 9:55 PM