

**Town of Groton**

**Zoning Board of Appeals**

173 Main Street

Groton, Massachusetts 01450

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March 6, 2024 - 6:00 PM - Second Floor Meeting Room

**Members Present and Voting for Public Hearing**

Bruce Easom, Chairman

Dan McLaughlin, Clerk, Full Member

Thomas Peisel, Full Member

Jay Prager, Full Member

Veronica O’Donnell, Associate Member

Leonard Green, Associate Member

Molly Foster, Associate Member

Gregg Baker, Associate Member

**Others Present**

Judi Barrett

Paul Alphen

Members of the public

**The meeting was called to order at 6:00 PM by Chairman Easom and stated that the meeting was being recorded for later broad cast. There will be video and audio for viewing.**

**Both Gregg Baker and Molly Foster were in attendance for their first ZBA meeting after they had been sworn in by the Select Board.**

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

**Meeting Minutes**

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

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

**Member McLaughlin read aloud the public notice into the record**.

Chairman Easom reminded everyone that those who would be sitting on this application would be Bruce Easom, Thomas Peisel, Dan McLaughlin, Jay Prager, and Veronica O’Donnell.

Chairman Easom thanked Member Petropoulos for reaching out to Alfred von Campe, one of the three persons who expressed interest in becoming a Zoning Board of Appeals member and was not selected. Mr. Easom also thanked Mr. von Campe for putting his name in to the ZBA.

Chairman Easom mentioned that he reached out to the Chief of Police, Director of the Department of Public Works and the school district about the safety on Cow Pond Brook Road. The DPW and Police Department had submitted comments back when the project was being proposed as a 40-unit development and they had not submitted anything since the new proposal was 28-units. Chairman Easom read an email from the DPW Director, Tom Delaney, dated March 1, 2024. In sum, Mr. Delany expressed his concerns about buses being able to get in and out of the property safely and that this does not seem like a buildable development given the location and land. Chairman Easom also read an email into the record from himself, the Superintendent or schools and from Dee Bus Service. This email explains how getting a bus down to this development could become a reality and what work would need to be completed to be able to get down to this development. There was no response from the Police Chief as of this meeting.

Member McLaughlin asked if there was a turning radius analysis done for any fire trucks that may need to get in to the development. Mr. Alphen said that he would like to think that there was a customary analysis that was completed that would have determined this but he will add this to a list of items to check on.

The “spite strip” was the next topic of discussion and Chairman Easom read an email from Spencer B. Holland dated February 27, 2024 into the record regarding this matter. Spencer Holland’s email states that he agrees with the gist of what the applicants have mentioned about this “spite strip” being a public way and that it should not affect the project.

There were also preliminary comments submitted by the applicant on stormwater and an updated list of waivers. These comments have been submitted to the peer reviewers. Paul Alphen summarized the highlights of the two documents and mentioned that the main important point seems to have to deal with the level of detail that the peer reviewer wants for the stormwater design. Mr. Alphen said that Mr. Brem explained what preliminary plans are required for purposes of a 40B project and how the plans that have been submitted are what is required per this information. Another topic was the proposed water line and how Nitsch questions whether the plans show sufficient detail and Mr. Brem tried to identify where this level of detail was. On the topic of water, it is in Mr. Alphen’s understanding that his clients, the applicants, have met with Tom Orcutt to discuss the water study that is needed as a prerequisite for this grant application for the water line extension and how they have commitment to the necessary funds for this to go forward. Mr. Brem said that they would anticipate that since the daily sewage flow is now within the jurisdiction of the Board of Health that a condition of approval would incorporate provisions regarding the compliance with the applicable regulations. Mr. Alphen also said that there is another memo that was submitted in November for waivers that is a summation of the local Board of Health regulations and he was not sure if these had previously been submitted.

Nitsch Engineering had commented on site review plan requirements and Mr. Brem reported that the project is not subject to site plan review so all of these requirements are not applicable. A cut and fill analysis and location of electrical communications, etc. are not submitted at this stage of the submission process but they expect that there will be conditions of approval for the final plans to have that information on them. Mr. Alphen also mentioned that there was a question pertaining to an environmental analysis and he explained that the applicant is not required to submit an analysis as part of the application process and that it is up to the Zoning Board if one is warranted. Mr. Brem has asked if the Board has formally requested an environmental analysis pursuant to Section 338-34B of the regulations.

**Chairman Easom opened the floor to the board:**

Judi Barrett mentioned that preliminary plans do not always mean the same thing to everybody and that her experience is that when a peer review consultant is reviewing plans submitted under 40B, they will point out to the Board areas within which the plans do not meet a requirement and that it comes down to whether or not the Board needs particular information in order to determine a decision. The Board should discuss with Nitsch what is needed now in order to determine if this project is feasible, buildable and other things that may need to be addressed.

There were no comments from the Board at this time.

Chairman Easom asked Mr. Alphen to elaborate on the email about the issues regarding the slope of the road in to the development. Mr. Alphen said that there were questions in Nitch’s letter regarding the slope of the road and the final grade and Mr. Alphen mentioned that he submitted a letter dated February 5, 2024 that explains Rosie Lane is proposed as a private way and that it will be owned and maintained by the condominium association and that it is not anticipated to be a “shared driveway”. This road is better described as a “lane close” or “minus street”. Since this development is not described as a subdivision, the maximum grade of a lane or minus street is 10% and the current plans show a grade at 10% at a point to the degree that waivers a requirement the applicant has requested a waiver of section 381.10.D2 to allow a maximum grade of 12% in a waiver from section 318.10.D4 to allow a leveling area for not more than 4% at a distance of 20 feet from the nearest edge of the intersecting travel way. The applicant is also requesting a waiver from section 381.10.D5 to the degree that a waiver from the subdivision rules and regulations are applicable to permit the grades within the right of way to exceed 7 feet above or below existing grade because of the unusual existing topographic conditions of the site. Both of these waivers are warranted to reduce the amount of fill required at the site. Mr. Alphen anticipates that the peer reviewer will have comments on these requests as well. Chairman Easom said that the Fire Chief may be interested in this as well.

Member Prager said that he would like to get an idea of what the layout looks like with these different grades, but the peer reviewer may be of better help with this. It was determined that Nitsch should review this and submit their comments on these matters. It was noted that both Nitsch and the Fire Chief have been given this information to review.

Takashi Tada, Town Planner, asked if these plans included the turning radii and Mr. Alphen was not sure and said that it was something that would have to be discussed at a future meeting.

Judi Barrett mentioned that these were waivers of subdivision regulations and asked if the Planning Board ever granted a waiver for a slope similar to this and Mr. Tada said that he believes that they have granted a waiver for a 7-foot fill maximum but was not aware of one that was for the slope getting into a development. There may have been a small number before his tenor as Town Planner, but would still be an uncommon request.

There was further discussion regarding the slope and fill for this development. It was asked how much fill was being brought on to the site and if the cut and fill analysis has been submitted yet and Mr. Alphen did not believe they had submitted them yet. This as an item that should be obtained and submitted.

Chairman Easom asked if the applicants were required to file a MEPA report for this, given the fact that they are presumably receiving State funds for this project and Mr. Alphen said that he believes Jeff Brem has already started to pull this together. It was mentioned that the applicants would likely need to submit one for the rare species as well.

Chairman Easom reminded everyone that the close of the public hearing, with extended date, would be April 24th,2024 at midnight. Due to this, Mr. Easom asked when the list of items requested would be submitted. Mr. Alphen said that these would be done by the next meeting, which would be in 2 weeks. Mr. Alphen said that they would be willing to request another extension if necessary.

**Chairman Easom opened the floor to the public:**

Anne Riemer, resident and abutter, read her own letter into the record and expressed her concerns regarding health and wellbeing to potential future residents as this location in particular. She explained the odor pollutions she, and others, have experienced, from the Black Earth composting plant and how this development will be the closest to this composting plant and the future residents would be affected the greatest by being there. She also expressed her concerns regarding the current traffic along this road and around this area. It was noted that some of these concerns should be addressed by the Board of Health. Unless these are considerations in any other permitting process, these may or may not be concerns that the Board can consider for their decision. A copy of this letter will be put on the Zoning Board of Appeals website.

A Groton resident asked what studies have been done at this stage to ensure that the groundwater hasn’t been contaminated and if a study has been completed the potential of this property becoming flooded. Chairman Easom said that the landfill has been capped and approved by the State as a capped landfill and this document is a public document and the Board of Health would be able to provide this information. However, there is a rubber membrane over the top of the pile to keep water from infiltrating and leaching materials out of the material that is in the landfill. Samples have been taken but not necessarily any and all samples, so there are some unknowns about this landfill situation. Takashi Tada said that the landfill is capped and it is required to be monitored, so the Town has a contract with the firm that monitors the landfill according to the MassDEP requirements. These reports can be found in the Board of Health file.

Another Groton resident and abutter made a comment that he was surprised that this was close to approval when there was a significant number of unknowns. He also mentioned the ongoing traffic concerns and how it may not seem like a significant amount in general, but for those who live and walk on this road, it is a significant amount. Chairman Easom said that there were limitations that the Board has regarding 40B applications and Ms. Barrett went in to further detail regarding the waivers and what the Board is able to do (or not do).

This same resident asked if a 40B application has ever been denied and it was answered that there has been in recent times, however it is not entirely common. It greatly depends on certain aspects on if it will be upheld.

Paul Alphen has a list of items that he should obtain for the next meeting and Chairman Easom has a list of items that should be followed up on as well.

Member Peisel asked about the path of resolution for the sidewalk or turning radius. Chairman Easom said that he will have a conversation with the Town Manager and Town Planner to discuss what this process looks like on their side, in conjunction with the applicant since there is a shared cost with this.

Hans Riemer concurred with his wife’s comments about the odor pollution at this location and that you can smell it from his house, which is about a mile down the road. He recommends monitoring the smell and wind and sounds from the shooting range for any helpful evidence/information for this project.

Member Peisel asked about the environmental assessment and if this is something that needs to be voted on so that the applicant should bring it before the Board. Since this is not a requirement, the applicants are asking if they request this, the applicants will do so but if they do not, they will not submit one. Ms. Barrett asked Mr. Tada if the Planning Board ever requested a specific environmental assessment for certain permits and Mr. Tada was not aware of a situation where this has occurred and said that the site plan review requirements are usually very detailed in themselves and does not necessarily require more information.

Anna Eliot reminded the Board the interest the Parks Commission has in across the road with road elevation and possibly transferring fill from this location and suggests a potential condition where it should be that the fill being removed from across the road should be used on that location. The fill Ms. Eliot is bringing up is regarding the parking at the fields and how they are trying to improve the parking at this location and the fill across the road would be beneficial. It is recommended to submit a cut and fill analysis.

A Groton resident asked if an alternate site has been considered and Mr. Alphen said that as far as he knows, the applicant has not considered another site as this site is an appropriate site for the proposed use.

Fran Stanley mentioned that neighboring properties have conducted environmental analysis’ and there has been discussion with Natural Heritage regarding what has already been found and that this location would likely also contribute to the analysis. Mr. Alphen said that there was a preliminary meeting with Stewardship Committee regarding Natural Heritage but there has been nothing further yet about the restrictions with the use of the property but this is still an ongoing discussion.

A Groton resident asked if the cost incurred to the Town would be a consideration the Board can consider in making a decision and Ms. Barrett said that the Board’s jurisdiction is public health, public safety, environmental impact, open space, building and site design and these are the things that they can impose conditions on when making a decision.

Another Groton resident asked if there has been an assessment done on whether more police, fire, etc. will be needed with the newly approved Groton Farms and this project if it were to get approved. Ms. Barrett said that this is not what public safety means in the context of Chapter 40B. If there is a public safety concern on the street that no amount of mitigation can fix and if the project designed sufficiently per the Fire Department so they can access in the case of an emergency and reach at least three sides of the building.

There was brief discussion about the next meeting date and it was discussed that the next meeting to be held would be on March 20th, 2024. This meeting will be pushed forward to 6:00PM.

***Member Prager made a motion to continue the public hearing of Heritage Landing to the 20th of March, 2024. Member*** ***Peisel seconded this motion and it was carried unanimously.***

**General Business**

**Approval of Invoice from MDM Transportation**

*The Chair will entertain a motion to approve the invoice from MDM Transportation, invoice 1303-01 in the amount of $6,600.00. Member Prager made a motion to approve the invoice from MDM Transportation, invoice 1303-01 in the amount of $6,600.00. Member Peisel seconded this motion and it was carried unanimously.*

**Approval of Invoice from Nitsch Engineering**

*The Chair will entertain a motion to approve the invoice from Nitsch Engineering, invoice 84911 in the amount of $1,295.00. Member Prager made a motion to approve the invoice from Nitsch Engineering, invoice 84911 in the amount of $1,295.00. Member Peisel seconded this motion and it was carried unanimously.*

**Approval of Minutes from February 7th, 2024**

*The Chair will entertain a motion to approve the meeting minutes from February 7th, 2024. Member Peisel made a motion to approve the meeting minutes from the 7th of February 2024. Associate Member O’Donnell seconded this motion and it was carried by majority vote.*

**Member Pragermade a motion to adjourn. Associate Member Baker seconded the motion and it was carried unanimously.**

A motion to adjourn at 7:25 PM