



TOWN OF WEST NEWBURY

381 Main Street, West Newbury, MA 01985

ZONING BOARD OF APPEALS DRAFT MEETING MINUTES 07-02-20

ZBA Members attending: Paul Kelly (Chair), Patrick Higgins (Member), Dennis Lucey (Member), Richard Davies (Member) and Judith Gregg (Member),

Absent members: None

Meeting Documents Provided for the Meeting: Meeting Agenda; 40B permit rules amended approved on 6-11-20; e-mail responses from Sam Joslin and Jon Witten to Pat Reeser's questions on 6-11-20; Newspaper Public Notice; DRAFT Meeting Minutes 5-19, 6-2, 6-11; e-mail responses from Planning Board, Conservation Commission, and Open Space Committee acknowledging Public Hearing on 7-2

Meeting was called to order at 6:03 PM. Meeting was by remote participation. Meeting was recorded.

1. Jon Witten summarized his responses to Pat Reeser's 6-11-20 e-mail regarding suggested changes to the Town's Permit Rule wording.
2. As a point of clarification, Jon Witten advised that Mass Housing controls the lottery system for units and the interior finishes to units. Whereas the Town controls project location and exterior finishes.
3. Jon Witten confirmed Mass Housing will provide up to \$15,000 of fees for consulting to Mass Housing as respects the Town's 40B project. Mass Housing will not provide a "technical" consulting.
4. Jon Witten confirmed again that the ZBA can charge the developer for consulting fees, but not legal fees.
5. Jon Witten cautioned that the definition for "uneconomic condition" is confusing, so the board should not attempt to define it in the Town's Permit Rules. "Uneconomic" applies to totality of project and not separate factors.
6. The ZBA can require a conference with Developer prior to submittal of project to Mass Housing and the Town Board.
7. Jon Witten cautioned that the Board should not "deny" a project based on an incomplete application, noting that the applicant/developer will likely ignore a lot of the Town's regulations.
8. It was discussed that the Board has principally 2 reasons to grant a waiver to its regulations. One is that the regulations create an "uneconomic" condition. The other reason is that the regulations applied to the project affect the health, wellness, and safety of the public.

9. The Board voted to elect Dennis Lucey as a full member of the ZBA, filling the vacancy by departed member Bill Bachrach. The Town will continue to search for one or two “associate” members.
10. In discussing additional changes to the Town’s Permit Rules and Regulations, and clarifying meanings of certain rules and regulations, the following issues were addressed:
 - a. For identifying significant and mature trees to be indicated on the submitted site map, the Town will use the standard of “shade trees” under the Shade Tree Act. In this way the Town will be consistent and not subjective as to which trees qualify.
 - b. On site maps the scale needs to reflect 1 inch equals 40 feet.
 - c. It was determined to not specify in advance of the project’s start who will maintain trails, but to negotiate the maintenance as the project progresses. It will also be determined if trails are open to all public and not just residents.
 - d. Jon Witten confirmed the Board has authority to recommend traffic regulations.
 - e. The Board needs to re-define “open space usable”, “open space non-usable”, “resident use only”, and “all public use” areas. Site maps from the Developer should identify these separate areas.
 - f. If the definition of open space has already been defined and adopted by the Town Planning Board, the Zoning Board can follow that definition.
 - g. Jon Witten noted that the “regulations” set the floor and not the ceiling for regulation requirements.
 - h. 40B projects need to be consistent with town planning and housing production plans.
 - i. The Board and the Developer need to add to the project impact list the degree to which the proposed development does or does not advance the objectives of the housing plan.
 - j. It was again noted that all public hearings are subject to the “open meeting law”.
 - k. Board “Executive Sessions” are permitted on issues discussed by the board in private so as not to reveal the town’s position on certain legal matters (e.g. the purchase or sale of property) or certain contractual matters (e.g. negotiations with unions). The “subject” of Executive Sessions needs to be identified in Meeting Agenda. Once these Executive Session matters have been resolved, the negotiations must be revealed in full to the public.
 - l. All changes to the Rules and Regulations were unanimously approved by the board. Revised Permit Rules and Regulations as of this 7-2-20 meeting are attached to these minutes.

11. Angus Jennings advised that the Developer submitted a whole new project plan for 40B eligibility. The Town has made a request to the State and the Developer for a **new** project application as the project has been substantially amended. The Town is seeking additional time to respond to the State regarding the Developer's newly submitted plan. At present, the Town must respond to the State by 7-22-20.
12. Discussion was begun but not finalized on Section 7.2.8 to hold back Certificates of Occupancy for the last 2 remaining market rate units until all affordable units are sold and all exterior features (e.g. roads, sidewalks, trails, recreation features, etc.) have been finished. This will be discussed again at a future meeting.
13. Meeting minutes of 5-19 and 6-2 were reviewed and approved by the Board.

Meeting was adjourned at 8:28 P.M.

Respectfully submitted,

Judith D. Gregg

Judy Gregg

ZBA Board Member