



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

140 Worcester Street * West Boylston MA 01583 * zba@westboylston-ma.gov

MEETING MINUTES

November 19, 2015

Chair: Kristina Pedone

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

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

Members Absent: Paul Hennessey (Associate Member).

At 7:15 p.m., Mrs. Pedone called the meeting to order. She read aloud the names of members present. She then announced the first item of discussion, which was to be a review of the working session that took place as part of the continuing discussion of 94 North Main Street.

94 North Main Street Working Session:

In response to a question from Mr. Ali, the developer, Mrs. Pedone replied that one person can comment on each issue to be discussed. Mr. Harrison agreed to be the one to respond. Wayne Amico from VHB commented that there are not many issues still outstanding, and he listed them: VHB provided an initial comment letter to information provided to them (10/15), the response letter from Bertin Engineering (10/21), the supplemental comment letter from VHB (11/6), the working session (11/12), and a follow up summary letter from Mr. Amico addressing some points from the working session (11/13). He also coordinated with Bertin Engineering and at 4:00 today came a final letter for the board's consideration. He continued that, at the last meeting, they read through the information submitted and since the last meeting there have been two re-submittals by the applicant, one being a package with plans, comments, responses and agreements from 10/28, and supplemental submittals since the working meeting on 11/16, 17, 18 and 19 (see page 2 of the letter, which is on file).

Continuing with reading of the letter, regarding "General Engineering Comments," on page 3, discussion of accessible parking space signage, addressed on 11/6, accessible curb ramp details, also addressed on 11/6, transformer locations addressed on 11/6, and some curbing

comments, addressed on 11/6 and sidewalk comments were addressed on 11/6 (see letter). (Mrs. Pedone asked him to clarify the sidewalk comments for others present). Also, a stormwater pollution plan was addressed on 11/6.

Next, regarding "Grading and Stormwater Comments," #1 moved infiltration systems to be more than 20 feet from the building foundations, and #2, inverts for roof drains tying into recharge systems were added, and the applicant needs to revise and clarify grading and drainage plans. Mr. Benson asked Mr. Amico, regarding the revised plans, if he had seen them? Mr. Amico replied that he did, and on 11/19, VHB said that the issues had been addressed. He continued that, regarding item 3, a swale along the western side of the property, the applicant was asked to revise the grading of the swale such that there would not be runoff onto the neighbors' properties; at the working meeting, it was agreed that the applicant would revise the grading and it was addressed. Regarding item 4, infiltration systems and detention basins, the applicant was required to review the topography to be sure they will work properly and not affect the abutters' properties; the applicant did provide a two-foot wide clay barrier on the perimeter of the detention basins to avoid any drainage onto abutting properties; at the working group, they decided that a two-foot clay barrier was acceptable to address stormwater breakout, but they still needed to understand the infiltration system function better, so they will do test pits to prove that the system will function properly based on sub-surface conditions. Mr. Amico stated that these were basically the three outstanding comments, and read from his response letter regarding the infiltration system. It stated that, based upon Bertin Engineering's grading and drainage plans of 5/28/15, the estimated seasonal high ground water elevation is 30 inches below grade where each of the three test pits were conducted. VHB understands that some depth of soil has been removed from this site. As a result, VHB cannot calculate the absolute elevation of estimated seasonal high ground water. The applicant said that perhaps two feet of topsoil was removed prior to conducting of the test pits, which may prove to be adequate separation for the infiltration system to work properly. It was recommended that elevation of the test pits be verified to be sure that adequate separation exists between the proposed infiltration system and estimated seasonal high groundwater in order for the infiltration system to function properly.

Mr. Benson asked Mr. Amico what options there were to handle this? Mr. Amico replied that test pits show not a four-foot separation, which is required, but 30 inches. He reported that the applicant said that soil was cleared from the site before, so there might have been a four-foot separation previously. He recommended additional elevation calculations by the applicant to prove it will work and he believed that they could work with the applicant to make the infiltration system work. He said that other options can be done, for example, smaller diameter pipes. His recommendation was that the board give conditional approval on the design plans based on additional information given to them by VHB and the applicant by a date decided by

the board, where VHB will either provide written confirmation of the acceptability of the system or the applicant provides a re-design. In response to a question from Mr. Benson, Mr. Amico explained that the bottom of the infiltration system must be four feet above ground water, or prove by analysis that it does not need to be so. Mr. Amico thought that it could be worked out by both engineers. Mr. Benson asked him why they should compromise if it is outside the bounds of the regulations? Mr. Amico replied that they can probably prove it to be acceptable, or supply additional information; or, instead of 30" diameter pipes, use smaller diameter pipes. Mr. Benson expressed concern at compromise being less than the Town deserves. Mr. Amico then read the concluding statement of the letter, and said that the applicant must provide acceptable information or re-design, and the board will not sign off until they are comfortable with it.

Mr. Amico continued with item 5, regarding the placement of catch basins on Main Street; the applicant needed to either move them closer to Main Street or add additional catch basins. He said that the applicant has revised the design, moved the catch basins closer and satisfied the concerns.

Regarding item 6, similar to item 4, regarding infiltration systems, Mr. Amico recommends that, if the applicant does not use 30" pipes, he should use smaller ones. In response to a question by Mr. Benson, Mr. Amico responded that they do not have enough information to say that this would work. He said that it will either not infiltrate, additional water will be in the system, or there will not be adequate handling of runoff, but again he believed that this was something that could be worked out.

Regarding item 7, fencing, Mr. Amico said that this issue was resolved.

Regarding item 8, treatment of slope at the back of the property, they were not clear on the geotechnical information; Mr. Amico said that the applicant modified the design to a 2:1 slope which is very stable and satisfied concerns. But, he added, the grading now extends to the parcel of land behind the lot to be deeded to the Town (Lot 3). He said that the board must decide if the grading affects the conservation restriction on the lot or not, and decide if the applicant has the right to do that or not. In response to a question from Mr. Benson, Mr. Amico explained that previously, steep grade stopped at the property line, now they show flatter grade going over the property line, and some 10 to 30 feet of wooded area would need to be cleared; other than this, the lot would not be affected. Mr. Harrison verified to Mrs. Pedone that there are no houses in that area. Mr. Amico commented that the board needs to decide if this is an issue or not. Mr. Rajeshkumar, who attended the working session, commented that, at the working session, they discussed that this is conservation land and shouldn't be disturbed. Mr. Amico then said that Town Counsel (Carolyn Murray) would explain this. Attorney Murray continued that, according to condition 31 of the original comprehensive permit, prior to

issuance of the occupancy permit, this land will be conveyed to either the Town, the Conservation Commission, or Land Trust; if none of them accept the parcel, it will have a perpetual conservation restriction on it. But, it is now still under control of the applicant and not owned by the Town. Mr. Benson believed that the idea should be that it is conservation land and if the applicant clear cuts on it, asked if that goes against the intent? Atty. Murray responded that the permit does not say anything about the state in which the land must be preserved, only about to whom it is offered, and if anything is done to the land, those people can refuse it when it is offered.

(Mrs. Pedone asked Ed Marchant, Affordable Housing Consultant, to comment). Mr. Marchant said that a reasonable way to look at it is that complete information is necessary as to how much of the lot would be affected, and suggested drawing of a no-disturbance zone; this way there would be some protection for the land but the applicant is able to fix the slope. Mr. Benson asked who decides what is acceptable? Mr. Marchant replied that Town Counsel said that there is no discussion of the condition of the land; probably there should be an understanding that it should not be touched. He thinks that they should see how to minimize disturbance and obtain more information on this.

Next, Linda Isgro of 70 Prospect Street, spoke. She discussed that, when the former ZBA (of which she was a member) reviewed the permit request, the lot was to be left in its natural, untouched state. Mrs. Pedone responded that there has been clear cutting, which has been discussed at many meetings, with VHB review. There is little disturbance, not even 30 feet. The question is not if the applicant can do it, it is what he proposes to do, but they do not agree to anything at this point, they are just getting information. Ms. Isgro responded that her assertions were taken off of the comprehensive permit; what was approved was on the plans to imply ZBA's intentions, and whatever is being considered now is contrary to what was previously agreed upon. (Mrs. Pedone instructed that this will discussion will be left until the end).

Mr. Amico continued with item 9, which he deemed a minor change; when they reviewed the slope and found it to be in a 2 to 1 proportion, to the edge of the parking area, VHB recommended introducing a swale into the drainage system. The applicants modified it and it is acceptable to VHB now.

Next, Mr. Amico discussed the utility section of the letter, which he said mostly centered around unknowns and inconsistencies. Regarding item 1, which discussed utility conflicts, Water Department, Fire Department, and Municipal Light Department have given their approvals.

Regarding item 2, which discussed layout of utilities, the applicant modifications were acceptable.

Regarding item 3, discussing mainly water connections, the applicant worked with DPW and added connections.

Regarding item 4, the electrical layout, Mr. Amico read that the Water, Fire and Lighting Departments submitted approval letters.

Regarding item 5, also discussing electrical concerns, approval was received by all three departments mentioned above.

Regarding item 6, discussing hydrants, the Water and Fire Departments approved the applicant's layout.

Regarding item 7, which discussed retaining walls and hydrants, he said that the Water and Fire Departments approved; the applicant went back to them and the Lighting Department this week, and they issued supplementary letters stating that, if the layouts are not appropriate, the applicant will have to move them.

Regarding item 8, which discussed heating, the applicant added locations on the latest plans for propane tanks. Mr. Femia asked where they will be located? Mr. Harrison replied to the north side of building C and the east side between B and C. (Mr. Ali added that they are underground).

(Mr. Ali then passed out documents to the board). Mr. Harrison added that building A will also have the propane.

Mr. Harrison then addressed the documents just passed out, and explained that the first sheet was of grading and drainage plans, and pointed them out.

Next, Mr. Amico continued with item 9, the size of water lines and valve locations, for fire and personal purposes; VHB approved of them, and they agreed that the applicant will do these during construction, but the Fire Department must still approve.

Regarding item 10, water shut-offs, issues have been resolved.

Regarding item 11, telecommunication lines, they are shown on the most recent plans.

Regarding item 12, there was construction detail confusion, and the applicant needed to make sure that clarifications were made to the Bertin plans of differences from the Marchionda plans; Mr. Amico said this was addressed by the applicant.

Regarding item 13, a revised lighting plan was submitted.

Regarding item 14, a four-foot safety fence at the top of the slope/ledge cut was added to the plan; they recommended that the applicant evaluate leaving it there but there is no requirement for the 2 to 1 slope.

Mr. Amico then discussed a new item. Based upon the amount of information provided originally and the supplemental revisions and plans, VHB recommends that a condition of approval is that a comprehensive package for the board, Building Inspector and both engineers be provided by the applicant. (This concluded Mr. Amico's review of the letter).

Mr. Harrison then thanked Mr. Amico and stated that the working session was helpful. He then said that there were two engineering items that they needed to address, and the item regarding the conservation land. One area was the detention areas; Mr. Harrison said that he is not asking for a compromise, they will design the system to meet requirements, and he asked that the board accept the recommendations by Mr. Amico.

The second item he discussed was the infiltration system; he would like to address that, give more information to VHB, and then provide to the board for review.

Next he discussed the conservation land. He said that originally the property was not to be further than the property line of lot 3. He asserted that, for better engineering practices, a 2 to 1 slope is better grading for that area but they want to minimize disturbance to the conservation land. Mr. Harrison suggested that there could be a no-disturbance zone with a line beyond which no work could be done.

Mr. Benson then asked Mr. Harrison what is on the area now that is to be graded? Mr. Ali replied that there is a large boulder behind building C. Mr. Harrison stood up and showed the plan to the board, and explained that, to meet the 2 to 1 slope, the engineers said that the applicant would have to encroach on lot C. Mr. Benson said that he wants to see what the area actually looks like, with pictures, and Mr. Harrison suggested that aerial photos could be taken of the area.

Mr. Rajeshkumar asked how far into the lot the disturbance would go? Mr. Ali replied roughly 20,000 square feet of disturbance. Mr. Harrison pointed out that there would be 2.8 acres or 121,968 square feet of undisturbed open space.

Mr. Witkus then asked, when the area is graded, and the trees are gone, will there be solid ledge? Mr. Harrison replied that they would have to lay soil to meet the grading, and pointed out that there would be ledge, then slope coming off. Mr. Witkus asked if they would be blasting the ledge? Mr. Ali said that it would depend on what they needed to do. Mr. Harrison

added that, at the last ZBA meeting, they said that hammer would be used, and if blasting has to be done, the Fire Department has a process to use. Mr. Amico added that there would also be a pre-blasting survey done.

Mr. Rajeshkumar then asked, regarding the conservation land, if ZBA has authority or the Conservation Commission? Mrs. Pedone replied that Concomm hasn't agreed to accept the land. Mr. Rajeshkumar believed that conservation land should not be touched and it was his understanding that it must be remain in the same condition. Atty. Murray then responded, that she did not disagree with Mr. Rajeshkumar, but at the moment, she did not believe that there is a conservation restriction on the property yet; she has not seen one. She continued that, also, the plans are referenced as part of the Comprehensive Permit, and at the working session, the Marchionda plans discussed keeping the lot in its natural state; but the Bertin plans contain all the modifications to the permit and are before the board for final approval, and it is within the per view of the ZBA if they want to allow it.

Mr. Harrison then said that there are two options, to allow a greater than 2 to 1 slope and not disturb the conservation land, or allow a 2 to 1 slope with limited access to the conservation land. He believed that the 2 to 1 slope is a better choice for the site.

Mr. Harrison mentioned that they will conduct test pits, and Mr. Benson explained how test pits work (in reference to the part of VHB's letter that additional test pits were needed). Mr. Amico replied that, up to this week, there was no evidence to show if the infiltration system would work properly, and said that there is still not enough information even though the applicant had more test pits done. Mr. Amico explained that the testing shows the height of the groundwater but not the type of soil. Mr. Benson then asked if soil is removed, has the property area of construction has been lowered and would they need to grade four feet below the new grade? Mr. Amico replied that his engineers said that if they knew there was more soil that there may be enough separation. Mr. Benson asked if the test pit would be four feet below the construction level? Mr. Amico replied that, technically, no it would not be. Mr. Benson asked him if that is relevant? Mr. Amico replied that he was not positive, and that he was not sure of all the figures and they ran out of time so that he could not answer the question right now. He recommended that there could be the condition that it will work out, or the applicant will have to redo it and come back for review. Mr. Harrison continued that he is not saying that the test pits will be finished grade, and explained that, today, they are down to ground water, not four feet; when completed, they will be above that, and added that they did not have enough time to get to the engineer with the information. Mr. Amico continued that these are existing conditions; the soil is lower, 30 inches to ground water and they don't know by how much, determined by how much top soil was removed. Mr. Benson asked him how the

engineer knows that it is accurate? Mr. Amico replied that they are going by what they are told.

Mr. Amico said that, regarding Mr. Harrison, it is unclear what the applicant wants to do along the back slope, which looked to be a 1 to 4 ledge cut. The engineers do not have enough information on it. Instead they propose a 2 to 1 slope. He added that they do not need more geotechnical information, and believe that this slope is safer, giving examples such as if a piece of ledge fell off, or someone were to fall off of it, a 2 to 1 slope would be safer, but added that, in some areas if there is a solid ledge, 4 to 1 would be alright.

(Next, Mrs. Pedone opened the discussion to public comment and questions).

First to speak was Bud Hanscom (sp.?) of 16 Stillwater Heights Drive. He asked if there are any Town or state guidelines regarding blasting such as how close it can be done? Mr. Amico replied that there are regulations regarding blasting. He mentioned the possibility of it weakening a foundation. Mr. Marchant continued that the State Fire Marshall has guidelines for the qualification of contractors and pre-blast surveys and said that blasting is highly regulated. Mrs. Isgro then commented that she agreed with Mr. Marchant but mentioned the history of Afra Terrace, and expressed concerns about blasting in this situation with the ledge protruding and possibility of contamination of well water. Mr. Benson responded that they need to weigh the safety of the project regarding the slope and the possible consequences of blasting. Ms. Isgro responded that the close proximity to water was a major concern.

Mr. Hanscom (sp.?) continued his comments, first, regarding the conservation land, and commented that disturbing it would violate the spirit of the agreement. Second, regarding finding of groundwater 30 inches below the surface, he asked if there has been any determination if there are underground streams? Mr. Amico replied that there could be underground streams but he does not have any information on that. Mr. Benson asked him if that could be determined by the next ZBA meeting and is it relevant? Mr. Amico replied that infiltration, detention basins and slope are not adequate information for viability of the project and that he couldn't comment. Mr. Benson and Mr. Hanscom (sp.?) asked Mr. Amico if they should be concerned? Mr. Amico replied that the design engineer would know better. Mr. Benson said that the residents are concerned with how this might affect neighboring land, then asked if this is a potential issue and are the grading and drainage plans sufficient to address this? Mr. Amico replied that he was not sure that this can be determined from that information. He believed that one test pit per detention basin would be adequate but it may not show what they want to know; adequate testing might not even show if there is a stream sub-surface. Mr. Harrison commented that underground streams were not addressed by peer review in the past when the project was previously approved.

(Mrs. Pedone then responded that the board was satisfied with Mr. Amico's answers, and with no further public questions she closed the discussion to public comment). She next summarized that the meeting had covered the following items on the agenda: discussion of the working session and updated peer review. Next, she said that the board wanted the status of the restated amended decision from Town Counsel, and asked her if it was still an open item? Atty. Murray replied that it was still an open item, and said that at the end of the working session, Mr. Marchant, Mr. Harrison and Town Counsel (Atty. Murray) decided that they should meet, but until they have all finalized plans and minor modifications made by the applicant, it is still open.

Mrs. Pedone then asked Mr. Harrison if he had any additional items for the binder and if he had larger binders as promised for the board (and Town Clerk's copy)? He replied that they did have larger binders and additional items for the binders: updated Table of Contents (tab 34), propane and water plan (tab 34), Water Dept. letter date 11/16 (35), Fire Dept. letter dated 11/17 (36), Municipal Lighting Dept. letter (37), and his letter to the board, handed out this evening, regarding modification of plans (38). Mrs. Pedone asked him if anyone has reviewed these? Mr. Harrison said no, that they were submitted this evening for review. Mrs. Pedone asked him to read the letter for those present at the meeting. He proceeded to read his letter, dated 11/19, regarding the submission of revised plans to amend or replace former plans, and that there shall be reference plans on file, with a listing of the reference plans; modifications are listed also and he is requesting that they are not considered substantial changes. The applicant offered to accept as a condition to present more information. He also said that, regarding item 15, prior to the final amended permit they will give plans in one set, even though they have presented them before. Mr. Harrison did not believe that the architectural plans will have any changes. He added that they need a final set of drawings to obtain final approval from MHP, and hope to have them prior to the next meeting, but need approval from the board for layout modifications. Mr. Marchant responded that, at a prior ZBA meeting, the board acted on one of two requests for modifications, and what remains is approval of plans; the board voted to accept the other change as unsubstantial (the Secretary provided the vote sheet of August 20, which showed a vote on the reduction of number of units). Mr. Harrison said that they want item 3, site modifications, to be approved. Mr. Benson asked how they can approve plans if they might change? Mrs. Pedone added that 1 and 2 are approved. Mr. Marchant explained that, within 20 days, the board must decide if substantial or insubstantial, and had extensions before in order not to violate that timing. Meanwhile, he said that the critical issue at this time is the slope and its effect on the conservation land because regarding groundwater, the applicant has no choice but to comply. Mr. Marchant said that they need to take more time to understand the slope situation, and that Mr. Harrison said that they can stake it and take aerial photos and superimpose them on the area, and asked the board if they can go out to see the site? Mr. Marchant asked Mr. Harrison what the Building Permit status

was? Mr. Harrison replied that they do not satisfy the building permit requirements, only the construction permit. Mr. Marchant explained that more detail is needed for the building permit, and said that hopefully the slope will be resolved by the next meeting.

Mr. Harrison then explained that the architectural plans were from August, and no issues were raised with them. He said that the site plans may change regarding drainage. He said that they are trying to progress with MHP, and added that there is no approval from the board for the architectural drawings or site plans with building locations and asserted that they cannot get an updated commitment letter without approved plans.

In response to a question from Mr. Marchant, Mr. Amico replied that he did review the new set of plans. Mr. Harrison continued that he would at least like to obtain architectural plan approval. In response to a question from Mrs. Pedone as to why this matter is delaying MHP, Mr. Marchant explained that final approval differs from the project eligibility letter, which is based on a preliminary letter. For final approval, they want final plans. MHP is giving a loan so they need a revised pro forma, final plans to check for accuracy, and they need a final determination by the board that the plans are acceptable. Mr. Harrison continued that MHP hired an inspecting engineers who want to see VHB's final review prior to their peer review. He said that the applicant has retained two Clerk of the Works and needs a third one, and their Clerk of the works won't review until the Town's review is complete.

Mr. Marchant thought that progress has been made, but the slope is still an issue of concern before approval of the plans. Mr. Harrison responded that the building layout, parking layout and architectural drawings will not be affected by that. Mr. Benson expressed concern that the board was receiving information piecemeal and Mr. Harrison responded that they want the board to see layouts and floor plans; Mr. Marchant did not think that the board should get that involved with drawings and plans.

Mr. Ali suggested that the board take a walk of the site; he will stake out the area and show them. Mr. Marchant said that the board should defer to the peer review and that the plans should be accepted, but any vote to accept is subject to satisfaction of the board on storm drainage and slope. He mentioned that the architectural plans are not to the degree of a building permit, and asked how much the board has reviewed them? Mrs. Pedone, following a question from Mr. Femia, asked if the board needs guidance from the Conservation Commission? Mr. Harrison responded that, if there is an issue with the ledge, while it is conservation land, they are trying to make the area safe and it may need to be done; they are asking to insure a safer slope they may need to use some of the land since it is still their property, and they will try to minimize impact to it.

Ms. Isgro then said that it was clearly stated that the parcel of land in question was dedicated to the Town and to kept in its natural state, and alteration of it seems in violation of the agreement with the original developer (Lever). Mr. Benson continued that, if the applicant requests a modification, the board can allow it; at this time the land is owned by the developer (Ali); if he wants to do something that encroaches on the conservation land the board can approve the change if they agree that it is appropriate and in the best interest of the public. Atty. Murray agreed, and added that the conditions of the permit is prior to any occupancy permit.

Mr. Witkus then summarized that the applicants would be cutting off the ledge, putting in material and spreading it around the property and building it up, and he asked Mr. Harrison what they will be doing with the remaining material? Mr. Harrison replied that they would get it to the grade they want. Mr. Ali added that they might recycle it and leave it on the site.

Mrs. Pedone then said that the board will have discussion for a few minutes, with the discussion closed to public comment; she said that the board accepts these plans and VHB's review of the plans that are still outstanding items, and asked if the applicant will have them by the next meeting? Mr. Rajeshkumar agreed that they should have this by the next meeting. Mr. Benson asked Mr. Harrison, regarding the review letter discussed before, if item has been addressed? Mr. Harrison replied that it had been addressed, along with item 2. Mrs. Pedone asked about item 3. Mr. Benson then asked if the building elevations are subject to change? Mr. Harrison replied that they are staying. He added that DEP wants a four-foot separation of test pits. He said that they do not anticipate the design changing, and think that they can provide adjustments for retention area changes. Mr. Amico added that, based on the property, if the applicant cannot prove that it can work, they should be able to provide an alternative, but the engineers do not know enough at this point. He explained that there are many ways to deal with filtration. Mr. Harrison continued that the retention areas are across from the parking lot, and that the board should approve the site plan, and if there are changes the applicant will have to modify. Mr. Benson, referring to the Marchionda plans, said that they are from the original comprehensive permit and asked why the board needs to approve them? Mr. Harrison replied that they are amending and restating the Comprehensive Permit, where they are referenced, so they just want acceptance of them. Mr. Marchant said that he recommended an amended and restated decision. Mr. Benson was concerned that the board will be voting upon something already approved and that multiple votes would confuse the situation.

Mr. Benson reviewed the areas discussed that were outstanding that the applicant wants the board to approve. They were the landscaping plan (item 1), the photometric plan (item 2), the site plan by Bertin, utilities, retention wall layout, propane/water plan, and grading/drainage. Mr. Harrison added, regarding item 7, with conditions by VHB regarding retention areas, and

Mr. Benson added the slope issue. Mr. Harrison continued grading and drainage (#7). Mr. Benson asked if item 6 would be not an issue once the board obtains letters, and Mr. Amico replied that this was correct.

Mr. Benson then asked Mr. Amico if item 5 was shown? Mr. Amico replied that it was, and Mr. Benson responded that he was agreeable to it. He continued that he was okay with #4, and the utility departments. Mr. Amico added that, if there are minor discrepancies, the departments have the final say. Regarding item 3, Mr. Amico said that this was okay. In response to a question from Mr. Rajeshkumar, that parking is included on that, Mr. Amico replied that it was, and in response to a question from Mrs. Pedone, Mr. Harrison said that nothing has changed from the decrease to 172 parking spaces.

Mr. Benson then remarked to Mr. Marchant that lot 3 appears on this site plan but reminded Mr. Marchant that he was concerned because it did not appear at the August 20 meeting. Mr. Marchant added that it is also a condition in the comprehensive permit that lot C will be deeded. (There was a question from the audience as to whether or not something could be discussed that was not on the agenda, referring to the issue of lot 3 and the conservation restriction, and Atty. Murray replied that the board could decide if this was a natural part of other discussions, or it could be place on the next agenda).

Mr. Harrison continued that, in the original comprehensive permit, there were no more than two parking spaces/unit, and he asked if the board wanted the number of units on the site plan? He said that they propose 173 spaces. Mr. Benson suggested that the board weigh in as to if they are concerned or not.

Then Mr. Benson asked Mr. Harrison about the landscaping plan, and Mr. Harrison replied that they were items 13 and 33 at the last meeting (the Secretary provided Mr. Benson with copies of this and other binder items, as he was not at the last meeting). Regarding a question from Mr. Benson about the photometrics, Mr. Amico replied that they received that on 10/28, and that they were satisfied after the applicant's adjustments.

Mrs. Pedone asked if there was any reason these 7 items cannot be worked out by the next meeting? Mr. Harrison replied that they need to get approval from MHP. Mrs. Pedone said that, by then, they should have feedback. Mr. Harrison suggested that the plans could be addressed as Mr. Amico suggested. Mr. Benson expressed concern that what has already approved may be changed and it would be confusing as to what applies. Mr. Harrison responded, referencing condition 15 that, before the final amended restated comprehensive permit is complete, the applicant needs to submit one package. Mr. Ali added that they will have a complete set, and asked if six of seven outstanding areas are clear now, if he can go forward with the MHP paperwork, as he needs the loan commitment because this is costing

him money? Mr. Benson suggested that the board can vote on items 1-6, and table item 7. Mr. Ali and Mr. Harrison agreed to that idea.

Mrs. Pedone then asked Atty. Murray if the board can legally act upon items 1-6? Atty. Murray replied that the board does not have “action on modifications” or “vote” on the agenda, so that someone could file an Open Meeting Law complaint. Mr. Harrison asked if the board can acknowledge that these drawings are under consideration for an amended restated permit? Atty. Murray replied that the board can do that, or say that they are accepted and under review. Mr. Benson asked Mr. Harrison if they need that in writing? Mr. Harrison replied that a vote will suffice to get things moving for the applicant. Mr. Harrison and Mr. Ali asked if Mr. Amico submits a letter stating that the drainage system is acceptable, would that be alright? Mr. Marchant asked Mr. Amico to submit that a few days in advance of the meeting for review.

(Several questions came up from the board for the applicant. Mrs. Pedone asked Mr. Harrison why they cannot wait until 12/17, as Mr. Ali asked if they could meet in 15 days? He said that it was costing him money the longer he waited. Mr. Rajeshkumar asked why the applicant did not do the geotechnical studies sooner? Mr. Ali replied that Town Counsel cannot finish the amended restated permit until the plans are finalized. Mrs. Pedone asked the Secretary to add these items to the December 17 agenda). Town Counsel said that she can take all plans and information and incorporate it into the amended restated permit after the meeting. Mr. Benson asked the board to acknowledge this evening that items 1-7 are the plans under consideration of the board and it will be put on the agenda for December 17; all issues will be worked out by then; the board will vote; and Town Counsel will have what she needs for documentation. Town Counsel continued that if a full listing of documents is sent to her, she can build them into the decision assuming the board is in agreement, and if not, it can be modified. Mr. Harrison asked if the board wanted to make a site visit? Mr. Benson replied “yes” and also asked for photos. Town Counsel asked Mr. Marchant, Mr. Harrison and Mr. Amico to meet by December 17 to discuss other items. Mrs. Pedone summarized that they have housekeeping items and items 1-7 to be settled by the 17th and for these to be put on the agenda for that meeting. Mr. Benson repeated that they will have a site visit and would like aerial photos, but need them for the property in the present state. Mr. Harrison said that he will identify the area that will be the reference point for the site visit. Mr. Ali was not sure that they could get aerial photos.

After discussion, the board decided to have the site visit on Saturday, November 28, at 9:00; the site visit will be posted, but no minutes will be taken.

Mrs. Pedone reiterated that the board acknowledges the six items under the board’s review, along with the architectural plans, along with modifications from the working session by Town

Counsel, Mr. Harrison and Mr. Marchant. She asked Mr. Harrison if the board has an extension on the modification requests to December 17th? He replied “yes.”

Mail and Paperwork:

Mr. Harrison and Mr. Ali distributed new, larger binders to the board. Mrs. Pedone also reviewed mail given to her by the Secretary.

Minutes of August 20, September 17 and October 22 Meetings:

After review of all sets of minutes by the board, Mr. Femia moved to accept the minutes of 8/20 as submitted; Mr. Rajeshkumar seconded. All in favor.

Regarding the minutes of 9/17, Mr. Femia moved to accept the minutes as submitted. Mr. Rajeshkumar seconded. All in favor.

Regarding the minutes of 10/22, Mr. Femia moved to accept the minutes as submitted. Mr. Rajeshkumar seconded. All in favor.

With no further business to discuss, Mr. Femia moved to adjourn the meeting at 10:21 p.m. Mr. Benson seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____

