

**Town of Groton**

**Zoning Board of Appeals**

173 Main Street

Groton, Massachusetts 01450

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August 23, 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

Jack Petropoulos, Full Member

Thomas Peisel, Full Member

**Other Members in Attendance**

Veronica O’Donnell, Associate Member

**Others Present**

Larry Hurley

Cathy Burse-Hurley

Dan Wolfe

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 second hearing in the process for this special permit application.**

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

Chairman Easom said that from the previous meeting, there was a task to get input from Town Counsel on the clarification on the regulation associated with the 50-foot setback and the provision that if that applicants proposed structed is no more than the average of the adjacent lots that it can be permitted by the Zoning Board of Appeals. He also mentioned that there was discussion what the definition of adjacent really was, among other things. Since this discussion, Chairman Easom said that he had a phone conversation with Takashi Tada, Town Planner, and Brian Falk, Town Counsel and with this were some follow up letters.

Chairman Easom asked if the Board had any comments on this matter currently and none of the members did at this time.

Chairman Easom read the two letters from Takashi Tada, Town Planner and Brian Falk, Town Counsel, into the record. The email from Mr. Tada, in sum, stated that Town Counsel wouldn’t go into too much detail about the zoning bylaw because he felt like there was too much that was unclear in the bylaw with respect to the definition of “adjacent”. This letter also appeared that Town Counsel recommends that the applicants withdraw this application and re-submit a variance request. It was explained that a variance will void definition problems completely and one of the requirements for a variance is that there must be something about the topography or other aspects of the lot that makes the normal application of the zoning bylaw regulations ill suited. Mr. Easom said that from his understanding, there is a terrain issue on the proposed plot. Mr. Easom also said that the Zoning Board of Appeals could also choose to waive any fees associated with re-submitting this as a variance application. The second letter from Brian Falk, Town Counsel, explained how that section 218-6.3H of the zoning bylaw concerning the modification of front building setbacks does not confer special permit granting authority upon the Zoning Board of Appeals. This section is an as-of right dimensional standard ordinarily interpreted by the building commissioner as part of a building permit application and that it appears that the building commissioner recommended the applicants submit this application. Additionally, Mr. Falk said that from his understanding, that for this application, the building commissioner asked that the applicant to seek a finding from the Zoning Board of Appeals as to whether the proposed garage may have a modified setback under 218-6.3H. Mr. Falk recommends that the applicants either apply for an administrative appeal or a variance for the garage, which will require a new application and a new public notice.

Member Prager mentioned that this section of the bylaw should be looked over and clarified and also said that there was never an application submitted for a special permit, just an application for a finding or clarification. Mr. Prager also recommended submitting an application seeking a variance, but did mention that there would still be questions he would have if this was the case. The applicants will need to make a showing describing wherever this garage is and how the reduction in front setback is the very best that can be done under circumstances.

Chairman Easom said that this application was advertised as a special permit even though that was not how this application was submitted and that it was submitted as a determination of the building commissioner.

Dan Wolfe, with David Ross Associates, said that the summary that was just given in regard to all the aspects in this covered a number of issues he was about to mention, in particular that they have been to the building inspector to discuss what they could do and he was the one who pointed this part of the bylaw out that might allow them to come forward as they would like to and he was unwilling to make that decision, which led them here to explain what was adequate and in compliance with the bylaw and to get a finding from the ZBA that states that this is where the garage should be so they can get a building permit. Mr. Wolff did say that he recognizes that they could have come to the board with a variance request but he found it to be of better interest to come before the board to ask for a finding. The other concern that needed to be set straight is where this garage will be located on the property and that these lots, owned by the applicant, have all been merged. Mr. Wolfe said that he did take note of the lots that had been previously mentioned that should be considered and these calculations have included these lots, with the exception of one parcel which is less than nine hundredths of an acre and unbuildable. The new calculation for the offset came out to be 25.56 feet, which is a little over a foot greater of an offset off of the road that they are asking for the finding on. Member Prager asked why Lot 93 was not included in the calculations and Mr. Wolfe said that the reason why it was not was because in the previous hearing, the ones he did include were the ones that were mentioned. Mr. Prager stated that he only mentioned lots he thought should be included, but that it wasn’t a set guideline to what should be and that if other lots that were surrounding this one was included, this one should have been as well. Mr. Wolfe said that if these calculations are based off of what lots are touching the proposed lot, then there are a number of other lots that should be included. There was further discussion on which lots should be included and how there could be multiple different outcomes depending on which lots are included.

The applicant agrees with the recommendation to apply for a variance in this circumstance. Following this, the applicant asked if the Board would consider allowing the fees that have already been paid to be applied to a variance application if they were to come back with one.

Chairman Easom asked Takashi Tada, Town Planner, if the Board needed to make a finding in terms of what was requested of them from the Building Inspector, even though it got advertised as a special permit. Mr. Tada said that based on his latest conversation with Brian Falk, Town Counsel, he was leery of the town doing this since it wouldn’t match what was advertised and that he was reluctant to provide guidance on how to come to a decision on this particular matter. Member Peisel asked if it would make sense to ask the applicant to withdraw their application and then re-submit as a variance application and apply the previously paid fees to this application. Member Prager agreed with this assessment. Member Petropoulos asked what fees were being discussed and Mr. Tada said that there was a generic fee of $159.00 to submit this application, which includes the cost for sending abutters notices and posting legal notices. A new application will also need abutter notifications and a legal notice, which is about $.63 per envelope mailed and $80-$100 for the legal advertisements. This cost would come out of the Land Use/Zoning Board budget.

***Applicant Larry Hurley made a motion to withdraw his application for a finding without prejudice. Member Prager made a motion to accept Mr. Hurley’s motion. Member Peisel seconded this motion and it was carried unanimously.***

There was discussion on how the cost for a variance application should be dealt with when the applicants submitted this and it was agreed that it was not on the applicants that this was posted as a special permit application when their application did not get submitted as a special permit application.

Member Petropoulos made a motion that the Board waive the fees for any subsequent application, assuming fees are similar fees to this application. Member Peisel seconded this motion.

Member Prager said that he would make a similar motion to Mr. Petropoulos’s but would add that this should be applied to a subsequent application for a variance for this lot. With this additional input, Member Petropoulos withdrew his previous motion.

Member Prager made a motion that the Board waive the fee for the existing fee and allow the applicant to apply it for a subsequent variance application on this property in the application. Member Petropoulos seconded this motion.

Member Prager asked who managed this money and Mr. Tada said that the application fee goes into the general fund, so from the Town’s standpoint, a waiver to waive the fee for the forthcoming variance application is the easiest way to go.

***Member Prager made a motion that the Board waive the fee on any future variance application related to the garage on the property at lot 315 Lost Lake Drive. Member Petropoulos seconded this motion and it was carried unanimously.***

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

**Chairman Easom opened the public hearing. This is the fifth 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.

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

Mr. Alphen explained that the last hearing was continued to allow mor time to get more details on the scope of the traffic study, so this will be a main focus during this meeting. Mr. Alphen had sent two letters regarding how he believes this application is not premature and the other was in regards to a request to extend the time period in which the board can make a decision. The reason for this extension is because of the traffic study, in which during the extended time, the peer reviewer will be able to review this traffic study and so that the actual study can be completed and calculated. This time extension is, according to Mr. Alphen’s math, April 24, 2024, which includes the 40 days to render the decision. Due to this, they also will likely request this hearing to be continued until some day in November, so feedback has been given.

Chairman Easom reported that he got a schedule for the field usage at Cow Pond Brook Road from the Parks Commission, which includes schedules for football, baseball, soccer and other sports for the remainder of 2023. As this area has different activity levels than the normal 40B application, it was recommended that the applicants have access to this list to make a better assessment on when their traffic study should be completed. This schedule will be posted online on the ZBA website for the public to view. The decision on the dates and times for these should be done through the engineers but the public should be able to have input on what will be proposed for this traffic study, as they know the area better than most.

Member Petropoulos asked if it was possible to get the contact information for these organizations so that the applicant can have communication with them to find out when the peak utilization is for this study and then have a proposed study on how they came about these times and dates. The Board and the applicants thought this was a reasonable request and the applicants will seek out contact information and then will seek these organizations out for their input on the traffic study. There should also be a public hearing on this to hear this conclusion and discuss it before it is finalized and authorized to begin.

There was discussion on if there was enough time to get an accurate assessment, with the remaining time left in the year with events going on at the fields and it was decided that the traffic engineers should be the ones to assess if it is possible for the results to be done within the next couple of months or if it should be completed when sports start up again in the Spring.

Fran Stanley mentioned that baseball and soccer were likely the largest groups for the sports on Cow Pond Brook Road. Ms. Stanley also said that the extension timeline that Mr. Alphen gave might now be accurate but was not entirely sure on this. At this time, Mr. Alphen said that the extension time proposal also included the 40 days in which the Board has to render a decision and that they are under the understanding that they would be able to get a traffic study complete by the end of the Fall but if this is not possible, they will consider a longer extension.

Judi Barrett said that if the concern is that the scope of the traffic study cannot be accomplished in a way that allows the three-month extension to work for the Board and the applicant, there could be a condition to this extension subject to an additional three months (used as an example) or the public hearing could be continued to a date certain subject to a receipt of a satisfactory traffic study. Ms. Barrett asked if the concern was that this study could not be completed in three months’ time and the Board agreed with this assessment. Member Prager also said that these fields are used primarily in the Spring and Summer, and not as heavily in the Fall. The traffic engineer has not given input on this yet because the contracts haven’t been finalized at this time, but the hope is that they will be shortly and that they can get their review on this. Ms. Barrett recommended that if the applicant is amendable to extend this public hearing longer than the proposed extension, that they do so in order to conduct this traffic study. Member Petropoulos recommended that the applicants reach out to these sporting groups and ask them what time they believe would be the best time for the traffic study for highest traffic volumes and from there, it should be decided when the best time for the study to be completed. Mr. Alphen agreed with this process to go about the traffic study as of now.

There was brief discussion for a next meeting date to be able to reach out to all of the various sports on the schedule list and it was determined that September 20th, 2023 would be a reasonable time to get this completed. If the three-month extension needs to be extended longer due to the traffic study because of peak levels for sporting events on Cow Pond Brook Road, the applicants will at that point determine and decide if they will extend it longer. The peer reviewers and the applicants’ engineers should have been able to review the proposed scope by this time as well.

There was a letter that was submitted by the public on August 23rd, 2023 from Nancy Sarlan. Mr. Brem said that their engineer has not had time to look this over and it will be by the next meeting in September.

The next topic was the water situation. From Chairman Easom’s understanding, the water line grant, which is a grant to provide water to the site, was submitted and it is under review by the state but there was a letter from the state level that stated that he expected this application would be rejected in the review process because it appears to have been not submitted by the Town of Groton, but from the applicant of this project. Mr. Alphen said that they volunteered to help the Town prepare the application, in which they did so with the approval of the Town Manager submitted in the name of the Town. He mentioned it was still a mystery as to why it was not accepted as a normal application but his best guess would be because it was submitted via a non-town email address, even though the application was from the Town of Groton. However, they have met with the Town Manager and Water Department recently and they are working on other means to potentially get water to this site. Mr. Easom mentioned that in meetings that he has had with the Town Manager, he had asked him if this grant application is not awarded, did the Town Manager have plans to resubmit at a future date and he indicated that would depend on what guidance he got from the Select Board. Mr. Alphen said that he got the opposite impression when he met with the Town Manager and that the Water Department would be happy to submit the application. The applicants are still hopeful for the second round of this grant application process and to get this considered during this time, which is to occur shortly after the first-round ends (which is October).

Chairman Easom read the letter from Marc Horne from the EOED dated August 11th, 2023. This email is a reply to Mark Haddad, Town Manager, regarding this water grant application. This letter explains why the application is showing as active and this is because he believes there has been no official grant decision made yet. The initial review status is an automatic classification and Mr. Horne said that they have reviewed it and they have determined it was ineligible for the funding category due to the applicant Heritage Landing LLC being a privately held entity. Once the grant deliberation process in complete, which is hopefully at the end of the month, the status will change with all of the other applications. He also states that if the Town decides to resubmit during the next round, it is welcomed but the Town of Groton must be the applicant.

Member Peisel asked what the water superintendents’ motivation would be for submitting this application and it was stated that this grant would bring water to the DPW facility.

Following this, Chairman Easom brought up the three-month extension request. Mr. Easom read this extension request into the record, which states that they are requesting a three-month extension for the traffic study to be completed and reviewed. There was also an agreement letter that was submitted, which Mr. Alphen drafted. Mr. Alphen said that he checked with Town staff to see if there was a formal letter that had been previously used to extend the period in which the Board would render a decision on a 40B application and explained that there was no set form, which is how this agreement came to be. This agreement is that extension, plus the 40 days to render a decision. Mr. Alphen did mention that if the traffic study could not be completed within the next two to three months, as these letters suggest, the applicants will determine if they will grant another extension but believes that a six-month extension at this point might be premature. Member Prager mentioned that the extension request should state all of the previously mentioned items that Mr. Alphen just said.

There was further discussion on whether this extension is appropriate to be done at this meeting and it was determined that this extension would not be granted until the September 20th, 2023 meeting after Town Counsel has had sufficient time to review this extension agreement letter. This three-month extension is not an extension to continue for three months but rather extend the deadline three months. Judi Barrett said that this situation is very unusual and would defer to Town Counsel for their opinion on this matter.

Member Petropoulos asked if this was the proper vehicle for an extension and Ms. Barrett agreed that this was routine.

Member Prager asked what the harm would be in granting this extension and Ms. Barrett said that this is something that should be done at the next public hearing. The Board agreed with this so that Town Counsel could review the submitted extension letter to make an informed vote at that point. Ms. Barrett agreed that this would be an appropriate time to vote on the extension. The Board would also be able to make a better decision on this extension request based on the traffic study proposal that should be presented at the next public hearing as well. There does not seem to be opposition to granting a three-month extension. Member Petropoulos mentioned that not only does a three-month extension allow for this traffic study to potentially get done but it will also give more time for other things that should be resolved, such as the nitrogen loading concern and the water line issue.

Member Peisel asked if this extension could be withdrawn between now and the next meeting if they do not vote on it at this meeting. While this is a possibility, the applicants stated that this is not their intention.

Member O’Donnell asked what the timeline for the water line grant is for next year, if they were to missed or get denied in the “next round”. Mr. Alphen said the approval process is typically the same and while they’re hoping to get this submitted in the next round, the next year rounds would begin sometime most likely in May 2024. However, there may be other ways to get water to this project that would not require this grant, so the applicants remain hopeful on this subject.

Member Petropoulos asked Judi Barrett if the Zoning Board could approve this project without a water source and she stated that she hasn’t seen a board approve a project that hasn’t been feasible in the many years she has been overseeing these projects. There may be conditions that can be added to a decision, but usually the Board has reasonable documentation provided that shows the peer review consultant that says it is feasible and meets the states requirements. There can be conditions but there should be some sense whether what the applicant proposes is feasible. Member Prager asked if they could make a condition that states they need to have a source of water and Ms. Barret said that the board wouldn’t approve a project if there isn’t some sense that the applicant can provide water. Member Prager said that he agrees with this but the sense is that the applicants would have to come back at some point during this hearing and state that they filed another application for a water line grant and are meeting with the water department. Member McLaughlin also agreed with Ms. Barrett but said that it was really out of the Board’s control and asked if it was defensible to deny it if the Board decides this and Ms. Barrett recommended getting input from the peer review consultant and then them telling the applicant what they need to submit to provide water. This would also be a Town Counsel question.

There was further discussion on the water line grant and how to proceed with this concern. Town Counsel and peer reviewers to be sought out to ask them what documentation is needed to demonstrate the project has water. Another question for them is the same as the previously mentioned question, except for sewer and septic. A third question is as to whether or not the Board can approve this project without an approved water source and on the assumption they could not do that, at which point is it appropriate the Board request an alternative plan for water.

Chairman Easom asked Mr. Alphen asked about the Boards jurisdiction having a plan for water for this project and Mr. Alphen said that this included a letter as recently as August 21st. In summary, he said that the proposal submitted before them is the project being serviced by municipal water, which is not that far away and how it is feasible to extend it. It is understood that the applicant has not put it in writing that they have agreed to fund this water line extension, but it is an option that is available but the hope is still to work with the town and the commonwealth to get funding for this. Given that the grant status is not going as expected, the applicants are looking at other alternatives and they still have to define what these alternatives are and come before the Board to present these. They are currently still working on this, so while there is no resolution yet, they are working on it. Mr. Alphen further went on to explain that adding in a condition to the approval is not unusual and these would include conditions such as “the project shall be serviced by municipal water in compliance with the applicable regulations”. These conditions apply to septic systems as well. If municipal water is not feasible, there would likely be a condition where the water line extension would be at the applicant’s expense. The peer reviewers will be the main determinator of whether or not any amendments or proposals are feasible.

Chairman Easom and Mr. Alphen read a letter from Alphen & Santos PC dated August 21, 2023 into the record. This letter includes the applicants’ explanation on why this application that was submitted was not prematurely submitted and explained that they expect conditions to be added into the decision if approved. Member McLaughlin asked if these decisions and appeals in this letter were all viewed on their own merits and Mr. Alphen said he submitted them for examples and thought these would be appropriate to share.

Fran Stanley also said that there are other things that could be worked on during this time that are still pending, such as nitrogen loading and stormwater concerns.

Michelle Collette, with the Board of Health, said that one of her concerns is if town water is not extended to the site, the idea of using a community well might be worrisome and not feasible, stating that there used to be a very active landfill on the adjacent property and while it is monitored well when it was in operation, the gravel industry was very active and this site and adjacent sites were actively mined for sand and gravel. Also, there were excavations into the water table to the depths of forty feet on some of these properties and noted that this is not a pristine site, so relying on a private well in this area is cause for concern. Member Prager asked Ms. Collette if there was a way to test this and she answered that there was. Mr. Prager mentioned that if they were to propose a well, they would need to provide appropriate data showing that a well is feasible and Ms. Collette agreed with this assessment. She also stated that there are homes that have wells on this road, but they are much further away. Associate Member O’Donnell mentioned that a well with that depth and size, the pressure that it would create could adversely affect the other wells in the area too.

**Chairman Easom opened the floor for the Board:**

Chairman Easom said that Associate Member Russ Harris was under the weather for this meeting and was not able to attend, making this his first missed meeting for the 40B application for Heritage Landing/Cow Pond Brook Road.

Member Petropoulos asked if the applicant could allow for more than one missed meeting and Mr. Alphen said that this was a law and could not be allowed. Mr. Petropoulos then mentioned this is one downside to an extension because it increases the period of where you can only have one absence.

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

Member Prager read Nancy Sarlan’s email dated August 23, 2023 into the record. Ms. Sarlan’s email, in sum, asks more clarifying questions about the traffic study, including but not limited to why the dates, times and locations that were chosen, were chosen. This also includes when she and neighboring property owners believe a traffic study should be completed and explained why these are better than the proposed dates, times and locations. She also asked if there were plans about school busses and school bus stops and where these would be and if the buses would be able to travel through the project safely.

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 20th, 2023 would be a reasonable time for this.

Approval of the traffic study to be a main topic for this meeting and have this submitted to the Town so that the peer reviewers are able to review this before the meeting on September 20th. Town Counsel will also be sought out to review the extension letter that was prepared by the applicant’s attorney. The peer reviewers and Town Counsel will also be sought out to see what needs to be demonstrated that the project has feasible water and sewer and when the appropriate time is to ask for an alternative plan to obtain water.

Judi Barrett asked when the Board was expecting a review from the peer reviewers on site, civil and engineering and it was answered that they were waiting for more definitive information to be provided to them to review. Ms. Barrett recommended getting these reviews so that it can be determined what else the applicants need to provide.

***Member Prager made a motion to continue this public hearing to the 20thd of September 2023. Member Peisel seconded this motion and it was carried unanimously via roll call vote.***

**General Business**

**Approval of Minutes from August 9th, 2023**

*The Chair will entertain a motion to approve the meeting minutes from August 9th, 2023 as drafted. Member Petropoulos made a motion to approve the meeting minutes from the 9th of August 2023. Member Prager seconded this motion and it was carried unanimously.*

**Approval of Minutes from August 16h, 2023**

*The Chair will entertain a motion to approve the meeting minutes from August 16th, 2023 as drafted. Member Petropoulos made a motion to approve the meeting minutes from the 16th of August 2023. Member Peisel seconded this motion and it was carried unanimously.*

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

A motion to adjourn at 8:42 PM