

**Town of Groton**

**Zoning Board of Appeals**

173 Main Street

Groton, Massachusetts 01450

Tel: (978) 448-1121

 Fax: (978) 448-1113

September 20, 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*

Thomas Peisel, Full Member

Jack Petropoulos, Full Member, *via Zoom*

**Other Members in Attendance**

**Others Present**

Paul Alphen

Kim Hazarvartian

Chris Alphen

John Amaral

Leslie French

Rob Anctil

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.**

**Member Jay Prager is in attendance via Zoom, so any votes taken at this meeting will be via roll call.**

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

**Meeting Minutes**

With agreement from the Zoning Board of Appeals. The discussion with Leonard Green was moved to the first agenda item topic to interview for the vacancy opening on the Board.

Leonard Green introduced him and explained his previous background regarding his experience of being a Zoning Board member. He just recently moved to Groton and further went on to explain that he moved from Bedford, New Hampshire, where he served as a member on that Zoning Board for eight years. He noted that while Massachusetts and New Hampshire may differ in a few regulations, he believes that most are very similar to each other. He also mentioned that he grew up and lived in New Hampshire his whole life and attended and graduated from Dartmouth College and then Harvard Law School. He further went on to explain his experience as a lawyer and how he was in the Peace Corps for two years.

Member Prager asked Mr. Green what type of law he studied and it was answered that he studied general practice.

***Member Prager made a motion that the Zoning Board of Appeals recommend Leonard Green to the Zoning Board of Appeals to the Select Board. Member Peisel seconded this motion and it was carried unanimously via roll call vote***.

Member Petropoulos wanted to ensure that Mr. Leonard understood that both Alternate and Full members of the Zoning Board of Appeals may or may not be a voting member on any given case and Mr. Leonard verified that he did understand he could be called up to vote on a case for any given reason.

**179 Indian Hill Road, Special Permit Application #2023-5**

**Chairman Easom opened the public hearing. This is the second hearing in the process for this appeal application.**

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

Chairman Easom read Mr. Gus Widmayer’s email into the record, dated Tuesday, September 19, 2023. This email, in sum, states Mr. Widmayer’s decision to forgo his appeal of the Zoning Board of Appeals decision. He further went on to explain that he understands that his objections do not meet the threshold necessary to claim violations of zoning, the endangered species act, historic homes or existing conservation covenants.

***Member Peisel made a motion that the Zoning Board of Appeals accept Mr. Gus Widmayer’s request of a withdrawal on the hearing matter of 179 Indian Hill Road. Member Prager seconded this motion and it was carried by majority vote 3-0-2 via roll call vote***.

***Member Peisel made a motion to close this public hearing. Member Prager seconded this motion and it was carried by majority vote 3-0-2 via roll call vote***.

**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 brought up the few concerns that the Board and the applications previously went over last meeting. The first concern he brought up was the voting members of this application, which were himself, Dan McLaughlin, Jay Prager, Russ Harris and Thomas Peisel. Due to unforeseen health issues, Russ Harris has submitted an email, and filed it with the Town Clerk, that he has decided to step down from the Board. Mr. Easom read Mr. Harris’s September 6th, 2023 email into the record, which stated that he was resigning, effective immediately. As a sitting member on this hearing, it is important to get a fifth member to replace him for a voting member. Mr. Easom said that Member Veronica O’Donnell has been able to sit on every hearing for this application, except for the current meeting. If accepted to become a voting member for this application, this meeting would count as her one missed absence and she will be instructed to watch the video of this meeting to avoid the Mullen Rule. Mr. Easom asked if the applicant would consider allowing Member O’Donnell to be a suitable substitute on this hearing, taking place for Mr. Harris, and Mr. Alphen agreed that he would accept this proposal. Mr. Alphen will put together a letter that will state this for the record.

Paul Alphen began his presentation for this application, beginning with an email that was received about the water line situation. They believe that if grant money is ultimately not available, that the water line could potentially be privately constructed. He went on to explain that it might have some financial impact for the applicants, but at the moment that is the alternative option if the grant is not awarded. The applicants have also started further communication with the water department superintendent regarding this and the engineering on it for what would be required if the applicant decided to pursue this option.

Following this, Mr. Alphen introduced Kim Hazarvartian, who is with TEPP LLC, who is their traffic consultant for this project. He was the one who developed the scope of the traffic study pursuant to all of the direction that they have received, which has also gone through Bob Michaud, the traffic engineer peer reviewer for this project. Combined, both Mr. Hazarvartian and Mr. Michaud have determined when the most appropriate time would be to perform this study in regards to when the busiest times would be. They recently did a portion of this traffic study during a high activity time in which there was a softball tournament and Mr. Hazarvartian will report back his findings once he is able to. Ultimately, the Board and Mr. Michaud will determine if they are satisfied with this scope and depending on whether or not it is satisfactory is how this process will proceed with this topic.

The next topic Mr. Alphen brought up was the request for the extension that was previously mentioned. He reminded everyone that this request was to give the applicants more time to accomplish tasks, such as appropriate traffic counts and get these reviewed by everyone necessary.

Chairman Easom read an email from Brian Falk, Town Counsel, into the record. This email was in response to questions that Town Planner, Takashi Tada, and Mr. Easom himself pulled together to get some clarification on a few items. This email included a variety of questions that the Board members had, which included, but was not limited to, the requested extension, questions on if the project might be “uneconomic” if the applicants has to pay for the water line extension, if the applicants need to show that the project has access to a suitable source of potable water and if the sewage system needs to show that there is a viable sewage treatment that meets the local Board of Health requirements, as well as when the Board can ask for an alternative plan to obtain water if the water line extension grant is not forthcoming. In response to these, Mr. Falk explained that an extension is reasonable for the applicants to provide more data so that the Board can make a better-informed decision. Following this answer, he explained that for most of these questions, more information would be required if these things would not be able to be accomplished so that the Board can make an informed decision.

The peer reviewer for Traffic was not in attendance, so Mr. Easom asked the applicants if MDM Transportation has seen their traffic study yet. Mr. Hazarvartian explained that he spoke to Mr. Michaud about the scope of the study and about a traffic counting program and also looked at the spreadsheet of the activities that were given for the ball fields on Cow Pond Brook Road and they noticed the softball tournament that occurred the week before this meeting was held. Due to this, they put counters out for this at certain locations from the Saturday the tournament began through the week to the following Sunday. These dates included were September 9th to September 17th. They counted those weekend days, plus a day of the week during that timeframe, which was the scope of that portion of the study. Mr. Hazarvartian just received this traffic study data back and mentioned that this was only the first step in this traffic study. He explained that a traffic study includes existing conditions and then using these volumes, in which they will factor in future conditions, with no development being built, but also a study that factors in the proposed project. An analysis will then occur, taking into consideration certain intersections, crash data and other aspects. Mr. Hazarvartian said that finishing this traffic study is going to take a matter of weeks, so while some data has been collected, it is still not completed, so it has not been sent over to be reviewed by the peer reviver yet.

Member Peisel asked about the future growth of the exiting area and if no other structures are being built in the area, what are they accounting for in this growth. Mr. Hazarvartian said that lots of times they usually increase the data by half of a percent per year as a general standard, even if they don’t anticipate any growth in the area.

Chairman Easom asked if the applicants still intended to request the previously mentioned extension and the applicants agreed that they were still intending to ask for this 180-day extension. Member Peisel said that he has no problem with granting this extension, mentioning that the more time the applicants have to get plans together and the more time the public can give input, the better so that this project can get completed so that the Board can give an informed vote. Member Prager also doesn’t object to this extension, saying that it’ll be not only beneficial in terms of getting the traffic study completed, but it will also give more time to potentially figure out the water line concern. Member McLaughlin agreed with these two assessments. Chairman Easom mentioned that the first meeting that was held for this hearing was on June 14th, 2023 and 180 days out from there is December 11, 2023 and 40 days to issue a denial or permit with conditions would be January 20th, 2024. Town Counsel did look at the letter that was submitted and did not see any problems with it.

It was clarified that the April 24th, 2024 date would be extension with the 40-day deadline to issue a decision.

**Chairman Easom opened the floor for public comment regarding the proposed extension of April 24th, 2024:**

A Groton resident asked what this extension was for because from his understanding, the traffic study was said to take about three to four weeks, which seemed like adequate time to follow the original timeline. Mr. Alphen said that they did not say that the traffic study would be finalized in a couple weeks, rather that the portion their traffic consultant will do might be complete in a couple of weeks, but this does not include the time for the peer reviewer reviewing it and determining if anything else is needed and so and on and forth. So, in the long run, this traffic study will take longer than three to four weeks, with the back and forth between Mr. Hazarvartian and Mr. Michaud possibly taking a few weeks in itself, which does not include the time to make any adjustments that may be necessary or recommended. Conversations with the water superintendent will also be pursued during this time, too to ensure that their plans show some sign of proof that they have a design in place for this water line extension. More septic system plans will also be something that the applicants will research and submit during the time of this extension request.

The same Groton resident asked how the traffic consultant came up with the locations of the counters for this study because these calculations don’t appear to included the traffic count going down to the baseball fields itself. Mr. Hazarvartian said that they put the counter as close as they could to count all of the traffic going down Cow Pond Brook Road. The other counter they included was to get an idea on what is passing the driver and the speeds the cars are going.

The same Groton resident asked if the raw data for this traffic study would be available and Mr. Hazarvartian said that typically this data would not be useable but they can be given out but the data usually is put into a computer and then given out by the computer. Member Peisel said that the peer reviewer will be receiving all of the data they collect as well and they will be doing a thorough review on this information and at some point, when they are both in attendance, he can ask this again or the data can be made public.

The same Groton resident asked about the water line and brought up the previously asked question about the residents on the North side who asked who would bear the cost of this water line extension, including if the roads need repairing afterwards. Town Planner, Takashi Tada, did not have an update to this answer so Chairman Easom said that he would put this on a list of questions to get resolved. Following this answer, this resident asked when it was expected to get answers to their questions because this would help the residents on whether or not they agree with the requested extension. It was explained that the extension was asked for to get a sufficient traffic study that the residents had requested. There was brief discussion about how this traffic study could be completed by November and how the residents believe the plans that were provided aren’t sufficient to determine a decision and Mr. Easom said that it was up to the peer reviewers to decide this and once the traffic peer reviewer has been able to review the data and give their feedback about this, the Board will come back to this question at that point. It was explained that this 40B permit application is a process and it takes time to get all of the appropriate responses necessary to determine a decision.

Michelle Collette asked that if the extension is granted, will the applicant prepare the drainage calculations and design for the stormwater management system. Chairman Easom said that this was certainty an important aspect for this project.

Another Groton resident asked if the traffic study has been completed or if there will be more data collection, as she thought they were going to talk about the parameters at a meeting before the traffic study was conducted and it appears it has already been completed without doing this. Chairman Easom said that it is up to the peer reviewer to determine if more data should be collected or not. Member Prager mentioned that this traffic study has not been completed and that it has just been drafted and they have collected data to get some information before the end of the sports seasons. He explained that this is not the end of the traffic study and more will be done. Since there was still a bit of confusion, this same resident asked if there would be more counting of cars and Mr. Hazarvartian answered this by explaining that they will show the data that they have collected to the peer reviewer and depending on his results, this will determine if they believe more should be collected or not. With the uncertainty of this, this resident proceeded to mention that there was a significant number of cars that came down other roads that were not being counted and that the week this study was performed was a weekend in which there was bad weather, which wouldn’t be an accurate count for a weekend where it was not raining. She also mentioned that this was a softball tournament and softball isn’t a normal sport that plays at these fields and that soccer, football, lacrosse and baseball are the typical sports that play here. This information will get transferred to the peer review consultant for their information.

This same resident and abutter brought up how she thought that this study was not being done at all, including no counting, until a meeting was held in order to agree upon the traffic study parameters and she mentioned that this is a surprise that it was done without this being completed. It was explained that the applicants saw a tournament going on and they took the opportunity before the sports season ended to gather at least some data for their traffic study. While this may be sufficient data, it will be determined by the peer reviewer if more should be collected. If more needs to be collected, the applicants will come together to determine the next good time to do this, with the help of the peer reviewers, Board and the public.

There was further discussion on where the residents believe there should be more counting done and how they agree that more should be completed.

Takashi Tada, Town Planner, explained the difference between traffic count and traffic study, which is the traffic impact assessment. The counting of the cars Is the data that is collected to establish a reasonably accurate baseline condition and the study is the actual study that tells them what the impact will be from this data. It’s important to get a good baseline, but the real focus is the impact that this project will make. Mr. Tada also mentioned that it is not necessarily the peer reviewer to determine if the scope is sufficient or not, but to ensure that the data collected is sufficient to get the accurate outcome.

Mr. Alphen said that with all of this information, they may need more time to get this information but they are trying to do this project right.

Mr. Alphen said that he will grant an extension to the Board to complete the public hearing portion until April 24th, 2024. He will send in a new letter that will not include the part where the original one says to include the 40 days to write the decision.

***The Chair will entertain a motion to engage Town Counsel to sign an agreement letter with the applicant of Heritage Landing to extend the public hearing portion of the hearing util 24 April, 2024. Member Peisel made this motion and Member Prager seconded it. This vote was carried unanimously via roll call vote 4-0.***

Chairman Easom asked for the applicants to provide a letter indicating that they will accept Veronica O’Donnell as a substitute for Russell Harris in sitting on this hearing and Mr. Alphen said that he will draft this up and send it over.

Fran Stanley also agreed that this extension will help the applicants to able to gather and put together more information for this permit application. The peer reviewers will be sought out to get a list of missing items if not already done. Nitsch Engineering has presented a list of this already earlier right before this meeting and will be sent out to everyone necessary.

The Water Commission will be sought out for a few things, such as who would bear the cost of the hookup for water if a water line is installed.

Mr. Hazarvartian said that it might take up to four weeks to get the preliminary traffic study data ready to be presented. If the peer reviewer decides that there should be more data collected, this time might need to be extended further. This four-week timeline only includes the time in which it will take Mr. Hazarvartian to complete his portion of the traffic study. This should be divided into two steps so that the public is able to give their input on the traffic data. There was further discussion on this traffic study. The applicants are recommended to lay out a few more counters over the next few weeks to catch more data, just in case the peer reviewer comes back and does want more, so to not deter the process of this application since the next “busy” time for this area will be in the spring.

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 October 4th, 2023 would be a reasonable time for this.

***Member Prager made a motion to continue this public hearing to the 4th of October 2023. Member Peisel seconded this motion and it was carried unanimously via roll call vote.***

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

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

Chairman Easom reminded everyone that the first public hearing for this 40B application was held on March 22, 2023 and said that 180 days from this date would be September 18th, however there was a two-week extension request that brough this date to October 2nd, 2023. Mr. Easom also said that the goal was to keep the public hearing portion of this application open until at least the first draft of the decision was written so that any public input could be taken into consideration for this. Mr. Alphen has sent out a rough first draft and has been working with the applicants to make sure they are in general agreement in terms of this application and the applicants agreed with this assessment. Mr. Easom asked about the process that has been going on with Mr. Alphen and the applicants. Rob Anctil explained that Chris Alphen drafted a comprehensive decision and they both have gone back and forth with a few of their suggestions and Mr. Alphen has incorporated the vast majority of them into this decision. It is still a work in progress; however, it is a strong work in progress. Mr. Amaral agreed with Mr. Anctil assessment and also mentioned that by the end of the meeting, if they determine that an extension would be necessary, they would be willing to look in to extending another week or two for the sake of getting everything in order and done correctly, especially because the waiver list is still an item to go over and discuss. Mr. Alphen also agreed with this assessment. Mr. Anctil also brought up how they have met with the accessibility committee and the accessibility committee provided feedback and that the applicants and Mr. Alphen have incorporated this feedback into the decision. Michelle Collette read aloud a letter from the accessibility committee which explained the feedback that the accessibility committee gave and Mr. Alphen said that this has been incorporated into the draft decision that was written as number B66. Mr. Alphen said that he has tried to incorporate, to the best of his ability, of what the Town staff has given for input.

This Draft Decision has not been posted on the Town’s website yet, but will be put up in the coming days so that the public can review this. Chairman Easom has read the draft decision and believes it to be accurately written out in terms of everything that has been brought up during meetings.

There was brief discussion if the public hearing portion of this 40B should be extended and it was agreed with the Board and applicants that if this is necessary, they are agreeable to extending it a few more weeks if need be. Mr. Alphen recommended that the public hearing should remain open until a set date, plus two days to ensure that if any issues arise after the last open meeting, they can get together and resolve it during those two days as a safety net.

Before diving in to the waivers, Mr. Anctil mentioned paragraph B69 in the draft decision. In regards to this, he said that what they tried to do for this section was to mirror the language that the peer reviewers did in the care for building a residential subdivision. He further explained that building a residential subdivision has a number of different lots and in this situation the applicant has a right after they put in an infrastructure to act in form of security, which is done in one of three ways: land, cash or a tri-party agreement. Mr. Alphen had said that part of the municipality would typically have a bond that says that things are completed as set-forth in the private development, and often ties what they will be looking for in a subdivision, such as to say that they are accepting the road or water lines for sewer and ensuring they will be built in accordance with their standards. Following this, Mr. Anctil said that they are going to set forth a bond for this. Sometimes a bond will be set at the beginning of the project, in which the amount is significantly larger because the infrastructure hasn’t been done at all. Mr. Alphen said was that with no certificate of occupancy shall be issued until they created a bond and Mr. Anctil had included his language in this section which included that they would be able to build three buildings and then the bond will be set up. These three buildings are presumed to not be able to get a certificate of occupancy until the last large building is built until they put this bond together. Mr. Alphen stated that he doesn’t see this condition as any form of contention and said that what has been amended by the applicant is accurate. Member Peisel asked if any of the other buildings, apart from these three large buildings, need a certificate of occupancy and it was answered that it would vary depending on the use of the building. Following this, from Mr. Peisel’s understanding, this condition says that they won’t go beyond three until bonded, regardless of the three that are built. Mr. Anctil agreed with this and at the point where the fourth would be built, the applicants would come back to the Board and gather what is outstanding and Greg Roy would come back with cost estimates of the remaining work and the applicant then has the option of either depositing funds within the town to complete this work or entering into a tri-party agreement with the town, the developer and a lender saying that they are pledging that security. Mr. Tada agreed that Mr. Alphen was correct and said that it can be structured any way and agreed that the way this is laid out makes sense. He said that in the end, this is to ensure that if something happens, the Town has some way to not leave this project unfinished. Member Prager asked how the applicants came up with three buildings for this and not a different number and Mr. Anctil said that he had wanted to provide meaningful security and these three buildings would be the two apartment buildings and the townhouses.

Member Jack Petropoulos lost service for less than two minutes. Mr. Amaral asked how it would affect Member Petropoulos’s attendance record since he lost service for a very short time during the meeting. As Mr. Petropoulos has not missed a meeting for Groton Farms, as long as he watched what was missed, it would not affect the Mullen Rule.

The applicants proceeded to go over the waiver list, and Mr. Anctil read these off one by one and explained a few of them in greater detail if he deemed it necessary. Mr. Anctil clarified that this waiver list is showing that they are planning to follow the plans that they have submitted. Mr. Amaral said that these plans have been reviewed by the peer reviewers and there was an agreement reached after input. The applicants decided it was best to read these waivers at a public hearing to ensure that nothing was missed. Member Prager asked if they could make some sort of representation that they have done a final review of this set of waivers and that they agree that the list of waivers is completed. Mr. Alphen answered this by explaining that any waiver that is not contained in their request, the Board is not granting to the extent that the plans show. Mr. Anctil said that the bylaw says that they are required to submit a list of waivers and while the applicants have done an internal waiver list, this waiver request for this condition is them saying they are going to build this project according to the plans.

Member Petropoulos asked about the height waiver that was just reviewed and what the requirement is for the district and Mr. Alphen said that it was 35 feet and 3 stories and the proposed buildings are taller than 35 feet and 3 stories so the applicants need a waiver for this. Mr. Petropoulos asked how tall the proposed buildings were and it was mentioned that the plan says a little above 58 feet but they would check with Greg Roy to verify this.

Member Petropoulos asked about the waiver for the pro forma and the rational for why it is required and Mr. Alphen said that Groton has application requirements but this specific comprehensive permit application is regulated by the state under Chapter 40B. He further explained that Chapter 40B has requirements that show what needs to be done in a comprehensive permit application in front of the Zoning Board of Appeals. They have found a finding in the decision, which he believes is accurate, which is that they have met the state requirement for what is required. They needed to provide a pro forma as part of the site plan application to Massachusetts Housing, which is what they did and is a public record. There should be no reason for the applicant to provide a pro forma or any information to the local board, so this waiver is appropriate and necessary. Mr. Petropoulos asked why this was required if the pro forma was not a requirement for the local board and Mr. Alphen said it was because it is a requirement in the Groton bylaws.

John Amaral mentioned that he has had communication with the Sustainability Committee and they have informed them they wouldn’t agree to their plans and why, but it was noted that the Sustainability Commission did come back and acknowledge that the applicants have been cooperative and they have incorporated several of their suggestions and were satisfied with the applicants response.

The sign that was submitted by the applicants was briefly brought up and it was noted that it should be incorporated into the decision. The applicants have agreed that they would bring forward a second draft of this sign with accurate dimensions to visual it better.

The applicants and the Board agreed that a three-week extension would be appropriate, plus two days so that there are a couple extra days just in case something goes wrong after the last public hearing, so that the public hearing process stays open so all the Town committees and boards can submit anything if they have it and for the public to submit anything concerning this 40B as well.

Let the record show that the applicant has requested an extension for the public hearing period to end on October 13th, 2023. The applicants to provide a written letter stating this.

There was brief discussion about the next meeting date and it was discussed that the next meeting to be held would be on October 11th, 2023.

***Member Prager made a motion to continue this public hearing to the 11th of October, 2023. Member Peisel seconded this motion and it was carried unanimously via roll call vote 5-0.***

**General Business**

Member McLaughlin disconnected from Zoom.

**Approval of Invoice from Nitsch Engineering:**

*The Chair will entertain a motion to pay the Nitsch Engineering invoice in the amount of $810.00. Member Prager made a motion to approve the Nitsch Engineering invoice. Member Peisel seconded this motion and it was carried via roll call vote 4-0.*

**Approval of Minutes from September 6th, 2023**

*The Chair will entertain a motion to approve the meeting minutes from September 6th, 2023 as drafted. Member Peisel made a motion to approve the meeting minutes from the 6th of September 2023. Member Prager seconded this motion and it was carried via roll call vote 3-0-1.*

**Member Prager made a motion to adjourn. Member McLaughlin seconded the motion and it was carried via roll call vote 4-0-.**

A motion to adjourn at 9:23 PM