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MINUTES OF THE HEARING ON THE PETITION OF MARSH VIEW LLC, 93 CENTRAL STREET HEARING # 09-03

A public hearing of the Acton Board of Appeals was held in the Town Hall on Tuesday, January 25, 2010 at 7:30 pm on the petition by Marsh View, LLC for approval of a Comprehensive Permit on a parcel located at 93 Central Street, Acton, MA, Parcel 123 on Map G-2 of the Acton Town Atlas. The petitioner proposes four single family dwelling units with one of the units being affordable.

Present at the hearing were Jonathan Wagner, Member; Ken Kozik Acting Chairman; Richard Fallon, Alternate member; Scott Mutch, Zoning Enforcement Officer and Assistant Town Planner and Cheryl Frazier, Board of Appeals Secretary. Also present was the Petitioner, James D'Agostine, his engineer Mark Donohue and many abutters to the property.

Ken Kozik continued with hearing # 09-03. He began by saying as always the Board will begin the hearing this evening by reviewing the file and noting any new submissions. He continued saying it is worth assessing where the Board is at this point and where are they going. In previous hearings there have been concerns articulated by the planning, health, fire, and neighbors abutting the proposed development. At prior meetings, the developer has agreed to make the necessary changes and revised plans have been submitted to the town for further review. Ken personally agrees with the Planning department at this point. He thinks that any outstanding issues should be addressed and placed in writing in the plans or other documents prior to the Board making any kind of type of decision. Ken asked Jon Wagner and Rick Fallon if they had any comments. They agreed with Ken. Ken moved on reading the new submissions into the record which included an email from the Fire Chief, an updated memo from Planning, an Engineering memo and a Board of Health memo.

Scott Mutch of the Planning Department began discussion of his memo. The first issue was regarding the trees and shrubs being drought resistant, and also, the subsurface of the sod being loam. Staff is comfortable with what has been submitted regarding this issue.

Sheets being stamped by land surveyor done.

Screening material between units 1,2,3, and 4 have been addressed.

The proposed SU-30 turn around at the rear of the property is not satisfactory to the Fire Chief. Further modifications to the pavement configuration are necessary in order to permit fire apparatus to maneuver in and out of the site. Ken Kozik read the FD memo which states the Fire Chief's concern about the turning. Town Engineer, Corey York has suggested an alternative that the Chief is comfortable with. The adjustment has been made.

At the previous hearing one of the citizens asked staff to re-review the proposed FAR. Staff found that although the numbers are not exact, the project as currently proposed does exceed the .25 FAR, however, the .25 FAR is just a guideline for the BOA to refer to. It is to the discretion of the BOA as how to proceed in this regard. Mr. D'Agostine added that as far as the floor area ratio he believes it's just a guideline and not a rule. The Planning Dept. would like to see conditions written into the decision.

Scott continued by stating that staff recommends any decision being drafted or rendered by the Board of Appeals have as few conditions as possible. Any and all outstanding items should be addressed and made by the applicant prior to the public hearing being closed or any Decision being rendered.

Ken Kozik asked Mr. D'Agostine if he is satisfied with the Fire Department's issues. Mr. D'Agostine said they will do what is being asked of them.

The next memo was from the Board of Health. The issues they have will be satisfied after the hearing is closed and the applicant submits their documentation to them.

The Engineering Dept. comments address street addresses, maintenance agreements, legal documents and the SU30 turnaround. They will be conditioned in the final decision.

Ken asked Mr. D'Agostine where they are now and what has been addressed since the last hearing. Mr. D'Agostine said there was a concern with the fence at Gwynn Horsburgh property located at 89 Central Street. The plans have been revised to show a six foot high fence located five feet off the edge of the driveway to screen the backyard area of the house at 89 Central St. The next issue was regarding the headlight glare to three homes on Tuttle Drive. The house at 44 Tuttle will be substantially screened from headlights by Unit #3. To decrease headlight penetration at 42 Tuttle Drive six 6-8 foot tall arborvitae trees are proposed to be planted along the driveway. The house at 40 Tuttle Drive is located 160 feet from the portion of the driveway from which headlights will be directed towards the back of its garage and additional plantings are not proposed.

Mr. D'Agostine continued saying they gave elevations of the units facing Central St. The decks and exposed basements will be the only changes from the original plans that were submitted. Ken asked Roland if he was satisfied. Roland said he has met with the petitioner and based on the petitioner's word he feels the issues that remain can be resolved after the hearing is closed.

Ken asked the public for any comments they might have.

Ken Guditz, of 81 Central St., submitted twelve copies of documentation to the Board. He is an Architect and he feels what's missing is esthetics. These buildings do not fit in with the neighborhood. There is a drastic change in scale of the buildings. In the Rules and Regs of the Comprehensive Permit Policy architectural plans and scales should be shown. They are not stamped by an Architect.

David Honn, of 105 School St. states that the 40B law states if the Board denies this petition the petitioner will go before the Housing and Community development. He thinks this proposal does not meet the guidelines that were set up for the Town of Acton.

Jill Defoe of 101 Central St., doesn't understand how they can put four houses on this lot even though she knows it's a 40B. Ken Kozik responded that the Selectmen felt if they are forced to have affordable housing wouldn't it be better to have smaller projects vs. the type of project that was built at Nagog Park. Ken continued stating they have three options, grant it, grant it with conditions, or outright deny it.

Lee Davis Honn, 105 School St. read regulations out of the Comp permit rules and regulations. He asked the Board what do the abutters need to do and what more do they need to provide to the BOA to show that the abutters outweigh the need for the housing.

Maureen-Ryan Friend, 42 Tuttle Dr., asked about a fence to block the lighting from the cars and Mr. D'Agostine said the FD does not want a fence along the back of the property. They have added screening. She feels when they turn from Pine Ridge Road the light will be shining onto her property. She appreciates how Mr. D'Agostine has worked with all the abutters but he doesn't have to live there. She said this may be legal, but it's wrong.

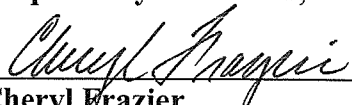
Jon Wagner said their argument is with the state not the Board of Appeals. Deborah Piper, 101 Central Street said she has attended all the hearings right from the start and is distressed over this project and how much it will affect the town and all of the residents. John Horan, 101 Central Street agrees and added that it's hard to find a house nearby this project that isn't on a ¼ to a two acre lot. This project does not fit with the neighborhood. If the developer wanted to put in four single family dwellings and it wasn't a 40B they would be denied.

Jon asked if the petitioner could get everything to the town that they need within two weeks and then if the town and the petitioner are able to address all the final issues. Scott and Mr. D'Agostine felt besides the legal issues everything could be addressed.

Rich Fallon said the only outstanding issues are the Fire Chief, Planning, legal matters, and BOH that won't be addressed until after the project begins.

The Board moved to continue the hearing, the motion was seconded. The hearing was continued to Wednesday, February 24th in Room 204.

Respectfully submitted,


Cheryl Frazier
Board of Appeals Secretary



Ken Kozik
Chairman, Board of Appeals