

Zoning Board of Appeals
 One Liberty Lane
 Norfolk, MA 02056
 June 5, 2019
 7:00 P.M.

Christopher Wider – Chair ----- Present	Medora Champagne – Associate Member-- Present
Michael Kulesza – Vice Chair ----- Present	Robert Luciano – Associate Member ----- Present
Joseph Sebastiano – Clerk----- Present	Amy Brady – Administrative Assistant----- Present
Donald Hanssen – Member ----- Present	Dan Hill – 40B Attorney ----- Present
Devin Howe – Member ----- Present	

The duly posted meeting of the Norfolk Zoning Board of Appeals convened at 7:08 P.M. Room 124 of the Norfolk Town Hall. Mr. Wider announced that the meeting was being video- and audiotaped

PUBLIC HEARINGS:

4 & 6 Hill Street, (2) SPs – Request for continuance to July 17, 2019 – Present was Ted Cannon, attorney.

Mr. Kulesza made a motion to continue the hearing for 4 & 6 Hill Street to July 17, 2019 at 7:00 P.M.; Mr. Howe seconded the motion;

Mr. Wider asked why the hearing continues to be pushed out. Atty. Cannon said that the applicant runs a snow removal business, and was very busy into late spring. He has now been working with his engineer, and is just about ready to complete site plan approval in front of the Planning Board. Atty. Cannon requested that the hearing be re-advertised, and abutters re-notified.

the vote on the motion was unanimous.

6 Hill Street Appeal – Mr. Wider said that the applicant had asked for an appeal due to a personal conflict.

Mr. Hanssen made a motion to continue the hearing for 4 & 6 Hill Street to June 19, 2019 at 7:15 P.M.; Mr. Sebastiano seconded the motion; the vote on the motion was unanimous.

81 Pond Street Appeal (cont'd from May 1, 2019)

Mr. Wider called the continued public hearing to order. Present was Timaree Michienzie, applicant; Bob Bullock, Building Commissioner/Zoning Enforcement Officer.

Ms. Michienzie handed out a package containing her Town of Norfolk Business certificate; her application for an F.11.a; an email from Bob Bullock regarding the F11a, dated 10/4/18; an approved F.11. site plan determination for a bank that is signed by Mr. Bullock; the site plan on file with the town dated 12/14/93; and pictures of the property now. The property required a lot of “cleaning up” (pallets, stone, and other debris) and “came with a tenant.” They have connected to town water and have a town-approved septic plan. Previous uses include a data center with 10 or more employees; a handicapped mobility building with 10 or more employees and approved handicapped parking in the front; and a masonry company. The site plan they received with the purchase and submitted with the F11a did not have signatures. They have since found a site plan with signatures, dated 12/14/93, which is compliant with zoning laws which they would like to use. Mr. Wider clarified that they are appealing the Building Commissioner’s request for a full site plan approval with the Planning Board. Mr. Bullock said that in looking at the F11a application that was submitted to him he saw the site plan differed from the signed one of file, and decided to make a site visit with the Town Planner, Rich McCarthy. Parking spaces on the 1993 site plan were behind the fence on the side of the building, some excavation had been started in the front; nine commercial vehicles were parked out back, which would have required a special permit, no stormwater collection was apparent. Mr. Bullock said

commercial vehicles were parked out back, which would have required a special permit, no stormwater collection was apparent. Mr. Bullock said that his email said the site needed modification to the original (1993) site plan; if the parking is to be in front, that would be an additional special permit; there is also garage space storing electrical equipment that was not on the plan. Mr. McCarthy noted that if they were going to comply with the 1993 plan, they really didn't need any modification; Mr. Bullock pointed out where the driveway would need to be straightened, and they would need to determine how that building would be accessed from the parking lot.

Mr. Wider suggested the applicant work with the Town Planner to prepare a new F11s for submittal, and then determine if a site plan modification is necessary at that point. Mr. Bullock mentioned that fact that there does not appear to be a way to deal with stormwater. Applicant will work with both Mr. McCarthy and Mr. Bullock. Mr. Wider suggested that they continue the hearing until this is worked out, at which point it can be withdrawn without prejudice.

Mr. Sebastiano made a motion to continue the hearing for 81 Pond Street to July 17, 2019 at 7:30P.M.; Mr. Hanssen seconded the motion; the vote on the motion was unanimous.

113 North Street, Finding

Mr. Sebastiano read the Notice into the record. Present was Ted Cannon, attorney for the applicant; Eric J Carlson, trustee and applicant; Dana B Willard, trustee and applicant. Plans presented were entitled "The Ox Pasture," sheets #1-3 of 6, prepared by Dunn-McKenzie, Inc., dated 12/15/18, Rev. through 4/12/19

Lot consists of 10 acres; it is currently one lot with two single family homes, with access via a small driveway. They are requesting from Planning Board to divide it into 3 lots, and to construct a private road with a "hammerhead" at the end to access all three houses. They are in front of the ZBA because of some structures on the property. There is a very old fieldstone garage that would not meet the side setback requirements with the new lot lines. In addition, there are 5 sheds; 2 will be removed, but the remaining 3 end up in the front yard with the lot lines. Atty. Cannon said the request is for the board to make a finding under 40, section 6, that the requested alteration will not be substantially more detrimental than the existing nonconformity. Mr. Cannon did point out a misstatement in his initial application, where he did state that the Planning Board had requested access for all three lots to come off of the road; in fact, only 2 lots will be accessed from the new road, and one will continue to be accessed from the current driveway. Atty. Cannon detailed where the 3 parcels will be. Parcel 1 has the fieldstone garage. Parcel 3 backs up to conservation land. The existing houses are on Lots 1 & 3; Lot 2 will be a new home. The house on Lot 1 will be refurbished at some point; the house on Lot 3 will probably be razed, and it needs a new septic system. There are 5 sheds; those numbered 1, 3 & 5 on the plan will be removed. Shed 4 is 12' x 20', built a couple of years ago for storage, and Shed 2 (8' x 16') is for gardening tools, etc. He would like to keep these two. There is no room to move the lot lines. A covenant will be in place for the private road for maintenance. Land is currently in a Trust, it will be separated out to three owners. Discussion ensued with respect to the creation of nonconformities regarding the sheds, and whether it was substantially more detrimental to the surrounding area than the existing nonconformity of two houses on one lot. The sheds will be set back 400' from North Street, on a private way.

Mr. Kulesza made a motion to close the hearing for 113 North Street; Mr. Sebastiano seconded the motion; the vote on the motion was unanimous.

Lakeland Hills 40B Comprehensive Permit

Mr. Sebastiano read the Notice into the record. Present were Attorney Christopher Agostino; Ted O'Harte, Applicant; Stephen O'Connell, Andrews Survey & Engineering (ASE). Plans presented were entitled "Presentation Plan," sheet SK1, prepared by ASE, dated 6/5/19.

Atty. Agostino began with introductions and an overview of the Chapter 40B law, and the project to date. Since the application was submitted in stayed in September it has changed somewhat; significantly, a Notice of Project Change was submitted to Mass Housing, and there is no longer a rental component (Lakeland Commons) of the project. Another design element that has changed regards "critical health and safety concerns;" the 1,100' narrow entryway has been redesigned as a "double barrel" entryway. He mentioned that preliminary comments have been received from the Board's peer review engineer. Density was also addressed, and Atty. Agostino stated that density alone does not make a project non-viable, unless it related to a critical health and safety concern.

Mr. O'Connell then gave an overview of the proposed project, which he said encompasses 22 acres. The entryway would be two 18' wide paved lanes with a landscaped island. The 1,100' l.f. entryway would end in a traffic calming circle, and then go in two directions, creating a 24' wide loop with two 24' wide cut-through roads, and a 24' wide "eyebrow" road. There are 96 units proposed, a mix of single-families and duplex units. Mr. O'Connell said there is a single wetland resource area on the property, the boundaries of which he said were approved by the Conservation Commission and verified by Mass DEP through a Superseding Order of Resource Area Delineation (SORAD) which is valid for a period of three years. He pointed where there is one proposed wetland crossing. Five stormwater detention basins with closed pipe networks are proposed to convey water to four general areas; two basins are on the entry road, which collect water running down from the high point there; stormwater after the highpoint of the entry road will run down in to the developed area, and be collected with that stormwater in three basins located there. Soil testing performed by ASE indicates that the soil would accommodate the stormwater system as proposed. The project would be serviced by the municipal water main on Seekonk Street; hydrant flow tests performed under the supervision of the Department of Public Works (DPW) indicated adequate supply and pressure. Columbia gas has proposed a gas line in Seekonk Street, which would be utilized in this project. Other utilities would come underground from Seekonk Street and remain underground throughout the project. An onsite wastewater treatment plant (WWTP) is proposed; potential leaching and facility areas are being proposed based on initial soil testing and consult with a WWTP engineer. A total of 221 bedrooms are proposed, equates to approximately 24,000 gallons per day (gpd) based on the Title 5 standard of 110 gpd/bedroom. In total, there is about 4,200 l.f. of road (entryway is counted only once). Mr. O'Connell said that WSP provided preliminary traffic analysis [this has not been received by the ZBA] on the original 104 unit proposal; 604 weekday total trips with peaks as follows: A.M. – 46 trips; P.M. 54 trips; site distances were found to have met or exceeded standards. Road profiles were provided with the plans; a comment from the preliminary engineering review indicated that the grades do not tie in to the surrounding grades; Mr. O'Connell acknowledged that, and said that the grades will tie in as the design develops.

Atty. Hill reviewed the history of permitting the project, beginning in September of 2017, at which time the Board had before it 3 pending Comprehensive Permit Applications exceeding 300 units, and so activated "Safe Harbor" under 40B regulations; one of those projects was closed on April 24, 2019; tonight was agreed as an opening date, and the Board now has 180 days to close the hearing, unless the applicant consents otherwise. Atty. Hill noted the project was changed in December, 2018, as described by Mr. O'Connell. Atty. Hill referred to preliminary comments on this project by Sean Reardon of Tetra Tech, and noted that the applicant had been contacted to see if Mr. Reardon was an acceptable reviewer of the civil engineering part of this project; the applicant had no objections, and provided a peer review deposit into the town's account. Mr. Reardon's comments consisted of 9 bullet points. Atty. Hill said there are 13 categories of submittal requirements for 40Bs. The first category is the Waiver Request list; Atty. Hill feels the waiver list as submitted is deficient, and Tetra Tech has been asked to go through it to ensure all necessary waivers have been requested; that information should be available for the next meeting. The second category is site plans, which have been submitted, and Tetra Tech has made some initial comments. Subsequent categories include reports, such as a traffic study and environmental impact reports; signed and stamped architectural plans are required, as are various tabulations which have not been provided. A definitive subdivision plan is required; utility reports have not been submitted; written narrative not provided. A certified plan of the site has been received, and the Board also received a detailed existing conditions plan when they heard an appeal stemming from the Zoning Enforcement Officer's stop work order issued for this project site. Other submittal requirements have been met. Atty. Hill said the Board's role in the 40B process is to decide which

bylaws and regulations should be waived; density is not grounds for denial, but excessive or inappropriate impact to public health and safety, environmental impacts, and planning objectives of the Town of Norfolk.

In response to Mr. Kulesza, Mr. O'Connell cited the following: unit frontages will range from about 40' – 85'; lots sizes will range from 3,000-10,000 s.f.; distance between units will be 15'; driveways will range in length from 22' to 28'; front setbacks will be similar to the driveway lengths; rear setbacks will range from 15' to 60'.

Mr. Howe noted that some of the ponds are very close to abutting properties, and asked for assurances that stormwater policies and procedures would be carefully followed in order to protect public health, and that septic systems on abutting properties be shown on the plans in relation to the WWTP and the stormwater management system. Atty. Agostino said that stormwater management will come under the jurisdiction of the state, and the WWTP will also be state-permitted; Mr. Howe acknowledged that, but stated that the ZBA also has a responsibility to see that the project complies with the state standards. Atty. Agostino said since the WWTP and stormwater systems are state regulated, the ZBA only needs to determine, from the preliminary plans, if there is a site condition or other issue raised that would prevent the project, from a preliminary perspective, from complying with the state requirements. He said the applicant does not need to prove compliance at this stage; if an issue appears in the course of this hearing process it can be dealt with, but they are not going to design and present a fully engineered stormwater management system or wastewater treatment plant; they will revise preliminary plans only to the extent that the peer reviewer needs to concur that it is feasible, and the ZBA only needs to condition the permit on the applicant obtaining a state-issued permit. Mr. Howe asked if any test pit information has been submitted; Atty. Agostino said they have the data and will submit it. Mr. Howe noted that he may have concerns with the stormwater system that are within the ZBA's right to confirm what the applicant is proposing; for instance, one basin near Seekonk Street appears to be below the elevation of a wetland resource area, which is concerning without having seen any test pits. Also, DEP guidelines state that infiltration basins cannot be within the 50' resource buffer, and one of them is located within that buffer; Mr. Howe expressed concern that the basins near Seekonk Street may spill out onto the street, citing this as an example of why the Board should see a full stormwater report and test pit information. Atty. Agostino thanked Mr. Howe for pointing that out, and said they will look into it; Mr. Howe again asked if the Board will received a complete stormwater report and test pit information so they can confirm it complies with DEP standards, and that it will not potentially cause an impact to the health and safety of the town. Atty. Agostino said that since Mr. Howe has raised the concern about the test pits near Seekonk Street, they will provide sufficient information to Tetra Tech, but they will not at this point provide a fully engineered stormwater plan. The "walkability" of the route from the proposed development to the train station was debated. Mr. Kulesza stated for the record that in 21 years, he has never seen anyone walk from that area to the train. Snow removal and parking capacity were addressed; Atty. Agostino said the current parking plan exceeds bylaw requirements, and snow removal areas will be addressed. The project could be conditioned on tying into the future gas main; if never installed, the whole project will need to be re-engineered.

Atty. Hill said that the Board will have a hard time reviewing the project if a stormwater report that complies with state standards is not received. A stormwater management permit would normally be issued by the Planning Board if this were not a 40B project, and there are other Planning Board waivers from which the applicant is requesting waivers; waivers are not automatically approved, the applicant must show the waivers are necessary to make the project economical. Atty. Agostino said they will submit a stormwater report, he just wanted to stress that the standard is not for them to prove compliance; he said the information submitted will be sufficient for Tetra Tech to review.

Karen Clark, Seekonk Street, asked if all 20+ acres will be clearcut; Atty. Hill said there will be substantial grading and much of it will have to be cut; specific areas of concern that are pointed out to them could be replanted. Josephine Cordahi, Seekonk Street, said that Seekonk Street is currently not walkable, and there is not safe space for children to wait for the school busses; Atty. Agostino said as the application exists now, there are not sidewalks planned for Seekonk Street, but walkability to the train station is an important issue that will be considered; all units will be 2- and 3-bedroom units, the WWTP will dictate the number of gallons per day (gpd) that can be treated; according to Google, the train station is a 40-minute, 2-mile walk,

not including the entryway to the development; Mr. Howe mentioned the capacity of train station parking, which seems to be near capacity; Atty. Hill asked the status of the state groundwater discharge permit; Atty. Agostino said the permit will not be obtained prior to the disposition of this case by the ZBA. George McLaughlin, Stop River Road, asked if any ledge will need to be removed; Mr. O'Connell said there will likely be some blasting; a cut and fill analysis will be completed soon; Ms. Cordahi expressed concern about the narrow width of the entryway; Atty. Agostino said a traffic study has been done, and it will be reviewed and discussed in detail.

It was decided that Mr. O'Connell and Mr. Reardon will speak directly, and a new set of plans will be drawn up for review at the next meeting on July 31. July 5 was set as a deadline to submit the plans from ASE to Tetra Tech. Atty. Hill said the traffic study will be submitted. Atty. Hill said that the applicant would be willing to extend the 180-day deadline by a month. In order to not have to wait until July 31 to award peer review contracts, the board decided to delegate authority for choosing reviewers to the Chair in conjunction with the Town Planner.

Mr. Kulesza made a motion to delegate the choice of peer reviewer for landscape, architecture, wetlands science and traffic to the ZBA Chair in conjunction with the Town Planner; Mr. Sebastiano seconded the motion; the vote on the motion was unanimous.

Mr. Howe made a motion to accept Tetra Tech for civil engineering and stormwater review; Mr. Hanssen seconded the motion; the vote on the motion was unanimous.

The Administrative Assistant will request comments again from various departments, to be received by 6/21/19.

Mike Kosakowski, 24 Stop River Road, mentioned three 40B developments in close proximity to each other, with regard to traffic patterns; Mr. Wider said the traffic study will take that into account; Ms. Clark said traffic patterns change dramatically when school is out; it was explained that traffic studies do take seasonal fluctuations into consideration.

Mr. Sebastiano made a motion to continue the hearing for 144 Seekonk Street, Lakeland Hills, to July 31, 2019 at 7:00P.M., in Room 124 of the Norfolk Town Hall; Mr. Kulesza seconded the motion; the vote on the motion was unanimous.

MINUTES:

April 24, 2019 – Mr. Kulesza made a motion to accept the minutes of April 24, 2019; Mr. Hanssen seconded the motion; the vote on the motion was unanimous.

May 1, 2019 – Mr. Kulesza made a motion to accept the minutes of May 1, 2019; Mr. Sebastiano seconded the motion; the vote on the motion was unanimous.

Mr. Kulesza made a motion to adjourn the meeting; Mr. Hanssen seconded the motion; the vote on the motion was unanimous.

The meeting was adjourned at 9:42 P.M.


Joseph Sebastiano, Clerk