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**Scituate Zoning Board of Appeals
Meeting Minutes
December 7, 2017**

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The Scituate Zoning Board of Appeals held a public hearing on December 7, 2017 in the Joseph P. Norton Emergency Operations Center at the Public Safety Complex located at 800 Chief Justice Cushing Highway, Scituate. The meeting was called to order at 7:00 P.M.

Present: John Hallin, Chairman, Sara Trezise, Ed Tibbetts, Anthony Bucchere.

Also Present: Jason Talerma, Esq., Mead, Talerma & Costa, LLC. and Bob Vogel, Building Commissioner and ZEO.

Application: SEB/Herring Brook Meadow, LLC requests a Modification to the Comprehensive Permit for Herring Brook Meadow, LLC pursuant to M.G.L. Chapter 40B, Sections 20-23. The request for change is on file with the ZBA for the project located at **126 and 132 Chief Justice Cushing Highway (Assessor's Map 58, Block 1, Parcels 8A and 5), Scituate, MA.**

Representing the Applicant: Bob and Geoff Engler of S-E-B, LLC, Attorney Stephanie Kiefer, Smolak & Vaughn. Also present: Jim Velleco, Architect, Grazado Velleco Architects; Jeff Couture and Al Trakimas, Scitech Environmental; Kate Kennon, Offshoots Landscape Architects.

Attorney Kiefer gave the Board a brief introduction of those representing the Applicant before an overview of the history and proposed changes of the Comprehensive Permit. The Board heard the initial application in 2006. The ZBA denied the application before the HAC overturned the decision on appeal. Subsequently the ZBA appealed the HAC decision. In January of 2014 the appeals court denied the 2nd appeal. The approved permit for 60 total units, of which 25% were deemed to be affordable units, has been scaled down to 48 units in two buildings in the proposed modification. The proposed plan shows no changes to the open space, land set aside and graveled path approved in the permit issued. The percentage of affordable units remains at 25%. Additional changes proposed include the elimination of surface parking to be replaced with underground parking and a decrease in the impervious surface. The 2007 waiver request was included in the recently submitted documents and renderings. The proposed modification will require a height waiver for the increased building height as a result of the 2016 FEMA flood map regulations.

Mr. Geoff Engler, Vice President of SEB LLC and Project Manager of Herring Brook Meadow continued the presentation with the statement of his awareness of the contentious history of the application, and assurance the Board they have no interest or intention in adversarial hearings on the proposed modifications. SEB strives to meet the needs of the town and those neighbors in close proximity to the proposed project. The revised plan has been targeted toward retirees and

empty nesters. SEB has made great efforts to share the proposed plan with several town departments and respond to any concerns raised. The response from the meetings was all positive. Mr. Engler was later amused by the characterization in a letter received from the Acting Town Administrator noting the Applicant's "callous concern" for the significant impact of the flood regulations and issues involved therein. In fact, the flood zone was the single biggest consideration in the proposed revisions.

Mr. Valleco reviewed the submitted revised plan via slides on a projector. The numerous unbuildable areas of the lot were noted. The first building, being the dominant building, would be as picturesque as could be. The existing large Beech tree would remain. The concept shows less along the street side with a lower profile in an effort to achieve the goal of minimizing the height. Underground parking beneath both buildings with separate entrances and lobbies further enhance said goal. Mechanicals are shown to be located in the lobbies. The buildings would be constructed with a concrete base (underground garage location) with a wood frame and steel. The garage is shown at elevation 12'. Both structures must fully comply with the 2016 FEMA flood mapping regulations for the AE 16 zone. Accordingly, the back side of the basement is required to remain open to allow flood waters to drain out as the tide recedes. The second building is shown to be located approximately 280' from the first building.

Mr. Trakimas presented the Board with the existing conditions of the site. The entrance from CJC is unaltered. The pervious area has been eliminated. Utility plans are unchanged from the approved plan. An on-site treatment plan has been approved by D.E.P. with mechanicals for such to be located in a separate shed-like structure. Green space within the development would be heavily landscaped. Developed area remains unchanged at 3.7 acres.

Ms. Kennon explained the submitted plans for landscaping on site. Patio space is proposed for the area between the two buildings. Native plantings with consideration for seasonal color have been included. Vegetation along CJC would remain and added to. Ms. Kennon described the plantings proposed on site.

At the conclusion of the Applicant's presentation Mr. Hallin opened the meeting to questions from the Board prior to public comments and questions.

Mr. Bucchere stated it looks as though the square footage of the units would increase a great deal. Are any changes proposed for the affordable units?

Mr. Engler explained the units range from 1,400- 1,700 sq. ft. The units are larger than the original plan and some of the third floor units will have a loft area to be accessed by a staircase in individual units, thus creating a fourth floor. This accounts for 9,000 sq. ft. built in to the roofline. Affordable units would track similarly to other units in size.

Mr. Bucchere asked for clarification of the open space mentioned "for the Town's enjoyment".

Mr. Engler explained the 3.9 acres would be owned by the residents. Condo. fees would, in part, be applied to maintenance associated with the community garden space. In fact, the statement referencing open space for the Town's enjoyment may have been a misrepresentation.

Mr. Bucchere observed the public access to the river traverses the property.

Mr. Engler acknowledged there is no well-defined formal entrance.

Mr. Bucchere requested clarification of the emergency overflow parking area proposed over the septic leaching field.

Mr. Engler explained cars in the underground garage can relocate in a flood event. Parking in the meadow area would have the space capacity of 77 cars and would pose no threat to the septic system.

Mr. Bucchere further inquired about initial plans for property management and noted significant concerns related to flood plain issues as well as density unusual for Scituate.

Mr. Engler explained the property owner typically recommends a management company. To ensure maintenance of the infrastructure the Board can insert conditions in to the permit. The high quality of this project typically translates in to owners being vested in maintaining the property.

Ms. Trezise referenced Mr. Engler's statement and asked what, exactly, was he amused by?

Mr. Engler replied the letter stated the FEMA flood map was not considered. Mr. Engler stated the flood regulations were the single biggest consideration in the proposed plans.

Ms. Trezise explained that flooding is a very serious issue in Scituate and referenced Scituate Zoning Bylaw Section 470.9 as well as the 2014 decision of the Mass. Supreme Judicial Court in *Doherty v. Planning Board*. Ms. Trezise asked do you dispute this land is subject to flooding?

Mr. Engler stated his agreement with the flood issues surrounding the Town as well as the proposed project location.

Ms. Trezise explained the bylaw states that vacant land subject to flooding cannot be built. This bylaw does not pertain to existing structures razed and reconstructed. Ms. Trezise requested the Applicant submit a site plan showing the location of the buildings with an overlay layer of the flood plain for the approved project as well as the proposed plan.

Mr. Engler assented to the request.

Ms. Trezise stated her reservations regarding the underground parking garage and the feasibility of moving 77 cars in a flood event. Environmental hazards associated with auto fluids and trash receptacles located underground must also be evaluated. It is incumbent upon the Applicant to ensure the health, safety and well-being of citizens in the Town.

Mr. Engler stated he would be concerned about a flooding event, but the situation is not unique. The garage has been designed to meet all FEMA requirements.

Ms. Trezise asked what the market price range of the units.

Mr. Engler stated the gross figure is anticipated to range from mid \$500,000 to mid \$700,000 with penthouses being priced at the upper end of the range. Affordable units would be expected to range from \$160,000 to \$200,000.

Ms. Trezise asked if the cost of flood insurance had been considered and how affordable units may be impacted by that cost.

Mr. Engler stated those costs are not yet known. After a definitive answer is known he would inform the Board at a subsequent hearing.

Ms. Trezise asked if handicapped accessible units were part of the plan.

Mr. Velleco explained the units are constructed to be adaptable for handicapped access.

Mr. Tibbetts noted the proposed project is an improvement over the last project and is visually more appealing. However, the back side has substantial impact from the marsh. Mr. Tibbetts expressed concerns with the flooding issues and referenced a ZBA decision precluding an Applicant from building as a result of the Doherty ruling in despite of the proposed plan complying with all current FEMA regulations. The case, known as Walsh v. Peter Morin, was heard in Plymouth Superior Court, later in land court, and subsequently remanded to the ZBA to specifically to apply the terminology "subject to flooding" as in the Doherty case. Mr. Tibbetts expressed concern with the Applicant and the Board investing significant time in hearings and review processes only to determine the subject property is not buildable.

Mr. Engler confirmed the cases referenced were not 40B's.

Mr. Bucchere stated the question to be answered is: do the Scituate Bylaws apply to 40B's?

Attorney Talerman confirmed the bylaws do, in fact, apply to 40B's. It is incumbent on design professionals to prove conclusively, with agreement from the Town design consultants and peer review, that regardless of the bylaws, if the project complies with federal and state requirements, that the structures, health and safety and characteristics of refraction and deflection of flooding water on to abutting properties are not adversely affected.

Attorney Kiefer reminded the Board their review is confined to only the changes proposed to the existing comprehensive permit.

Mr. Hallin asked if the Applicant intended to submit a pro-forma.

Attorney Talerman stated a pro-forma may be submitted further in to the review hearings.

Mr. Hallin asked for clarification on the plan and logistics to move cars during a flood event.

Mr. Engler replied that arrangements would need to be made.

Mr. Hallin asked if a topographical proposal had been submitted.

Mr. Engler stated it had been submitted. The design is similar to that of 2006.

Mr. Hallin asked if any affordable units were slated to be those with a loft on the 4th floor.

Mr. Engler replied "yes". The plan shows six affordable units in each building.

Mr. Hallin asked that the Applicant address the issue of public access.

Ms. Trezise referred to the unlawful alteration of the property and the conflict surrounding the Conservation Agent selling his property to the prior owner of the proposed development the proposed septic system lies in the location of said property. Ms. Trezise asked if the enforcement action was completed and if the ZBA can request a new order of resource area delineation.

Attorney Talerman suggested the Conservation agent be consulted to answer if the passage of time has "cured" the alteration of the property. He further informed the Board that the Applicant has a valid order of conditions with an extension on it and that the Conservation Agent has contacted D.E.P. for a review of the proposed project. The Applicant must submit a Request for Change to D.E.P. If D.E.P. determines the change to be substantial enough the application will then come before the local Conservation Commission. Wetland delineation and conditions past and current will be reviewed.

Mr. Engler stated D.E.P. had been contacted. Based on communication thus far, he feels confident there will be no issue with D.E.P. on the amended project.

Attorney Kiefer explained the history of the enforcement order.

Attorney Talerma explained Woodard and Curran, peer reviewer for the Town, will present a proposal. Scitech will provide a further report which should include a review of interests to be protected on land subject to coastal storm flowage. Further, operation and maintenance will require a significant plan. Additional analysis of the slope in the rear and the landscape architecture in the rear is needed. The underground parking and plan for relocation of cars as well as the potential environmental impact of trash receptacles located underground during a flood event must be further analyzed. Attorney Talerma stated that a traffic review will likely not be necessary due to the reduced number of units.

Mr. Tibbetts asked Mr. Trakimas if there is a more recent wetlands resource plan than the two dated October 2004 and April 2008. Mr. Trakimas responded that there is not because the site is still under a valid superseding order of conditions. Mr. Tibbetts also asked that Mr. Engler provide an outline of the project history. Mr. Engler agreed to do so.

Mr. Hallin asked Mr. Engler for a height marker/pole to provide a height perspective on site.

Mr. Engler suggested a marking of building location and site walk.

Mr. Hallin agreed to site walk and said a pole or height marker would benefit residents in getting a sense of the building heights on site, and the impact of such on views from the river as well as the neighborhood.

The meeting was opened for public comment.

Frank Kilduff of 125 CJ Cushing Hwy. asked how many gallons per day the septic system is designed for and expressed concern with the proposed height of the buildings. Height of 52' as shown on a plan is dramatically higher than the maximum allowed under the bylaw. Would both buildings be on the same elevation? Added concern was expressed with regard to the lack of sidewalks and the safety of residents who may want to walk to town with a curb cut out to a highway with a cars travelling 50 M.P.H. in both directions. This factor should be considered in the overall safety of the project.

Mr. Engler confirmed both buildings would be on the same elevation. Both buildings would be elevated considerably above the FEMA requirement, perhaps 8-10'. A 10' x 20' shed like structure will house the wastewater treatment mechanicals and additives.

Kathy Donahue of 4 Cushing Landing asked for an estimated amount of fill and a rendering of the broadside showing the elevation of abutting properties. The rear building appears large, looming and dense. Further, traffic has increased significantly in the past 11 years. The speed zone on 3A is 50 M.P.H. In the spirit of cooperation and effort to avoid unnecessary ill will, would the Applicant consider a neighborhood meeting?

Mr. Engler stated his contact information would be made available and asked the neighbors have one or two individuals serve as the points of contact for communication. The Applicant expects to engage with the neighborhood. Regarding the estimated amount of fill on the site, the Applicant would endeavor to provide an answer at the next hearing.

Matt Ahonen of 5 Martha's Lane asked what is the setback of the southwesterly side property line on the 126 CJC side. Additional concerns regarding the relocation of cars on top of the septic system during a storm and light pollution. Is there certainty the septic will not fail? How will light pollution be addressed?

Mr. Engler stated light pollution would be reviewed and addressed. Further, the septic system has been designed to withstand the weight of the cars.

Michael Collins of 24 Martha's Lane has become involved in the Scituate Housing Authority and understands 40B's are almost impossible to stop. Working cooperatively can help ensure the best possible outcome for the Town. The location of the wastewater treatment and generator are too close to the abutting neighbor's lot lines given the associated noise and fumes. Consider relocating for the benefit of those property owners. Further, a plan to eventually create a linear

walkway and bridge has been proposed by the Conservation Commission. Would the Applicant consider an easement to access a sidewalk from the corner of Martha's Lane to access the public walkway?

Marsha Klein of 146 C J Cushing Hwy. asked how the buildings and associated fill would impact her property.

Mr. Engler stated direct abutters would be addressed and their concerns would be heard. A narrative specific to Ms. Klein's property will be constructed and presented at a subsequent hearing. The issues concerning public access and building height has been made clear and will be reviewed. Further feedback will be forthcoming at a subsequent hearing.

Mr. Bucchere asked if the Applicant had a title report on the property and requested it be provided to the Board.

Tim Ayers of 2 Cushing Landing stated his concern related to the prospective bridge obstructing access via his boat to the river.

Werner Boehl of 15 Martha's Lane stated his concern for the volume of fill and impact of rapid rising water hitting the fill and having nowhere to go but the houses. Flooding is a huge issue. Studies so not show what living in the location for many years has shown.

Michaela Kildoff of 125 CJ Cushing Hwy. suggested a balloon test as a means to provide a building height perspective.

Mr. Hallin concurred and said other balloon tests have been successful. The height of the proposed structures is of great concern.

Mr. Engler stated the Applicant was willing to reconsider the idea and has heard the concern over building height.

Sandy Higgins of 25 Hollycrest Road reiterated concerns relating to flooding and building height.

Maureen Collins of 24 Martha's Lane stated her concern with density. Is there going to be sufficient parking for the units with three bedrooms?

Mr. Engler replied that ample parking had been planned and accommodated.

Gloria Hollstein of 11 Martha's Lane expressed further concern with the large amount of fill and flooding.

Mr. Engler explained there is a storm water management plan in place which will be reviewed and revised if necessitated by the proposed changes. The plan must be designed to a flood event.

Mr. Bucchere explained Woodard and Curran is the peer review engineer for the Town and will review the studies submitted by the Applicant.

Kathy Donahue asked if the 50' buffer was delineated on the plan.

Mr. Vogel referred Ms. Donahue to the G.I.S. online mapping tool on the Town webpage.

The Board and Applicant agreed to continue the hearing at a meeting on January 25, 2018 in the same location.

Mr. Tibbetts moved to continue the hearing at a hearing on January 25, 2018. Motion seconded by Mr. Bucchere. All in favor, unanimous.

Mr. Bucchere moved to adjourn. Motion seconded by Ms. Trezise. All in favor, unanimous.

Meeting adjourned at 10:00pm.

Respectfully Submitted,


Anne M. Kelly