

# TOWN OF GEORGETOWN ZONING BOARD OF APPEALS

## MINUTES OF A PUBLIC HEARING 43-47 West Street – ZBA FILE #09-05 Request to Modify a 40B Comprehensive Permit Georgetown West Realty Trust Continued from 12/1/09, 1/5/10, 2/2/10, 3/2/10 April 6, 2010 – 7:30pm

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**Board Members Present:** Paul Shilhan, Chairman  
Matt Lewis, regular member  
Jeff Moore, regular member  
Jon Pingree, associate member  
Scott MacDonald, associate member

Zoning Clerk: Patty Pitari  
Applicants – K. William Krikorian, Mr. Douglas Deschenes, Attorney for the applicant and Richard Morello, owner

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P. Shilhan, Chairman opened the hearing at 7:30 for 43-47 West Street ( modification of approved 40B Comprehensive Permit requesting to remove the Over 55 age restriction) the chair asked for a motion to waive the reading of the legal ad for 43-47 West Street, so moved by J. Pingree and seconded by J. Moore, all in favor. Motion carried.

New Correspondence -- J. Pingree read letter from Building Inspector (see attached).  
J. Pingree asked applicant about removing closet from one of the bedrooms.  
Mr. Deschenes stated that's why we removed the closet, so it would not be seen as a new bedroom.

Mr. Deschenes provided a package of information that included documents that Patty didn't receive copies of back in December 09 of along with some new material; it included a letter from Remax, letter from East Boston Savings Bank, E-Bulletins market information, letter of representation, 1 page traffic report, comparative Market Analysis from Remax, and comparative market analysis from Coldwell banker in Haverhill, Proforma dated 12/1/09, proforma dated 9/30/03, and a revised proforma dated 11/25/09.

Mr. Deschenes, Attorney for the applicant, One Billerica Rd. Chelmsford Ma. – We have provided a letter from East Boston Savings bank stating they are not longer financing residential projects of Age 55 and over, (see attached). They are the current mortgage holder on the project.

Mr. Douglas Deschenes – Our project as approved is no longer economically feasible under the state regulations that the profit margin is well below the 15%. I believe even with the age restriction lifted it's still marginally economic, but the rules and court cases supporting that say that as long as the modification will result in a project that is less uneconomic it doesn't necessarily have to go over the 15%, so if your 10% now and 14% with the modification, your still not over the 15 making you economic, but 14% is less uneconomic than 10%. The only thing missing from package is some testing relative to the environmental, and I understand it's with Conservation Commission. The next

big issue is the reviewers or consultants, we are ready to submit the \$5,000, but we have some concerns with the consultants, and the necessity for all. We are not seeking a new project; it's a modification so I don't think we need all consultants the board listed, I don't agree. Specifically, I agree with the financial consultant and traffic consultant. We would agree with Town Counsel but only in respect to the drafting of the decision or interpreting documents.

I disagree with your environmental consultant, for the septic and storm water engineer, under Title V there is not reduction in flow for 55 and over, when it was designed it was done for title V, the septic system is not changing. There was substantial work done by the environmental consultant in the original permit but the process is ongoing and there is nothing relative to this modification that would need an environmental consultant. In regard to children, and someone brought up the cleanup standard is different, it is not, when you made it over 55 there could still be older children there.

J. Pingree stated for the record we didn't make it over 55 the applicant requested it be 55 and over.

Mr. Deschenes - Without question the economy and market has changed and I have done 8 or 9 of these conversions to eliminate the 55 and over, I know that DHCD is not approving any site approval letters for Over 55 anymore, it's not just developers that are changing, and it's the institutions.

S. MacDonald asked what were some of the other towns.

Mr. Douglas Deschenes listed some town, Groton, Dracut, Westford, Littleton, Tyngsboro, one was denied in Groton, we are at HAC now, and it's identical to this case.

J. Pingree - I doubt they have their 10%.  
Deschenes - Yes that is different.

J. Pingree stated there is going to be more people in there, you have admitted in your traffic study that there will be more people, and your saying you don't need to check what would happen with septic that nothings changing, but in your traffic you contradict it. If someone converts the home/study or the den to a bedroom, it needs to be considered. We need to consider the impact on the well fields also. That has been the big issue with this project is the location to the towns well fields.

Brief discussion on someone living there and then converting it to a 3 bedroom illegally, in other instances in the deed or condo documents it would state that they are 2 bedrooms.

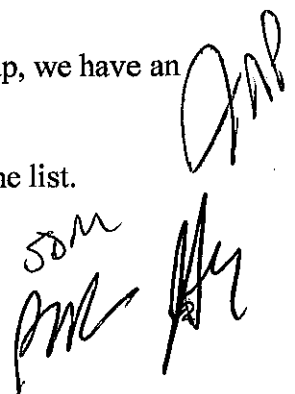
J. Pingree I am comfortable with the 2-3 people on the septic, but it's a possibility to be more.

J. Pingree - Do you have the magnetic testing and monitoring wells report with you we requested back in December of 09?

Mr. Deschenes - No we don't, it should be with the Conservation Commission.

J. Pingree – You told us back in December that you were 99% complete with the cleanup, we have an email from DEP stating you are not 99% cleaned up, and you have 9 action items left.

Patty Pitari gave the Attorney a copy of the email from DEP (Valerie Thompson) with the list.



R. Morello – DEP and risk assessment are arguing over two issues, to me they are minor issues, the major cleanup is done, now we need to get the RAO (completion report) they want us to do off site testing, because we can prove that there are dioxins all over town, that's what they want us to do, we have been asking for a meeting for over a year so we can hash out what they want us to do.

J. Pingree - I asked for the magnetic testing report and well monitoring and now after 4 months you don't have it and neither does conservation.

Discuss follows on the septic with Board of Health and title V. Krikorian stated he believed we gave the water dept. an easement to access the monitoring wells, and in a meeting with conservation, and they had the right to come in and monitor them, we never heard of any problems.

J. Pingree – But we asked for this information back in December of last year, and you have nothing we asked for, and you are holding this up, you were also to come in with a check for consultants and now you don't want the environmental/storm water consultants. We believe that the environmental is very relevant.

Mr. Deschenes - The items you are asking for are not relevant to the modification. I apologize for being unresponsive to your requests, but it's a separate issue. They still have to finish with DEP before they can build.

J. Pingree – If it takes two more years to cleanup then the market may change also.

M. Lewis - You were asked to provide us with some items, when we sat back in December, you said you had the magnetic testing report and the well monitoring, and you don't have it, and your attorney is saying it's not relevant, and want us to believe everything is ok, and you don't want us to use the environmental consultant and you can't even provide 2 testing documents we asked for 5 months ago on December 1, 2009. A statement was made that no one is not looking for 55 and over, I have found differently, what would happen 5 years from now and it's cleaned up and now there's more people looking for over 55 and you want to come back to us again.

Mr. Deschenes - In response to the testing and environmental consultants, I believe you are limited to the request before you, why do we need an engineer for something that was already approved; this isn't a restriction against over 55. This project will still produce those affordable units. This request will not impact the storm water or septic.

M. Lewis – Well then we disagree, we have a memo from Water Dept. in December 1, 2009 that states the lifting of the age restriction may impact wastewater, it should be given consideration, we also have a letter from the Highway Dept., with concerns on impact, and you are now saying what we originally asked for and you agreed to provide and now you're telling us you're not going to give it to us.

Krikorian – We don't think it's pertinent.

P. Shilhan, Chairman -- We do, we are trying to look down the road and see what the final impact of this will be, we believe the impact environmental is relevant and the real estate issue the price of the units are going down, and these real estate values you have given us, it's a bad time to be doing this.

Handwritten signatures and initials at the bottom right of the page. One signature appears to be 'P. Shilhan' and another is 'J. Pingree'. There are also initials 'SM' and a circled number '3'.

B. Krikorian - We have a million and a half tied up. It really bothers me that we are not getting any help from you.

P. Shilhan – All we are trying to do is look at how this will impact the town and the good of this town.

Krikorian – We have been doing this for 10 years. You haven't been involved for 10 years. I am here to protect our investment.

P. Shilhan – Most of this has been on you, you were holding it up, not the town.

J. Pingree - We are here to protect the town. We are trying to work with you, if the water department says there may be issues, should we ignore it? Remember the well fields are approx. 1,000 ft. away, we need to protect those.

Krikorian – We are marketing the mid 400,000, we won't get the mid \$500,000 we could have before.

Mr. Deschenes - it's a benefit to the town, it's a 40B.

J. Pingree – You got your approval for this project in 2002 and it was granted based on certain stipulations and situations and now you're trying to change things, and I believe it could have adverse impacts on the town, there's a ripple effect, now your wanting a modification and you can consider the child factor and impact on the schools on the original 40B, now your changing it, and now we have to look at all the impacts now and we met our 10%, we have met our burden and it's not neutral, it has environmental impact, we need to see and check into those impacts.

M. Lewis – I have documents from Conservation starting in 2007 to 2009 trying to get you to work with MASS DEP.

P. Shilhan – You are saying we can't talk out it. You want to modify it and you don't want us to review the impacts? Why don't you get that done first?

Krikorian - You want us to continue to spending money with no recovery for us.

M. Lewis – Your attorney just stated if it doesn't matter if children are there, why don't we have the results if it doesn't matter.

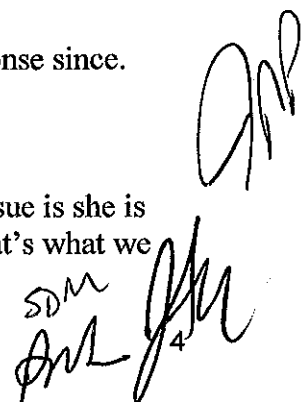
Morello – The only reason it's not done is we are waiting to hear from Valerie Thompson from DEP for a meeting.

J. Pingree – It doesn't look good with the history of what has not been done with the cleanup, as we read all the cleanup documents, they all say you're not cooperating.

Morello – I called V. Thompson from DEP in 2009 requesting a meeting and go no response since.

M. Lewis – So why don't you call again.

Morello – I can call 100 times, it's not going to matter. Everything has been done, the issue is she is not qualified to answer the questions, so we want to meet with her boss in Boston and that's what we are waiting for.



Shilhan - When the residents came here in December, all they cared about is the well fields and the cleanup. It's taken almost 8 years of cleanup.

M. Lewis - If we don't have the proper documents, and not hire an environmental consultant to review the impact, how are we suppose to go forward; we are trying to protect the well fields and the town.

Krikorian - Let's assume you approve the request and you make it conditional on the environmental, then the whole thing is done.

P. Shilhan - But we are not sure what is impacts will be, I don't think we should walk away from the environmental issue, I think it's the most important thing is have that consultant.

J. Pingree - I rather have the environmental in place of the traffic consultant.

Mr. Deschenes - The environmental was a big part of this, I don't disagree, but we can't build until it's done right. We asked for modification for the age restriction and your uncomfortable, how does the cleanup relate to the request? You should be pushing your conservation people to be tougher on these guys.

J. Moore - How many more months to cleanup.

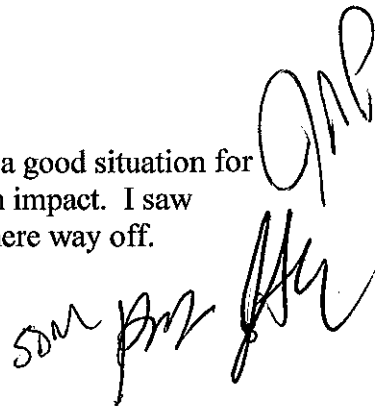
Morello - If we get a meeting with DEP, it depends on what they tell us to do, we are assuming we are correct, there is one issue with lead, and then the offsite dioxin testing and then it goes back to DEP.

J. Moore - We have a handle on the economic issue, but we feel the burden is on you to prove this is beneficial for the town, the procedures we went through to begin with, we found this was a substantial change, we initiated the hearing, in accordance with 760 CMR 56, we provided written notice to you and DHCD in a letter dated December 1, 2009 that a denial be considered based on the local need being met at 10% affordable housing, and in accordance with 760 CMR you had the right to challenge this within 15 days, and you didn't do that, and DHCD had 30 days to review our request and your challenge and it's also states in the regulation that is DHCD does not issue a decision within the time frame the decision shall be in favor of the municipality, and therefore I am of the position that any decision we make going forward is consistent with this notice we gave you on December 1<sup>st</sup> and consistent with local needs. What I am saying is any decision will be based upon local needs, and DHCD is no longer a board in which you can appeal a decision from this board. We can talk about consultants, but I want to be clear the basis on which we are making this decision, I feel and it's been at least 4 months I just want to make you aware.

J. Pingree - I see impacts to the town, more than when I voted in 2002 to approve this 40b. I don't see is how this is not detrimental to the town vs. the 55 and over which we had agreed to in the original permit.

Krikorian - 20% of these units still can be sold to people over the age of 55.

J. Pingree - It's a bad situation, it's not beneficial to the town, but have not created a good situation for the town than the town has agreed to before. If you add even 1 child per unit it's an impact. I saw those studies from Long hill Apartments (Norino Way 40B), and those numbers where way off.



**Audience:**

George Comiskey of 25 Old Jacobs Road - I a member of PIP and I was reading the paper and CB Berry construction is starting an Over 55 development in Topsfield, another in West Newbury by Gillis Homes and starting construction and it says sales are brisk. Also I spoke to Valerie Thompson at DEP and I have a letter stating the opposite of the applicant she is waiting for him to respond, and the reason he won't come in is the applicant is most likely wanting an "Administrative Consent Order" which would be detrimental to Mr. Krikorian, so it is not just that they are looking for a response outcome it says in the letter depending on results of a a method 3 risk assessment, a phase 3 remedial action plan may be modified and once a remedy is selected for cleaning up the site a phase 4 remediation plan must be submitted to DEP and once it's successfully remediated a response action outcome is needed. So in the first hearing they said they were 99% cleaned up and they waiting for one sign off letter from DEP and this document from DEP states the opposite. Also is the letter of credit have been updated.

Patty Pitari – I have received the updated letter of credit to expire January of 2012.

Bob Watts – I live next door, is it possible to be notified when this is continued. Also the area is zoned 2 acres, the impact of something going wrong could be catastrophic to the community if the impact to the well fields is damaged, this change was to clean up the site, and the water treatment facility for this is very close to my property. Patty Pitari suggested posting our continued notices on the website.

**Board Discussion continued**

J. Pingree – If I don't see the benefit right now and I am torn because you spent a lot of money, we had a good faith commitment for and Over 55 development. I don't think it beneficial to the town I think it's detrimental, at the moment, I don't think it's beneficial to change the original permit, I don't see how I would vote yes; I don't know how the rest of the board feels. We can go ahead and talk about consultants, but if I had to choose I rather have an environmental than traffic.

Mr. Deschenes – I appreciate your candor, and Mr. Moore's statement about the local needs, being over the 10%, we wouldn't be here if we totally agree with that analysis. The courts haven't ruled yet on a modification request when the original permit was applied for when you were under 10% and then a modification was applied for after you reached the 10%, so how do you interpret that, do you use the date of the filing of the modification, which in our case is after you reached 10%, and therefore everything Mr. Moore quoted would apply, and I don't agree with you or do you look to the original application date. They left if open to the date of filing, we have looked into that and it may be something we have to defend against. The law is unclear on coming in for a change, the criteria is unclear.

J. Pingree – Based on what you're saying we had 3 Comprehensive Permits going on at the same time, we had Pond St. Norino Way and you were the third, we denied Pond St., and it was appealed and we won that ruling.

J. Moore – We followed all the procedures why you didn't challenge the letter to DHCD.

Mr. Deschenes – I think it would have been a waste of time, DHCD certified your units, you have the 10% how do I argue that, our hope was to get it approved and it would have significant impact on the town. If spending the money for all these consultants that might agree with us, if your all going to be is of the opinion that you still don't think it's good for the town, I wish you would tell us that and my

Handwritten signatures and initials at the bottom right of the page. There are several signatures, including one that appears to be 'JMD' and another that looks like 'J. Moore'. There are also some initials and scribbles.

client can make some decisions on if the DHCD rules that over the 10% is right, or if they should withdraw it or what to do.

J. Pingree – This puts it back in your hand if DHCD agrees with it.

J. Pingree – The market could change in two years if it takes you that long to clean it up, if you withdraw it, maybe you come back and then it changes.

Mr. Deschenes – If the board shares the same, if spending money on consultants that might agree that we are uneconomic etc.... and we get verification, if you think it's not satisfying local needs, we need to consider some choices.

J. Moore – I agree with John I also don't believe it's detrimental to the town.

Mr. Deschenes – If the board feels that at least 3 of you feel they may not be in favor, we would appreciate you let us know.

Mr. Deschenes - I would request a recess to discuss with my client.

*At 9:15 the applicant requested a recess, and returned at 9:25pm.*

Mr. Deschenes - I would like to continue the hearing to consider your position of over 10% and we will notify you before the hearing if don't want to continue or go forward with consultants.

J. Pingree – As far as the time frame if you decide to move forward, would you want hire the consultants and be ready to go for the next hearing, now your stretching it out another month, and we will need an extension come the May meeting.

Mr. Deschenes – We understand we will be putting the consultants off, it will take a while one way or another, and we will sign an extension when needed.

J. Pingree – If you can let us know by April 20<sup>th</sup> if we are continuing.

P. Shilhan – So let us know if you're going forward with consultant or withdrawing.

Deschenes – We will definitely let you know by the 20<sup>th</sup>.

MOTION- J. Pingree to continue to May 4<sup>th</sup> immediately following the first hearing, seconded by S. MacDonald, all in favor. Motion carried.

Patty Pitari  
Zoning Administrative Assistant

Approved 5-4-10

5DM