

MEMORANDUM

To: Arlington Zoning Board of Appeals
Fr: Stephanie Kiefer, Esq.
Re: Response to Completeness Review Memo, Thorndike Place, Arlington, MA
Date: March 18, 2020

I. Background: Thorndike Place 40B Application

ALR's Comprehensive Permit Application was filed with the Board on September 1, 2016. On September 30, 2016, Board opened the public hearing and, on October 6, 2016, issued a written notice that it sought to invoke the 1.5% general land area minimum ("GLAM") safe harbor under M.G.L. c.40B and 760 CMR 56.03(3)(b). Thereafter, the Applicant filed its written objections with the Board and the Department of Housing and Community Development ("DHCD"). Upon review, DHCD ruled that the Town had not satisfied the 1.5% GLAM threshold. From the DHCD's determination, the Board filed a *de novo* interlocutory appeal with the Housing Appeals Committee ("HAC") on December 6, 2016. Upon the filing of its appeal with the HAC, the public hearing process before the Board was stayed pursuant to 760 CMR 56.03(8)(c).

Within the HAC appellate process, both parties had an ability to provide relevant evidence and expert testimony regarding the Town's position that it had achieved the 1.5% GLAM threshold. Subsequent to a two-day hearing, after which the parties were presented the opportunity to file post-hearing briefs and response briefs, the Committee issued its written Decision on October 15, 2019, which decision concluded that the Board had not attained the 1.5% statutory minimum to invoke the GLAM safe harbor. As a result, the application was remanded to this Board to continue the public hearing process. The continued public hearing before the Board recommenced on December 10, 2019.

In moving forward in the hearing process, while local bylaws may have been revised since the filing of the ALR's Comprehensive Permit application, Chapter 40B and its regulations plainly require that the project to be reviewed under those "local requirements and regulations" that were in effect at the time of the application's submittal to the Board. *See* 760 CMR 56.02 ("Local requirements and regulations," defined as those in effect at the time of the Project's application to the Board).¹ A copy of the Arlington Zoning Ordinance in effect at the time of the application is enclosed for the Board's file on this application at Attachment A. We note that the Town re-codified the Zoning Bylaw in 2018, but the Zoning Bylaw under which the project is to be reviewed is the Zoning Bylaw enclosed herein.

¹ *See also Paragon Residential Properties, LLC v. Brookline*, No. 04-16, slip op. at 45 (Mass. Housing Appeals Committee Mar. 26, 2007); *Meadowbrook Estates Ventures, LLC v. Amesbury*, No. 02-21, slip op. at 12 (Mass. Housing Appeals Committee Dec. 12, 2006); *Northern Middlesex Housing Associates v. Billerica*, No. 89-48, slip op. at 11 (Mass. Housing Appeals Committee Dec. 3, 1992).

II. Completeness Review Summary and Responses

Below please find the Applicant's responses to the Completeness Review memorandum prepared by the Board's special counsel concerning the Thorndike Place 40B Application. With respect to Completeness Review memorandum, it is Applicant's position that the application materials filed with the Board on September 1, 2016 comport with the filing requirements of Chapter 40B, and to the extent that local regulations in effect as of that date requested supplemental information, a timely request to waive the same was included within the original application. Please refer to Tab 5 of the Comprehensive Permit application, pp. 12-15². In response to the Completeness Review and to provide the Board with updated plans, as had been discussed at the December 10 public hearing, the Applicant states as follows:

Project Eligibility Documentation – Section 3.2.1³

The Completeness Review memo states that the application contained no evidence of Applicant being a limited dividend entity

Response: The Project Eligibility Letter issued by MassHousing, dated Dec. 5, 2015, confirms that Applicant has met general eligibility standards under the New England Fund housing subsidy program and that Applicant had entered into Acknowledgement of Obligations to restrict its profits. Specifically, by Finding F of the Project Eligibility letter, MassHousing confirms that Applicant will satisfy limited dividend entity. A copy of the Project Eligibility letter can be found in the original Application at Tab 4. Pursuant to 760 CMR 56.04(6), the Board has no authority to question the finding of the Project Eligibility Letter; it states “[i]ssuance of a determination of Project Eligibility *shall be considered by the Board... to be conclusive evidence* that the Project and the Applicant have satisfied the project eligibility requirements of 760 CMR 56.04(1).” In other words, the subsidizing agency's determination is conclusive.

Preliminary Site Plans – Section 3.2.5

The Completeness Review memo states that the preliminary site plans do not adhere to certain requirements and otherwise not subject to scaling.

Response: See revised preliminary site plans set titled “Thorndike Place Comprehensive Permit, Dorothy Road, Arlington, Massachusetts”, prepared by BSC Group, Inc. (“BSC”), dated March 13, 2020. Attachment B. The revised site plans were also submitted directly by BSC to the Board's administrator via email on March 16, 2020.

² As referenced in the Comprehensive Permit Application, Tab 5, Applicant sought waivers from certain provisions contained in Sections 3.1, 3.2, 3.2.5, 3.2.7, 3.2.13, 3.2.14 and 3.2.15 of the local 40B regulations. An updated waiver list is attached hereto as Attachment F.

³ The Section references in Applicant's response correspond to those references of the local 40B regulations referenced in the Completeness Review memo. .

The plan set includes a Title Sheet (Sheet G-100); General Notes and Legend (Sheet G-101); Existing Conditions Plan (Sheet V-100); Existing Environmental Resources Plan (Sheet C-100); Overall Site Plan (Sheet C-101); Layout, Materials and Landscape Plan (Sheets C-102, C-103); Grading and Drainage Plan (Sheet C-104, C-105); Utility Plan (Sheets C-106, C-107); and Civil & Landscape Details (C-200). As reflected in the notes, the attached site plans were prepared upon BSC's on-the-ground survey conducted during December 2019 and January 2020, as well as upon its wetlands delineation completed on January 15, 2020.

Report on Existing Site Condition – Section 3.2.6

The review memo states generally that the site conditions report is incomplete and/or inconsistent with Section 3.2.6 requirements.

Response: As reflected by 760 CMR 56.05(2)(b) and Section 3.2.6 of the local regulation, to the extent not waived, information on existing site conditions may be combined with the preliminary site plans. Please refer to the Locus Plan, Existing Conditions Plan, Existing Environmental Resource Plan, as attached hereto at Attachment B. See also *Application for Comprehensive Permit – Thorndike Place*, Part III, pp. 14-15 and accompanying photographs to application, filed with the Board on September 1, 2016.

Preliminary Scaled Architectural Drawings – Section 3.2.7

The review memo generally states architectural plans are not complete and/or not consistent with local requirements, but without specificity of alleged incompleteness.

Response: Attached at Attachment C are updated preliminary architectural drawings, signed and stamped by Arthur Klipfel. The updated preliminary architectural plan set includes nine (9) sheets: Overall Site Plan (Sheet C-2.0); Site Section sheet; Typical Building Elevations (Main Building); Typical Unit Plans (Main Building) (plans at 1/4" = 1'); Typical Floor Plans (Main Building); Typical Plans and Elevations (Town Houses) (plans at 1/8" = 1'); Building Section; Garage and Parking Plans; and Building Layout.

Utility Plans – Section 3.2.9

The completeness review memo alleged that utility plans lacked certain information and that the plans were illegible.

Response: Please refer to the revised site plans attached hereto at Attachment B, with specific reference to Sheets G-101 (General Notes); C-104 and C-105 (Grading and Drainage); C-106 and C-107 (Utility Plan).

Recreation and Open Space Amenities – Section 3.2.10

The memorandum alleged the information was not complete, illegible and without scale.

Response: Please refer to the revised site plans attached hereto at Attachment B, with specific reference to Sheets G-101 (General Notes); C-101 and C-102 (Layout, Materials and Landscaping); and C-200 (Details).

List of Exemption – Section 3.2.11

The completeness memo objects to requests for blanket waivers from local wetlands..

Response: Waiver lists typically are updated throughout public hearing process to address changes to plans. A revised waiver list is enclosed herein at Attachment F, but the final waiver list is expected to be forthcoming once substantive review of the project plans have advanced through the peer review process and a final design is locked in based on considerations and items addressed within such review.

Pro Forma – Section 3.2.12

The completeness memo states that a complete pro forma was not included.

Response: The project's pro forma, setting out proposed costs and revenues, was included within the Project Eligibility application at Section V, pp. 14-16, a copy of which was provided to the Town. An additional copy of Section V is provided herein at Attachment D. In accordance with 760 CMR 56.05(6), pro forma review is not permitted to be undertaken by the Board unless, if nearing closing of public hearing, the Board has provided draft conditions to Applicant and Applicant has disputed proposed conditions or waiver denials. The Board cannot otherwise undertake review of financials. *See White Barn Lane, LLC v. Norwell Zoning Board of Appeals*, Decision, HAC Docket No. 08-05 (Decision dated July 18, 2011).

Impact Analysis (Environmental and Municipal Facilities)– Section 3.2.13 and 3.2.15

The completeness memo asserts that no impact analysis was provided.

Response: An impact analysis is not required under Chapter 40B or its implementing regulation at 760 CMR 56.05. With that said, within ALR's 40B application, Applicant specifically requested a waiver as to the timing of submittal of an impact analysis. The utility of an impact analysis is better served upon public hearing dialogue with the Board, which may refine the preliminary plans. As stated in its Comprehensive Permit application, ALR agrees to submit an impact analysis for the Board's review within the public hearing process and request that the Board and its peer review engineer work with the Applicant to address when such analysis may be submitted and reviewed within a continued public hearing.

Traffic Impact Analysis – Section 3.2.14

The completeness memo notes the date of the Traffic Impact Access Study (April 2014) and generally states that it is inconsistent with 3.2.14 of the local 40B regulations. The comment also states that there is no evidence of who prepared the report.

Response: The traffic study captioned “Traffic Impact and Access Study, Mugar Parcel 40B Residential Development,” dated April 2014 and prepared by MDM Transportation Consultants, Inc. (“MDM”) is found at Tab 6 of the submitted Comprehensive Permit Application. The traffic report was prepared by Robert Michaud of MDM, who made a brief presentation at the public hearing on September 30, 2016. Mr. Michaud’s credentials were submitted with the Comprehensive Permit Application at Tab 12. As stated within the continued public hearing on December 10, 2019, given the extensive delay in the public hearings in part owing to the length of the Board’s appeal to the HAC, Applicant will submit a revised Traffic and Impact Study (“TIAS”), to better reflect current traffic conditions and revisions to the project design based upon the updated survey work performed by the Project Engineers at BSC.

Within the December 10, 2019 hearing, ALR’s representatives informed the Board that Vanasse & Associates (“Vanasse”) had recently joined the ALR project team and would replace MDM as traffic consultants. Scott W. Thornton, P.E., a Senior Associate with Vanasse, introduced himself to the Board at that time. Further, as discussed during the December 2019 hearing, Mr. Thornton advised that he had reviewed the prior TIAS and would be updating the same. To better analyze the project’s traffic impacts, ALR’s representatives stated at the continued hearing that they wished to work through revisions to the site design initially with the Board’s review and to build upon an updated TIAS with that information to better inform Vanasse’s analysis. ALR requests to address the timing of the updated TIAS submittal at the conclusion of the site design topic hearing(s), presently scheduled for April 14.

Statement of Demonstration of Compliance with Master Plan/Open Space Plan – Section 3.2.16

The Completeness memo states that such statement was not included within the Comprehensive Permit application.

Response: While such a statement is not required under the 40B regulations at 760 CMR 56.05(2), it is noted that the Application included a statement as to consistency with sustainable development principles as found at Pages 23-25 of the Comprehensive Permit Application. The specific discussions included: (i) concentration of development and mixed uses; (ii) advancing equity; (iii) efficiency of decisions; (iv) protection of land and ecosystems; (v) use of natural resources wisely; (vi) expanded housing opportunities; (vii) provision of environmental friendly transportation choices (MBTA buses and trains, bike, zipcar); (viii) promotion of clean energy; (ix) investment in neighborhood and addressing housing need. Should the Board request an updated Statement based upon the revised project plans, the Applicant shall so provide in accordance with a mutually agreed upon submittal date.

Roster of Development Team Members – Section 3.2.17

The memo states only that the roster is “not complete”.

Response: Tab 12 of the Comprehensive Permit application provided a listing of each member of the development team, together with a biography and summary of experience of each team member. At the December 10, 2019 hearing, the Applicant introduced two new members of the team – John Hession of BSC and Scott W. Thorton of Vanasse; Mr.Hession/BSC will replace Mark Beaudry/Meridian Engineering as the project engineer and Mr. Thorton/Vanasse has replaced the prior traffic engineer, Bob Michaud/MDM. Both Mr. Hession and Mr. Thorton introduced themselves to the Board at the December 10 hearing and provided the Board with an overview of their experience. Should the Board desire CVs from Mssrs. Hession and Thorton, we will provide the same at the upcoming continued hearing.

List of Abutters/Copies of Application – Section 3.2.18

The completeness memo states broadly that the abutters list, copies of application, etc. were not complete.

Response: The Applicant submitted the requisite copies (including both sizes of plans and form of media) of the Comprehensive Permit Application to the Town Clerk. Further, the certified abutters list is contained at Tab 11 of the Comprehensive Permit Application.

Together with this response, Applicant submits updated Preliminary Site Plans and Architectural Plans. Request was made of the Zoning Administrator and Town Counsel for specific direction as to numbers, size and form of submittal, given protective measures related to Covid19. Hard copies of the updated preliminary plans are being submitted in accordance with Town Counsel’s instructions in accordance with Attorney Heim’s response email of March 17, 2020.

Payment of Filing Fee – Section 3.2.19

The completeness memo states that the payment of filing fee was “unclear”.

Response: The filing fee was paid in full at the time of filing. A copy of the receipt is attached at Attachment E.