TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS
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MEETING MINUTES

August 20, 2015

Chair: Kristina Pedone

Members Present: Kristina Pedone (Chair), John Benson (Vice-Chair), David Femia (Clerk), and Jon Meindersma, Barur Rajeshkumar and Charles Witkus.

Others Present: Daniel Cronin (Associate Member) and Secretary Toby Goldstein.

Members Absent: Paul Hennessey (Associate Member).

(Effective 8/5/15, Mr. Rajeshkumar was voted in by the Board of Selectmen as a full ZBA board member, and Mr. Cronin as an associate member). At 7:17 pm, Mrs. Pedone called the meeting to order. She read aloud the names of those full board members and associate members present. She then proceeded to read the first item listed on the agenda.

Public Hearing, Anne W. Franceschi (AKA Anne W. Kanjuru), Petition for Special Permit, 32 Pheasant Hill Run:

(Mrs. Pedone announced that, as an abutter to the above property involved in the public hearing, she was recusing herself as a board member from the public hearing, and Mr. Benson would run the meeting for the public hearing).

Mr. Benson first asked the applicant for her name, and then verified her request for special permit for an accessory apartment in her home, at 32 Pheasant Hill Run. He then asked her to address the board. Ms. Franceschi explained that she would like her nephew to live with her in her basement, which would be the accessory apartment, and that she needs a separate electric meter for the downstairs. Susan Meola (who was representing with the applicant) explained that the home was split-level, and the accessory apartment would be in the lower level. Ms. Franceschi stated that, when she bought the house, she assumed that it was an "in-law apartment" as it was already there. Ms. Meola added that the in-law apartment was mentioned in the listing, but there was no permit for it, and that the next time the house is purchased, a permit will be needed again for an in-law apartment. Ms. Franceschi stated that

she lives there by herself. She said that there will be no new entrances or exits. Ms. Meola explained that, for the split-level, there is a front entrance, a back entrance, and the entrance through the garage will probably be for the apartment. Ms. Franceschi continued that her nephew can probably use the front door also for entrance. Ms. Meola stated that the square footage of the apartment is 625 square feet. Ms. Franceschi added that no additional construction will be done. Ms. Meola then told the board that there would be at least three parking spaces, and that there is sewer installed rather than septic system. (Ms. Franceschi furnished a notarized letter to the board confirming her residence at that house). She added that she thought that the house had been in foreclosure when Ms. Franceschi bought it and it was vacant. Ms. Meola also said that she did not know if there was a permit for the in-law apartment (Mr. Benson said that it would have been attached to the title of the house), and added that she thought the house was vacant for quite a long time.

Mr. Femia asked Chris Lund, Building Inspector, who was present at the meeting, if there had been a special permit at all previously on the house? Mr. Lund replied that there had been no special permit on the structure before. He continued that the house probably dates back to the 1980's, and that the statute of limitations of enforcement of construction is ten years without a permit, and six years with a permit. He explained that it is now past the time frame for him to use enforcement action on this pre-existing apartment, and the only thing he suggests is the condition that there would be a walk-through of the apartment to be sure of safety, such as emergency escape from the bedroom. He replied to question from Mr. Femia that he had not yet inspected the premises. Mr. Lund continued that, regarding existing building code in Massachusetts, the Building Inspector assesses pre-existing conditions for risk to life; if he sees grave danger, he can issue an order to correct the problem. He stated that (in response to a question by Mr. Benson) that, for a window to be considered an emergency exit, it must be no more than 44 inches above the floor, and have at least a clear opening of 20" x 24"(he referred to photos of the dwelling; a window shown seems to agree with those specifications but he must confirm that). In summary, he said that he must see that there is a safe dwelling unit and safe exit/entrance.

Ms. Franceschi then said (in response to a question from Mr. Meindersma) that she bought the house in 2004, and did not know the owner. Ms. Meola added that she thought that the house was in foreclosure and vacant for many years. (A resident then interjected that every finished home on Pheasant Hill Run has a finished basement). Mr. Benson then wanted to verify how many occupants the house would have; Ms. Franceschi replied that there would be two-her nephew and herself.

Mr. Rajeshkumar then asked Mr. Lund about the materials used in the house, and Mr. Lund responded that he will review the apartment for life safety for the potential occupant and will

be able to date the counters, sink, walls, etc. and determine from what materials these things were made. He added that there is no Building Permit on record to finish the basement, and split-level homes do not have to have finished basements.

Ms. Franceschi replied to a question from Mr. Benson regarding the need for handicapped accommodations that her nephew does not have any disabilities. She stated that more than five cars can fit in the parking area in response to another question.

Mr. Benson then asked Mr. Lund if there is, by law, a limit to the number of people that can live in a one-bedroom apartment, which may be a concern of the neighbors? Mr. Lund replied that, according to building and sanitation codes, 200 square feet equals one occupant, and with approximately 650 square feet in the basement, there could be four occupants. (Mr. Benson corrected him, stating that three would be the maximum with 200 square feet per person-that cannot be rounded up four people; Mr. Lund agreed).

Mr. Lund then discussed the purposes of accessory apartments. He said that they are not only for elderly or ill family members, but they can also make housing units available to moderate-income people. And, they encourage the Town to monitor for code compliance. He continued, the purpose of accessory apartments is broad-to allow someone with income issues to have a home, but it is still single-family in nature.

Mr. Femia asked Mr. Lund, if the special permit is issued, does the board need to obtain a "Declaration of Covenance"? Mr. Lund responded that he and the ZBA can obtain a recorded copy from the Registrar of Deeds, and anyone would be on notice that, if there is transfer of title, there must be a registered Declaration of Covenance, and continued that there is no recognition of the accessory apartment if it is not registered. Also, he said that, if title is changed, the house loses its status.

Mr. Femia questioned the fact that Mr. Lund has not checked the apartment yet for code compliance and safety yet if the ZBA issues the special permit, it would be under the condition of inspection? Mr. Lund responded that the nephew cannot occupy the apartment unless it meets his standards, but the special permit can be issued, with the condition that corrections will be made if needed. He responded to Mr. Meindersma's question that, rather than an occupancy permit being issued, it would be more of a certificate of compliance. Mr. Benson verified that, if the board approves the petition, it will be upon the condition that Mr. Lund inspects the premises to be sure that it meets the code for health and safety. Mr. Lund responded that he will inspect, then the board could sign to approve the special permit at the next meeting.

(Mr. Benson next opened the public hearing to public comment). First to speak was Linda Isgro of 58 Scarlett Street, a former chair and board member of ZBA. She believed that the burden of

proof was on the applicant, and asked how the ZBA can vote on this? She thought it was reasonable to consider what Mr. Lund can inspect, and thought that public safety and the kitchen were most important because of wiring and the electrical need of appliances, but that inspection would be difficult with the walls being closed up and that the applicant should have brought this before the board sooner. Mr. Benson asked Mr. Lund about the fact that the wiring is generally behind closed wall? Mr. Lund replied that there is a ten-year Statute of Limitations so that he would not open up walls to inspect wiring, and that the utilities were installed by the previous owner; his concern is more with things such as ingress/ egress and smoke detectors. Mr. Lund and Mr. Benson discussed the electrical requirements for dishwashers and stoves, and asked Ms. Franceschi if her stove is electric; she replied "yes." Mr. Lund continued that, except for such things as making sure a stove has no open covers, he would not try to bring the kitchen up to today's code.

Next to speak was Louise Hashway of 24 Pheasant Hill Run. She said that she was concerned that the house was sold with an "apartment" but there was not one and spoke of it being "grandfathered in." Mr. Benson responded that no special permit was issued for the apartment, and that it is not grandfathered in even if it did exist before, and each time the house is sold, there needs to be a new special permit issued. Ms. Hashway mentioned work done downstairs and asked what would happen if it doesn't pass inspection after the work is done? Mr. Benson and Ms. Meola replied that work has not been done downstairs. Mr. Lund responded that, for an accessory apartment to be a "second dwelling" there must be the ability to cook, sanitation, living space and sleeping space, and he can request, for example, that the stove be removed to allow more living space if there isn't enough. Ms. Hashway then asked, if the apartment is approved, what if the occupant moves out or how do they know if the owner is living there? Mr. Benson responded that this could be made a condition of the special permit, but per bylaw, the owner of the swelling shall occupy one unit except for a bona fide temporary absence.

Next to speak was John Paladino of 26 Pheasant Hill Run. He asked the applicant if there were two egresses? Ms. Franceschi replied that there are two, the front door and the door going in and out of the garage.

James Pedone of One Pheasant Hill Run spoke next, and he asked about the open foyer, and questioned whether or not the accessory apartment is separate from the rest of the house unless it is walled-off; Mr. Benson responded that the front door is one egress, but the garage door is another egress, but asked Mr. Lund about this question of separateness. Mr. Lund replied that it is not a two-family house, but an accessory apartment, and by law in a split-level home the use of the primary egress is allowed. Mr. Benson asked him if this referred only to accessory apartments or in general? Mr. Lund replied that, in the building code, two forms of

egress are needed; in a pre-existing structure with no building permit, life safety risk is assessed, and if it is a viable egress, it is allowed. Ms. Isgro remarked that she thought the board was giving the applicant the benefit of no one appearing before the board before, and that there should have been two entrances but because it was over ten years ago, it is grandfathered in. Mr. Benson reminded her that Mr. Lund said that that was the law regarding construction greater than ten years old. Ms. Isgro continued that the applicant can't be held accountable for any issues because of the construction being over ten years old, and Mr. Meindersma responded that they are not saying that, nothing is being grandfathered in, and there are statute of limitation requirements. Mr. Benson continued that, regardless, in any home greater than ten years old, the work done is not reviewable. Mr. Lund corrected this, except for life safety, and mentioned examples such as breakers, cover plates and the gauge of wiring and walls will not be opened.

Mr. Benson asked Ms. Isgro what her concerns were about the building not being subject to inspection other than for life safety? She replied that what she believed to be the liberal way that the bylaw is being interpreted bothers her and that this situation does not meet certain criteria; one example that she gave was that of the kitchen, which she thought looked as if it is in the bathroom (the applicant said that the kitchen and bathroom are separate). Mr. Pedone continued that the house meets the layout of a split-level, with a bedroom in the lower level, but his house was recently appraised and the downstairs and bedroom were not considered living space; he questioned how the accessory apartment could have ever been considered living space? Mr. Benson replied that it is up to the Building Inspector to decide if it is living space. Mr. Lund responded that an appraiser or bank has no authority regarding construction or building code; he gave an example of cape houses and that banks do not consider the upstairs area with the slant ceiling to be living space, and said that he is the authority on that matter.

Kristina Pedone of One Pheasant Hill Run asserted that the applicant called an electrician, and that the applicant had rented to other people before; she mentioned that the applicant is looking for a separate meter, and believed that the applicant must have done work to change the electrical structure. She also asserted that the stove and refrigerator were not in the downstairs when the applicant purchased the house. Ms. Meola and Ms. Franceschi said that they were there before. Mrs. Pedone continued that one has to do work to change a meter; the former work is not relevant now because work has been done to the electrical system; she asserted that the light inspector has to see it, not the Building Inspector. She said that she wanted to make it clear that, even though it is less than 700 square feet, it is different and asserted that work was done on the house without a permit and that it was rented before moving the meters and separating the electric. Mr. Benson then asked the applicant if any electrical work had been done on the house since she bought it in 2012? She replied "no," only

motion sensor lights and the garage door opener; the people who did the garage door got the meter. She asserted that no electrical work was done in the apartment, and that she never rented it. She explained that, initially when she moved in, that her niece used to live upstairs with her until she married, then a person with psychological problems (she works with these individuals) needed a place to stay. But she insisted that she did not rent, and that what was there is there now and she is sure that an electrician could come and tell if anything had been touched. Mr. Benson responded that the residents are concerned that the meter is not installed yet and that no electrical work has been done, but from what she said, electrical work has been done. Ms. Franceschi responded that it was just on the outside (the motion detector lights), the garage and side where the den is located and that there were previously two lights there but she added one. She also said that the doors overhead to the garage were changed because it was cold and she installed electrical door openers for the garage, which were not there when she bought the house. Mr. Benson re-stated the changes that she made and asked her if there were any others? She replied "no."

Mr. Lund remarked that the work described and the installation of a separate meter did not require re-wiring of the existing structures; the Municipal Lighting Plant and the Wiring Inspector were involved in adding of the separate meter (this prompted discussion of the accessory apartment) and he did not consider that as work being done. Mr. Benson asked if an electrician said that they needed a permit?

Marc Frieden of the Planning Board commented next. He thought that a compelling reason not to approve this request is the bypass of single-family zoning, and a note should be made in the title for the next sale. He does not think that it is a compelling enough reason that the neighbors are against it. The third compelling reason that he gave was that any tenant could just move in there after this one. And fourth that he stated was that there is no actual separation between the primary and secondary residences, so the tenant has free access to the entire living space. Mr. Benson thought that a door could be put at the bottom of the stairs. He continued that Mr. Lund pointed out that one purpose of the accessory apartment is to make units available to moderately-incomed individuals, which is in the bylaws. Mr. Frieden expressed concern with people creating duplexes from single-family homes. Mr. Benson noted that duplexes are addressed in the bylaws, where it states that, regarding accessory apartments, the structure must retain the appearance of a single-family home. Mr. Meindersma responded to Mr. Frieden, that the tenant now will be a family member, but if he decides to move out, anyone can move in. Mr. Frieden suggested that perhaps residents could come to Bylaw Committee meetings to discuss this issue.

Next to speak was Lynn Crandall of 28 Pheasant Hill Run (she did not sign-in). She said that she appreciated what the applicant wants, but also expressed the concern over who would move in

if the nephew moves out, and added that the residents all wanted a single-family neighborhood when they moved in.

Mr. Benson then asked Mr. Lund if there is anything in the bylaws to prevent the presence of a stove, sink and refrigerator and require the owner to take it out? Mr. Lund replied "no" and continued that if the request for the accessory apartment is denied, then the issue becomes that of two separate dwelling units, and the stove would have to be removed and a "wet bar" made. Mr. Benson asked him how the space in the split-level home would be divided with no door to divide it or separate entrance and how two separate living spaces would be determined? Mr. Lund said that this has no bearing on what the bylaw says, so long as there is safe ingress/egress, sleeping space, living space, sanitation and cooking space. Mr. Meindersma asked Mr. Lund, if there is no special permit, does that mean no stove is allowed? Mr. Lund replied that the bathroom could be removed, but the stove is the easiest to remove; this would eliminate a second dwelling. He explained that, according to State building code, if there is a separate stove, bath, sleeping space and living space, it is defined as a second dwelling.

Ms. Isgro then commented that they would be acknowledging this as an "in-law" apartment, and they would have no control over the nephew living there, but she believes that the separate meter was the trigger for inquiry into the accessory apartment, and the issue is whether or not it meets the criteria.

Bob Foley of 21 Pheasant Hill Run expressed concern that allowing this might establish a precedent in the neighborhood. Mr. Benson acknowledged that, when a special permit or variance is granted, there is often an expectation that it will be done for others; but he wanted to make clear that, if someone wants a family member to live with him/her, it doesn't matter if the neighbors do not approve of it. Mrs. Pedone also expressed the concern that others will want to do the same thing, possibly converting the homes to apartment buildings.

Mr. Femia then said that this zoning bylaw regarding accessory apartments was created in 1989, and asked, if the ZBA finds that the applicant meets the criteria in the bylaw, how do they not approve the request? If the applicant does not meet the criteria, they could not approve it, but so far he had not seen anything to the contrary. He continued that they can approve it with the condition of the Building Inspector looking at it for safety; Mr. Lund will report back to the board with his findings and they will make their final decision. Mr. Femia thought that, if the residents do not want these apartments, they should try to change the bylaw, and thought that there was no way that the permit should not be issued.

Mrs. Pedone responded that the dwelling in question is not a standing, legal apartment, and thought that the board's job is to grant or not based on this. Mr. Benson responded that this rule has been on the books.

Mary Paladino of 26 Pheasant Hill Run then asked if an accessory apartment is considered a rental property? Mr. Benson replied that he could not see it specified in the accessory apartment rules. She then asked, if so, is Pheasant Hill Run is zoned for rental property? Ms. Meola thought that anyone could rent their property, but Mr. Lund replied that an accessory apartment is allowed to single-family residential districts. He continued that they have five purposes: for older people to gain income, for moderate-income households to gain income, variety of housing, preservation of single-family character, and encouragement of the town to monitor compliance. Ms. Paladino asked about the effect on taxes? Mr. Lund said that would be a question for the Assessor's Office. Mr. Benson suggested that this could change the value of the home.

Next, Ms. Isgro asserted that conversions were done in the applicant's home. Ms. Meola insisted that there were no conversions done by Ms. Franceschi. Mr. Benson added that, according to Mr. Lund, they were done before the applicant bought the home. Ms. Isgro said that every request for special permit to grant an accessory apartment when she was on the ZBA was rejected. Mr. Benson responded that this seemed to imply that the present board is interpreting the rules differently. (The board moved on with more public comment).

Mr. Pedone next discussed the concerns of not only who might move into the accessory apartment one day, but that the applicant might not live there and could rent both dwellings and thought that this could open up the Town to liability, and thought that the board could say "no" to her request.

Next, Mr. Rajeshkumar asserted that, if the petition is accepted, the accessory apartment should be separate from the main building. Mr. Benson asked Mr. Lund if there is any reference in the bylaws to the accessory apartment having to be distinct? Mr. Lund replied that this is not a condition of the bylaw; the accessory apartment is a separate housekeeping unit, functions as a separate unit, but does not need its own lockable door (in response to Mr. Meindersma).

Mr. Meindersma next stated that, for the record, regarding the issue brought up by Mr. Pedone as to the applicant not living at the house, it would violate the criteria for the accessory apartment, who would enforce this and would there be a right to terminate or revoke the special permit? Mr. Benson asked Mr. Meindersma if the board, as a condition, could insist that there must be a family member occupying the home? Mr. Meindersma replied that he thought that would be unduly restrictive according to bylaw. Mr. Benson then asked if they

could do so with the applicant's agreement? Mr. Meindersma replied that he did not think the board should make the applicant do that as it is not in the bylaw; they need to decide if the criteria are met according to what the bylaw actually states and if they are met, then the petition should be accepted.

Mr. Benson then asked the audience if there was anyone present who was an abutter but did not oppose the petition? (No one responded, so Mr. Benson assumed that there was no abutter present that did not oppose it).

(At this point, with no further comment from the audience, Mr. Meindersma moved to close the public hearing to public comment. Mr. Femia seconded. All in favor. Mr. Benson then opened the hearing to deliberation by the board).

Mr. Rajeshkumar first said that he still thought that the accessory apartment would still not be a separate housekeeping unit if not isolated from the main building. Mr. Meindersma said that he shared that concern, and that the text of the bylaw suggests a different meaning, with "separate" suggesting an independent egress.

Mr. Benson asked Mr. Lund, with the nature of a split-level home, doesn't the upstairs occupant have to pass through the downstairs living space if she enters through the garage? Mr. Lund replied that she does not necessarily have to do that, as the common hall at the bottom of the stairs has access to the garage. Mr. Benson suggested that, if there is a common hallway, a further wall and door should separate the common hallway from the apartment. He described entering the garage, then the common hall, then the main stairs, and having a wall with a door to separate; without that division, would the apartment not be "separately contained." Mr. Lund responded, that if the board wants a continuance of the public hearing, he would be glad to go out to the property and map out and illustrate how the accessory apartment would work relative to the rest of the house.

John Foley of 21 Pheasant Hill Run then added that there are two egresses in his home, and the front entrance is not separate in any of the neighbors' homes. Mr. Benson then asked Ms. Franceschi, if she were to go through the garage to the common staircase, is there is a door to separate? She replied "yes" and Ms. Meola added that there is a door at the bottom of the stairs. Mr. Benson continued, that his concern is, if there is a door at the bottom of the stairs, once she passes through the door, she goes left to the accessory apartment or right into the garage, but there is no separation between the garage and the accessory apartment, so he is not sure that they are separate. Ms. Franceschi responded that sometimes she does not go through the downstairs and asserted that there are three doors. Mr. Benson next asked, that if she parks in the garage and enters the house, does she walk into the accessory apartment? She

replied “only the kitchen.” Mr. Rajeshkumar remarked that the applicant goes through the apartment.

Mr. Benson asserted that building code would be satisfied and separated housekeeping would be confirmed in a walk-through by the Building Inspector. Mr. Benson then asked Mr. Lund, if the upstairs and downstairs tenants have access to the garage door, each time they walk through it they have access, are the units separate? Mr. Lund replied that how it is used is not the issue, the issue is safe egress. Mr. Benson asserted that the bylaw requires the dwellings to be “distinct.” Mr. Lund responded that the meaning of “distinct” is that each unit has its own sanitation, living space, sleeping space and cooking space. Mr. Meindersma then verified that “distinct” does not mean that it has to have a segregable door.

Mrs. Pedone then said that the Building Inspector gives an interpretation with his opinion, but it is up to the ZBA to vote on the special permit. Mr. Lund responded that his role here is as the zoning enforcement officer, not the Building Inspector. Mr. Meindersma questioned if the board should issue the special permit with the condition that separation is met, that the accessory apartment is clearly its own space, and that the tenant and owner are not sharing living space. Mr. Benson said, according to the bylaw, that the apartment must be the “clearly subordinate part of a single-family dwelling” and asked if is subordinate? Mr. Meindersma replied that he thinks it is clearly subordinate. Mr. Benson asked him if he thinks that it must be segregated? Mr. Meindersma replied that he thinks that would be inherent in the word “separate.” Mr. Benson said that he was inclined to agree that there has to be some way to divide the space so that the accessory apartment would be separate and subordinate.

Next a resident (did not identify herself) asked the applicant where the washer and dryer are located? Ms. Franceschi said they are in the garage. The resident responded by stating that the entire decision here is based on separate electricity so that the applicant can charge the nephew and thought that she should just charge him the amount.

Ethel Manahan of 39 High Street expressed the opinion that it was time for the residents to be heard.

Mr. Rajeshkumar then asked if the board can continue the public hearing and the Building Inspector will inspect the home and see if the apartment is isolated or not? Mr. Meindersma and Ms. Meola asked if that can be put in the conditions for the special permit? Mr. Rajeshkumar asserted that the apartment is not isolated, and thought that the applicant should make changes and come back before the board. Mr. Meindersma responded that the applicant cannot obtain a building permit unless this is resolved, and he moved to grant the special permit with the condition that the accessory apartment be truly separate with its own lockable door, and each dwelling unit have its own door and be totally separate. Mr. Benson responded

that this leaves a lot open to interpretation. Mr. Meindersma withdrew his motion. Mr. Benson and Ms. Meola both thought that a door at the top of the common area can be done without an architect. The board wanted to see the layout and Ms. Meola said that she would send the board a photo. Mr. Meindersma then made a motion to continue the public hearing. Mr. Rajeshkumar seconded. Four members voted in favor (Mr. Benson, Mr. Rajeshkumar, Mr. Meindersma and Mr. Witkus); Mr. Femia voted against the motion).

(At 9:07 p.m., Mrs. Pedone announced that she would be conducting the meeting from this point onward. She read the next item on the agenda).

Informal Discussion Regarding 194 Maple Street With Susan Meola:

Marc Frieden addressed the board, noting that Ms. Meola was told by the Building Inspector that she needed to file paperwork with the ZBA which she does not have yet, and there is nothing further that they can discuss at the meeting. Mr. Meindersma made a motion to pass over this agenda item. Mr. Femia seconded. All in favor. Mrs. Pedone announced that this item would be passed over this evening.

Update and Informal Discussion of 94 North Main Street:

(Iqbal Ali, Dean Harrison and Edward Marchant represented).

(This topic was broken down into several parts on the agenda. Those include:)

Mrs. Pedone announced that the board applied for a grant from MHP and the board was granted $5,000.00 for a 40B consultant; Mr. Ali agreed to pay $5,000.00. She then introduced Ed Marchant, new 40B consultant, taking the place of Richard Heaton.

Mr. Marchant spoke next. He discussed his background. He said that he is a real estate advisor; he has worked on over 155 40B projects; he said that he has a diverse practice where he has worked with projects that MHP has funded and has also provided services to developers. Mr. Marchant explained that 40B is the law and gives leverage to developers, and if ZBA approval makes a project uneconomic, the developer can go to HAC for assistance. He continued that the ZBA must comply with 40B but work in the interest of the Town, making their job challenging; they must balance the regional need of affordable housing with the public's needs; HAC usually sides with the developers so that the Town must try to obtain the best possible project. He added that the neighbors are usually not supportive of these projects.

Mr. Harrison next addressed the board; he said that he spoke to Mr. Marchant about the material that he needed to furnish, and added that he wants to respond in a concise, complete manner. Mr. Harrison said that he and Mr. Ali offer to modify the Comprehensive permit from 96 units to 80, and will make an official request with a letter that he had to present. Mrs.

Pedone asked him if he submitted that as a formal modification? He replied "yes"(letter is on file).

Mr. Marchant responded that the board must make a decision within 20 days on whether or not this is a substantial modification; if this decision is not made within 20 days, the request is granted. He explained that, if it is deemed insubstantial, there are guidelines; if it is deemed substantial, the public hearing must be scheduled within 20 days. Mr. Marchant added that there have been changes after the Comprehensive Permit was issued, and that there is a long history of the project. He continued that the developer can grant an extension, but it must be in writing. Mr. Marchant said that he would help the board make an informed decision. Mr. Benson asked him if he has seen the project before? Mr. Marchant replied "briefly."

Mr. Harrison continued that the modification is only to reduce the number of units from 96 to 80, and to remove the top floor of building C. He discussed that site and architectural plans have been updated and submitted to the Building Inspector for comment.

Mr. Benson then asked about buildings A and B, and why Building C is only part of the project being discussed? Mr. Harrison replied that it is not complete for building permit review, only for comprehensive permit review, and mainly structural, fire and safety revisions, and added that there will be revisions for bldgs. A and B. Mr. Benson responded that, as Mr. Marchant stated, they have 20 days and Mr. Marchant needs certain information which the applicant does not have this evening; in order for the board to digest the information and make an informed decision, they need time to receive input from Mr. Marchant and then need some time to vote.

Mr. Marchant continued that there are complications with the project, but thought that the decrease in number of units was not substantial. What he believed was critical was the status of Lot 3, important to the board and the neighbors, and the status of this is not clear on the site plan. Mr. Harrison said that Lot 3 is still included in the overall site plan, with the conservation restriction that is stated in the Comprehensive Permit. Mr. Marchant responded that, if this is the case, the right thing to do is to vote the decrease of units to be an unsubstantial change. But, he continued, that much clarification is needed for the project and he wants everything in one simple document; in order to have that, there cannot be incomplete drawings and there must be a reference set of drawings, and he thought that there is not now a good set of documents.

Mr. Harrison disagreed with this; he said that he has worked with Mr. Lund on amended and revised documents. He continued that building C has construction documents; Buildings A and B are missing some items in the drawings. He thought that the documents are not inadequate, and that some input is needed as to what they should look at. Mr. Harrison said that they are

submitting a formal request (for the decrease in units) and drawings tonight so that they can let MHP know that the board allows the change. Mr. Ali next said that he suggests that, instead of submitting the same documents, that the board vote on the 80 units as unsubstantial this evening. Mr. Meindersma asked him if that meant that he is asking to separate this issue from the others? Mr. Ali replied "yes", so that he could move forward.

Mr. Marchant thought that there was adequate information this evening to vote on a substantial change or not, but that boards normally expect detailed drawings and also the construction lender and permanent lender. He outlined four major steps in a 40B project:

1. An eligibility letter, which was done. When a change is requested, the board is only authorized to look at the change itself. This is different because it would be a significant change as there is a new developer, but the subsidizing agency approved the change in developer (Mr. Ali) and the applicant has completed that.

2. The applicant needs final approval, which is a final review by the subsidizing agency that the project meets qualifications that were necessary to issue the project eligibility letter. This is different because MHC never made the original findings; he believed that DHCD did that. The critical requirements on that are that they want to see loan commitments; Mr. Marchant saw the construction loan commitment from Rockland Trust, and MHP has to review theirs again for 80 units.

3. A regulatory agreement has to be executed-this and the comprehensive permit are the two documents that control the project. The subsidizing agency and applicant are the only ones to sign this; this is not signed by the Town.

4. MHP has a commitment letter with special requirements such as for construction moderator, minimum equity, debt service reserve, and other items that help to protect the Town, and MHP and Rockland Trust, the lenders, look at that carefully as they have financial interest in the project.

Mr. Marchant mentioned that there have been issues with other projects that the applicant was involved with, and the said that the conditions in the comprehensive permit give all involved the ability to protect to the maximum extent, but that the applicant must be given a "short leash." There must be a good set of documents; the ZBA has no say about the Regulatory Agreement, but they can give input on the design and so that the project is built and managed right. He mentioned that he is not worried about the management company, Peabody Properties, as the lenders want a quality leasing agent to protect their investment. He added that, even though only 25% of the units are affordable, all 80 units can count towards the total for the Town. Mr. Marchant also said that hiring an advisor (such as himself) also helps. Mr. Benson asked Mr. Marchant how they get these things done? He said that the

board needs to have high standards, so that when they reference a set of plans, those are the plans that are referenced. He replied to comments from the board that they have not received complete, digestible information to review, Mr. Marchant responded that it is the applicant's job to make the paperwork simpler to review and approve, and to be ready to apply for a building permit and begin work, he should be able to produce construction drawings; at this point, basic drawings can be referenced.

Mr. Harrison responded that, regarding buildings A and B, it was always their intent to provide documents at a later date, but for building C there is a full set of plans; they have provided the loan commitment from MHP and just obtained an updated one from Rockland Trust; they need a revised commitment from MHP to get final approval. (Mr. Marchant commented that Mr. Harrison is a seasoned veteran, who has had a long relationship with MHP). Mr. Harrison responded to a question from the board regarding the binders of documents that they provided to the board at an earlier meeting, stating that the information in the binder is still good. He added that they still do not know which set of drawings to work from-they have provided the engineering drawings by Marchionda from the original comprehensive permit as part of the documents; they are using Bertin Engineering now. Mr. Harrison continued that, this evening, they are formally requesting a decrease in units from 96 to 80 so that they can proceed with the next steps, and they have more documents to provide to Mr. Marchant but also want to put together a set of documents and drawings of what they should be looking at going forward.

Mr. Benson responded that the board needs a concise binder with an index so that they can find things (he added that he did not find a regulatory agreement in the binder). Mr. Harrison responded that they have sent letters with attachments to the board. Mr. Benson continued that they need a master binder, and every time that something is submitted, it gets added to the master binder and anyone can find it. (Mr. Ali and Mr. Harrison asserted that they submitted the regulatory agreement after the first binder was made, and that Richard Heaton said that it was not necessary for the ZBA because it was not signed by them).

Mr. Harrison then discussed some items that the board needed that they addressed at previous meetings. But, Mr. Marchant told them that they have to have the regulatory agreement and not to confuse that with final approval. Mrs. Pedone told them that the board needs the date of the regulatory agreement and to see it; if they do not have it, the board does not have enough information to make a decision, and going forward, they will not review information unless it's in a digestible format.

Regarding the master binder, Mrs. Pedone instructed that every member of the board will have a copy of the binder, there will be a copy in the Town Clerk's office, a copy for Mr. Marchant and a copy for the Secretary/ ZBA office; the Secretary will maintain the master copy, which will contain only information presented to the board, official documents, and new material will be

added during ZBA meetings. (Mr. Meindersma requested number tabs in the binder, not lettered tabs).

Ms. Isgro next had a comment, regarding the issue of Mr. Marchant not considering that the decrease in units was a substantial change; according to the bylaw, she asserted that the decrease from 96 to 80 would be a greater than ten percent change, which is considered to be substantial, along with change in housing tenure. Mr. Marchant responded that there would be no change in tenure (rental vs. ownership), and asserted that if Lot 3 was taken away, there would be greater than a ten percent change, but it will still remain so that is not an issue. He continued that everyone wants Lot 3 to remain in the site with a conservation restriction.

Mr. Meindersma then posed the question to the audience, "do you want 96 units instead of 80?" They replied "no."

Mr. Frieden then discussed with Mr. Ali the possibility of reducing the number of stories on the buildings and having two walk-in floors at each building.

Bob Barrell of 14 Bowen Street (he did not sign in) then asked if the binder would be available to the public? Mrs. Pedone suggested putting a copy in the Town Clerk's office, and asked Mr. Ali when they could have it? He replied that they might have it in ten days. The board responded to Mr. Harrison that they would like all correspondence, attachments and e-mails included in the binder.

Mrs. Pedone then asked for any public comment regarding the decrease in units from 96 to 80. One resident suggested decreasing it to 64; they were told that was not an option. Mr. Marchant responded that 96 units were approved with the comprehensive permit; right not, the applicant is requesting two modifications, a decrease in units and change in the unit mix, and thought that these are probably the most dramatic changes.

Next to speak was Ethel Manahan. She commented on the fact that the property is Mr. Ali's and that he was approved for 96 units, asking "what about the neighbors and respect to their privacy and dignity?" Mr. Marchant replied that a 40B has benefits to the developer, but he has decided to take off the top of one building, which impacts the neighbors most; also, Lot 3 will remain; the decision was already written, appealed, and HAC made its determination and the ZBA is not authorized to counter that. Ms. Manahan then asserted that the project is disrespectful to the neighbors and will look like barracks. Mr. Femia asked Mr. Marchant if the management company will oversee the work? He replied "yes".

There were questions regarding the management company, but Mrs. Pedone responded that these things are beyond the board's scope this evening, and they would just address the decrease in units and the change in unit mix. Mr. Ali re-stated the change in unit mix, from 14

3-bedroom units, to 6 2-bedroom and 8 3-bedroom units. Mr. Marchant responded that there will be a decrease in the density of the development. Mr. Femia then asked if MHP approve the management company, and will they monitor it? Mr. Marchant replied that they are the senior lender and will monitor them. Mr. Meindersma emphasized that items 1, 2 and 3 in Mr. Harrison's letter were the only items to be addressed this evening.

With no further questions or comments from the audience, Mr. Meindersma moved to close the discussion to public comment. Mr. Femia seconded. All in favor.

Next, Mr. Meindersma moved to deem the changes outlined in the August 20 letter from the applicant, modifications 1, 2 and 3 in the letter from Mr. Harrison, as unsubstantial (decrease in units from 96 to 80, changes in units in bldg. A, and bldg.C reduced from 54 to 38 units), subject to the condition of Lot 3 remaining part of the 40B development. Mr. Marchant added that the board wants assurance that no development will be done on Lot 3. Mr. Benson asked him, if that lot is gifted to the Town, will that be out of the 40B project and change acreage? Mr. Marchant replied that, technically, it would, but it will be treated equally, and they will agree to language to keep the three acres in the count. Mr. Harrison said that they can put in the language, the reduction is 9.1 acres, but going forward, if the acreage is changed, it will be null and void. Mrs. Pedone reminded them that the board is not deciding if those acres are removed at this meeting.

(Next, Mr. Marchant, Mr. Ali and Mr. Harrison argued about the plan for Lot 3, regarding whether or not the plan submitted this evening showed Lot 3).

Mr. Femia then asked Mr. Marchant, if the three acres were taken away from the total, would the Town fall below the 1% affordable amount? Mr. Marchant replied that they will go back and revise; the applicant states that in the existing comprehensive permit, decision for stipulation by HAC, that acreage is included, and they would have to come back to change it.

Mr. Harrison continued that they submitted a land use summary and not any wquare footage of the property is being changed, only the number of units. Mr. Marchant advised the board that it was alright to accept items 1, 2 and 3, but the drawing does not include Lot 3. Mr. Harrison responded that it was not the site plan, only the retaining wall plan. Mr. Marchant disagreed, and said that this drawing that he referred to is labelled "site plan" and instructed Mr. Harrison to clean it up and show the property line, explaining that the site plan should show the entire site.

Mr. Harrison expressed frustration, asserting that he and the applicant submitted a set of plans in order to go forward with reviews.

Mr. Meindersma thought that the board should not reference the letter in their motion, but should state the unit reduction and change in unit mix. (Mr. Marchant replied to a question from Mr. Rajeshkumar about ability to change the mix of units, and Mr. Marchant said that it is subject to review by the subsidizing agency, but 10% must be three-bedroom, and that will be the case).

Mr. Meindersma then restated his motion; he moved to find insubstantial the change from 96 units to 80 units, the change in building A of 14 three-bedroom units to 6 two-bedroom and 8 three-bedroom, and the change in building C of 54 to 38 units. Mr. Femia seconded. All in favor.

Mrs. Pedone then suggested reaching out to Town Counsel to draft an amended and restated Comprehensive Permit. Mr. Marchant agreed, stating that they could allow the applicant to okay the draft. He then addressed Mr. Harrison, stating that item 4 in the letter, outlining the building specifications for all three buildings, is important. Mr. Harrison said that he will have that in 10 days or explain why not. Mrs. Pedone added that the board wants the binder in 10 days. Mr. Marchant mentioned that he wants the building specifications to include building materials, shingles, etc. He also referenced item 5 in the letter, regarding the 2009 Marchionda engineering plans, that it was not signed until December 14 of last year, and suggested that the board should obtain a letter from the engineer stating that this plan can be used. Marc Frieden responded that, for an ANR plan, the engineer said that he is not working on the project anymore.

Mr. Marchant then asked Mr. Ali if there is any Order of Conditions on the project? Mr. Ali replied that there is only stormwater management from DCR. Mr. Ali also asserted that the engineer certified that the plans did not change. Mr. Marchant said that VHB, who will be performing the peer review, is capable, and suggested to the board to send VHB a note, stating that the plan was signed in 2014 but the last revision was 2010 and they will know what to look for. Mr. Marchant then instructed Mr. Harrison to put everything together for the board to review.

Mr. Marchant then listed other items that the applicant must address (these also appear in the aforementioned letter submitted). First, the applicant must prove that they have satisfied ADA requirements; VHB will review the engineering plans and the Building Inspector the building plans. Regarding item 8 in the letter, there is no Order of Conditions. He wants to see a copy of the final pro forma for the 80-unit development upon which MHP's permanent loan commitment is based for item 9. Regarding item 12, a copy of the Rockland Trust loan commitment for the project based on 80 units. Regarding item 13, the explanation of Rockland Trust and MHP construction inspection requirements, which is protection for the lenders and the Town. Regarding item 14, a letter is sufficient for now, but MHP has to confirm Peabody

Properties, Inc. as Property Manager and Lottery Agent. Regarding item 15, regarding Final Approval, the Building Inspector cannot issue a building permit until the applicant obtains final approval from the subsidizing agency; then site work can begin. But, he added, VHB has to complete their review of the plans first. He suggested that, with future 40B's, no construction including site work should be done until there is evidence of the subsidizing agency giving final approval.

Mrs. Pedone then instructed the applicant that all documents must go through the board, and not be scattered but organized. She then asked Mr. Marchant what should appear on the agenda for the September 17 meeting? He replied that there should be an update on the status of the amended/restated comprehensive permit from Town Counsel. Mr. Benson thought that Mr. Harrison should go through the binders with the board; Mrs. Pedone responded that there would be no address of the items in the binder, just an accounting of what is in it. Mr. Lund replied to a question from Mr. Marchant that there is no update yet from VHB's review, as they had contractual obligations.

Mrs. Pedone gave a possible listing of agenda items – update from VHB, binder review with Mr. Harrison, Town Counsel amendment and re-statement, MHP update (units revised) from Mr. Harrison, and update on water and sewer from Mr. Harrison.

The board next discussed other requests; items 4 and 5 from the letter must be furnished to the board at the October 22 meeting (date changed from October 15). Mr. Lund said that he would check with VHB on the status of their review. Mr. Meindersma asked the applicant for an extension to October 31, which he gave the board in writing (on file).

With no other comments or questions, Mr. Meindersma moved to adjourn the meeting at 11:13 p.m. Mr. Benson seconded. All in favor. (Mr. Meindersma stated that he had not handed a letter of resignation to the Board of Selectmen yet).

Respectfully submitted,

_____

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____