



## ACTION ZONING BOARD OF APPEALS

### Minutes of Meeting

5/6/2019

7:30PM

Acton Town Hall

472 Main Street

Room 204

Board of Appeals members in attendance: Ken Kozik, Adam Hoffman, Emilie Ying.

Absent: Suzanne Buckmelter, R. Scott Robb

Also present: Roland Bartl, Planning Director; Vivian Birchall, Administrative Assistant; Stephen Anderson, Town Counsel.

#### 1. Opening

Chair, Ken Kozik opened the meeting at 7:30 p.m.

#### 2. Minutes

Mr. Hoffman moved to approve the 4/29/2019 minutes. The motion was seconded by Ms. Ying. The motion was unanimously (3-0) approved

#### 3. New/Special Business

##### 7:35 PM – ZBA 19-05 – Hearing, 236 Central Street Special Permit Application

The applicant presented an overview of the application for a special permit, including a simulation of the proposed building and highlighting the consultative process with the town staff.

Ms. Ying moved, Mr. Hoffman seconded and the board unanimously voted 3-0 to close the public hearing at 8:05pm.

##### *Deliberations:*

The board discussed the application. Ms. Ying moved, Mr. Hoffman seconded, and the board unanimously (3-0) voted to approve the special permit application with conditions recommended by the Planning Division staff.

Ms. Ying will write the decision.

##### 8:08 PM – ZBA 19-06 – Hearing, 12 Orchard Drive Special Permit Application

The applicant and the property owners presented an overview of the application for a special permit and mentioned that they have been working in consultation with the planning staff to come up with a conforming plan.

Ms. Ying moved, Mr. Hoffman seconded, and the board voted unanimously (3-0) to close the public hearing.

##### *Deliberations:*

The board discussed the application and agreed that the project as presented, with conditions proposed by the staff, complies with the by-laws and would not be injurious or detrimental to the neighborhood. Mr. Kozik moved, Mr. Hoffman seconded and the board unanimously (3-0) voted to approve the special permit application with conditions to build substantially to the measurements and plan reviewed during the 5/6/2019 meeting.

The decision will be written by Mr. Kozik.

##### 8:30 PM – ZBA 19-07 – Hearing, 4 Piper Lane Comprehensive Permit Application

Mr. Bruce D. Ringwall on behalf of the applicant, presented an overview of the application/proposed development which he said was guided by the subdivision control law. The presentation included proposed location, zone, acreage, number of units, building plan, interaction and comments from town departments and concerns from abutters.

The ZBA chair noted that there is a prior special permit application related to the land that the Board handled within the preceding year. He asked Town Counsel to advise the Board on the subject and whether or not the State's Comprehensive Permit Regulations provide a 40B Safe Harbor in this case.

*Presentation by Town Counsel*

Mr. Anderson gave a detailed presentation on: Potential 40B Safe Harbors; 760 CMR 56.03: Methods to Measure Progress Toward Local Affordable Housing Goals; Chronology re potential safe harbors under 760 CMR 56.03; How boards can proceed despite safe harbors; Board's waiver upon failure to invoke safe harbor 760 CMR 56.05 (3); ZBA's options as to safe harbors; Procedure to invoke safe harbor 760 CMR 56.03(1); Housing Production plan safe harbor; Related Application Safe Harbor; Factors that need to be satisfied for Related Application Safe Harbor; Potential response Re "Not Same Developer"; Potential response Re "Not Same Property"; Potential response Re "Not Same Purpose"; Potential response Re "Exception Applies".

He explained the 4 Piper Lane Comprehensive Permit Application in the context of Safe Harbors.

*Response by the legal representative from South Acton Neighborhood Association (SANA)*

Mr. Dan Hill pointed out reasons that the application should be denied under the State's Safe Harbor regulations. These included:

- The site in question was the subject of a related application that sought a special permit
- By definition, the prior application was more than a minor modification and that is why it needed a special permit
- Intent of the developer is irrelevant under the safe harbor regulations
- The regulation does not require that the site of the work be exactly the same.

*Response by the applicant's attorney*

Mr. Levine explained the application, land acquisition process and timing in comparison to the fore-mentioned affiliated application. He pointed out that comments from the different town departments showed minimal concerns, and were overall good. He added that MassHousing had found no problems with the application and issued a Project Eligibility Letter.

Several members of the attending public offered additional comments.

*Discussion:*

Each board member expressed their conclusion from the hearing, stating that they would vote to invoke safe harbor 760 CMR 56.05 (3)

After discussion, Mr. Kozik moved and Ms. Ying seconded to invoke safe harbor 760 CMR 56.05 (3). The motion was unanimously approved (3-0)

Mr. Kozik moved, Ms. Ying seconded and the board unanimously voted (3-0) to continue the public hearing on 5/13/2019, 7:35pm at Town Hall Room 204.

Mr. Anderson and Mr. Bartl will draft the decision to be discussed at the continued public hearing.

**4. Adjournment**

At 11:05p.m, Mr. Hoffman moved and Ms. Ying seconded to adjourn the meeting.  
The motion was approved unanimously.

*Documents used*

## 05-06-19 - Meeting Information

| Type | Name  | Owner    | Modified Date | Size   | Actions   |
|------|---|----------|---------------|--------|---|
| File | 19-05 - 236 Central Street                    | planning | 03/25/19      | 3      |    |
| File | 19-08 - 12 Orchard Drive                      | planning | 03/25/19      | 4      |    |
| File | 19-07 - Piper Lane Comprehensive Permit       | planning | 04/05/19      | 11     |    |
| File | 05-06-19 ZSA Agenda                           | planning | 05/02/19      | 210 KB |    |
| File | DRAFT 4-25-19 Zoning Board of Appeals Minutes | planning | 05/06/19      | 232 KB |    |

## 19-05 - 236 Central Street

| Type | Name   | Owner    | Modified Date | Size   | Actions   |
|------|--|----------|---------------|--------|---|
| File | Application                                  | planning | 03/21/19      | 1      |    |
| File | Public Comments                              | planning | 03/21/19      | 2      |    |
| File | Staff Comments                               | planning | 03/21/19      | 8      |    |
| File | 19-05 - 236 Central St. Revised Legal Notice | planning | 04/25/19      | 107 KB |    |

## Application

| Type | Name  | Owner    | Modified Date | Size   | Actions   |
|------|---|----------|---------------|--------|---|
| File | Applicant's Building                                    | planning | 05/02/19      | 130 KB |          |
| File | Letter from Scott Hayes - 1915_ZBA_2BL4-1.8_4-25-19.pdf | planning | 04/25/19      | 85 KB  |    |
| File | Special Permit Application 3.8.19                       | planning | 03/21/19      | 2 MB   |    |

## Public Comments

| Type | Name                       | Owner    | Modified Date | Size  | Actions   |
|------|----------------------------|----------|---------------|-------|---|
| File | Annette Lochrie Comments   | planning | 04/29/19      | 16 KB |    |
| File | Terra Friendrichs Comments | planning | 04/29/19      | 13 KB |    |

## Staff Comments

| Type | Name                                   | Owner    | Modified Date | Size   | Actions   |
|------|--|----------|---------------|--------|---|
| File | 19-05 - Planning Department Memo.pdf   | planning | 05/01/19      | 152 KB |    |
| File | AWD Comments                           | planning | 04/23/19      | 91 KB  |    |
| File | Building Comments 5-3-19               | planning | 05/06/19      | 14 KB  |    |
| File | Building Commissioner 5-6-19           | planning | 05/06/19      | 81 KB  |    |
| File | Building Division Comments             | planning | 04/09/19      | 4 KB   |    |
| File | Engineering Department Comments        | planning | 03/19/19      | 164 KB |    |
| File | Engineering Department Comments 5-1-19 | planning | 05/03/19      | 162 KB |    |
| File | Health Comments                        | planning | 04/19/19      | 37 KB  |    |

## 19-06 - 12 Orchard Drive

| Type                                | Title | Owner    | Modified Date | Size   | Actions |
|-------------------------------------|-------|----------|---------------|--------|---------|
| Application                         |       | planning | 03/25/19      | 1      |         |
| Public Comments                     |       | planning | 03/25/19      | 2      |         |
| Staff Comments                      |       | planning | 03/25/19      | 4      |         |
| 12 Orchard Dr. Revised Legal Notice |       | planning | 04/25/19      | 100 KB |         |

  

### Application

| Type                  | Title | Owner    | Modified Date | Size   | Actions |
|-----------------------|-------|----------|---------------|--------|---------|
| Application           |       | planning | 03/25/19      | 13 KB  |         |
| Proposed First Floor  |       | planning | 04/15/19      | 129 KB |         |
| Proposed Second Floor |       | planning | 04/15/19      | 12 KB  |         |

  

### Public Comments

| Type                   | Title | Owner    | Modified Date | Size  | Actions |
|------------------------|-------|----------|---------------|-------|---------|
| Devin Lee Comments     |       | planning | 03/25/19      | 1 KB  |         |
| Jared Bloom Comments   |       | planning | 03/26/19      | 15 KB |         |
| Steven Shumah Comments |       | planning | 04/22/19      | 9 KB  |         |

  

### Staff Comments

| Type  | Title | Owner    | Modified Date | Size   | Actions |
|---|-------|----------|---------------|--------|---------|
| 19-06 - 12 Orchard Drive Planning Division Memo |       | planning | 04/25/19      | 92 KB  |         |
| AWD Comments                                    |       | planning | 04/25/19      | 101 KB |         |
| Engineering Comments                            |       | planning | 03/25/19      | 107 KB |         |
| Health Comments                                 |       | planning | 04/25/19      | 52 KB  |         |

## 19-07 - Piper Lane Comprehensive Permit

| Type   | Title | Owner    | Modified Date | Size   | Actions |
|--|-------|----------|---------------|--------|---------|
| 2018 Fire  |       | planning | 03/25/19      | 1      |         |
| 80 School Street Documents   |       | planning | 05/02/19      | 13     |         |
| Application  |       | planning | 03/25/19      | 0      |         |
| Other Associated Housing Documents   |       | planning | 05/02/19      | 3      |         |
| Pre-Application  |       | planning | 03/25/19      | 4      |         |
| Public Comments  |       | planning | 05/02/19      | 22     |         |
| Staff Comments   |       | planning | 05/02/19      | 0      |         |
| 760 Code of Mass. Regs. Chapter 8E.08  |       | planning | 03/25/19      | 281 KB |         |
| Comprehensive Permit Application - Piper Lane, Acton, MA - hearing extension agreement |       | planning | 05/02/19      | 0 KB   |         |
| Letter to Zoning Board of Appeals with Exhibits 6.2.19                                 |       | planning | 05/02/19      | 1 KB   |         |
| Piper Lane Revised Legal Notice  |       | planning | 04/25/19      | 103 KB |         |

## 2015 Fire

| Type  | Title  | Owner    | Modified Date | Size   | Actions |
|---|--|----------|---------------|--------|---------|
| PDF   | <a href="#">2015_0033 90 School Street Report AFD (redacted)</a>         | planning | 05/03/19      | 96 KB  |         |
| <h3>90 School Street Documents</h3>         |  |          |               |        |         |
|   | <a href="#">t8-01 - 90 School Street Planning Dept Memo w. Legal</a>     | planning | 05/06/19      | 1 MB   |         |
|   | <a href="#">90 School Street Final Signed &amp; Stamped Decision</a>     | planning | 05/06/19      | 172 KB |         |
|   | <a href="#">Application</a>  | planning | 05/06/19      | 982 KB |         |
|   | <a href="#">AVVO Comments</a>  | planning | 05/06/19      | 101 KB |         |
|   | <a href="#">Engineering and Health Comments</a>                          | planning | 05/06/19      | 75 KB  |         |
|   | <a href="#">Fire Comments</a>  | planning | 05/06/19      | 44 KB  |         |
|   | <a href="#">First Agreement on Time Extension.</a>                       | planning | 05/06/19      | 42 KB  |         |
|   | <a href="#">Full Plans</a>   | planning | 05/06/19      | 1 MB   |         |
|   | <a href="#">HDC LETTER_90 School Street</a>                              | planning | 05/06/19      | 18 KB  |         |
|   | <a href="#">Neighborhood Letter</a>                                      | planning | 05/06/19      | 176 KB |         |
|   | <a href="#">Property Card</a>  | planning | 05/06/19      | 771 KB |         |
|   | <a href="#">Second Time Extension</a>                                    | planning | 05/06/19      | 10 KB  |         |
|   | <a href="#">ZBL Section 8</a>  | planning | 05/06/19      | 91 KB  |         |
| <h3>Application</h3>                        |  |          |               |        |         |
|   | <a href="#">Low Pressure Sewer Plan</a>                                  | planning | 04/09/19      | 1 MB   |         |
|   | <a href="#">Piper Lane 40B Application</a>                               | planning | 04/09/19      | 10 MB  |         |
|   | <a href="#">Piper Lane Condominium Site Plans</a>                        | planning | 04/09/19      | 37 MB  |         |
|   | <a href="#">Piper Lane Condo Floor Plans</a>                             | planning | 04/09/19      | 232 KB |         |
|   | <a href="#">Piper Lane Condos Renderings</a>                             | planning | 04/09/19      | 1 MB   |         |
|   | <a href="#">Piper Lane Hydraulic Report</a>                              | planning | 04/09/19      | 441 KB |         |
|   | <a href="#">Piper Lane Report Letter 3-7-19</a>                          | planning | 04/09/19      | 1 MB   |         |
|   | <a href="#">Stormwater Management Report Piper Lane LLC (March 2019)</a> | planning | 04/09/19      | 3 MB   |         |
|   | <a href="#">Stormwater Q&amp;A Piper Lane LLC (March 2019)</a>           | planning | 04/09/19      | 130 KB |         |
| <h3>Other Associated Housing Documents</h3> |  |          |               |        |         |
|   | <a href="#">2019-4-9_Axon - letter for HPP Certification - Avilon II</a> | planning | 05/06/19      | 150 KB |         |
|   | <a href="#">Axon Avilon Phase II - Final Decision Signed and Stamped</a> | planning | 05/06/19      | 230 KB |         |
|   | <a href="#">Housing Production Plan 2019</a>                             | planning | 05/06/19      | 2 MB   |         |

## Pre-Application

| Type | Title                                       | Owner    | Submitted Date | Size   | Actions |
|------|---|----------|----------------|--------|---------|
|      | Action comments to MassHousing 03-01-18     | planning | 03/03/18       | 261 KB |         |
|      | Action Comments to MassHousing 11-13-18     | planning | 03/03/18       | 900 KB |         |
|      | MassHousing Letter to Action 03-04-18       | planning | 03/03/18       | 31 KB  |         |
|      | MassHousing Site Approval Letter 03-29-2010 | planning | 03/03/18       | 801 KB |         |

## Public Comments

| Type  | Title   | Owner    | Submitted Date | Size   | Actions |
|---|---|----------|----------------|--------|---------|
|   | Alexa Nicoll on behalf of SANA comments 4-20-2019<br>This information was submitted to the Planning Division in a hard copy format. The materials referenced in this cover letter are available for public view in the Action Land Use Department M-F, 8AM-5PM. | planning | 04/26/19       | 69 KB  |         |
|   | Barbara Morse Comments 4-26-19  | planning | 04/26/19       | 0 KB   |         |
|   | Carolyn Dittes and Frank McNamara 5-6-19  | planning | 05/06/19       | 14 KB  |         |
|   | Catherine Bradshaw-Hyden 5-6-19   | planning | 05/06/19       | 16 KB  |         |
|   | Cheryl Bible Comments 4-26-19   | planning | 04/26/19       | 34 KB  |         |
|   | Christy White & Philip Corp 4-22-19   | planning | 04/22/19       | 14 KB  |         |
|   | Dan Hill 5-6-19   | planning | 05/07/19       | 1 MB   |         |
|   | Daniel Hill Comments 4-11-19  | planning | 04/11/19       | 2 MB   |         |
|   | David Henn Comments 4-25-19   | planning | 04/25/19       | 41 KB  |         |
|   | Gene Beresin & Michaela Moran Comments 4-16-19  | planning | 04/16/19       | 120 KB |         |
|   | Gene Beresin Comments 5-6-19  | planning | 05/06/19       | 1 KB   |         |
|   | Jean Butter 5-6-19  | planning | 05/06/19       | 13 KB  |         |
|   | Jennifer Brown 5-6-19   | planning | 05/06/19       | 11 KB  |         |
|   | Judi Kotanchik 5-6-19   | planning | 05/06/19       | 64 KB  |         |
| <a href="https://actionnewyork.stateviewcollection.us/00000000000000000000000000000000">https://actionnewyork.stateviewcollection.us/00000000000000000000000000000000</a> |   | planning | 05/06/19       | 14 KB  |         |
|   | Lauren Miller 5-6-19  | planning | 05/06/19       | 12 KB  |         |
|   | Michaela Moran Comments 4-4-19  | planning | 04/11/19       | 197 KB |         |
|   | Nancy Desker 5-6-19   | planning | 05/06/19       | 12 KB  |         |
|   | Peter Grover 5-6-19   | planning | 05/06/19       | 10 KB  |         |
|   | Rubin Henn 5-6-19   | planning | 05/06/19       | 12 KB  |         |
|   | Roger Gay 5-6-19  | planning | 05/06/19       | 11 KB  |         |
|   | Rustin Carpenter 5-6-19   | planning | 05/06/19       | 12 KB  |         |
|   | William Gilpatrick 5-6-19   | planning | 05/06/19       | 12 KB  |         |

 Staff Comments

| Type  | Title  | Owner    | Modified Date | Size   | Actions   |
|---|--|----------|---------------|--------|---|
|  | 4 Piper Lane PD memo with attachment                     | planning | 05/02/19      | 108 KB |    |
|  | ACHC 4 Piper Lane comments to ZBA 8-3-19                 | planning | 05/02/19      | 248 KB |    |
|  | AWO Comments 4-29-19                                     | planning | 05/02/19      | 101 KB |    |
|  | Cross-Town Connect Comments 4-23-19                      | planning | 05/02/19      | 120 KB |    |
|  | Engineering Department Comments 4-29-19                  | planning | 05/02/19      | 142 KB |    |
|  | Fire Department Comments 5-1-19                          | planning | 05/02/19      | 47 KB  |    |
|  | HDC Comments 4-25-19                                     | planning | 05/02/19      | 109 KB |    |
|  | Health Division Comments 4-29-19                         | planning | 05/02/19      | 32 KB  |    |
|  | Piper Lane Condominium - DRB 06-01-2019 Review - revised | planning | 05/02/19      | 114 KB |    |
|  | Police Comments 5-3-19                                   | planning | 05/02/19      | 30 KB  |    |
|  | SDA PP Slide Deck - 5-3-19 (A0816430x03BA0)              | planning | 05/02/19      | 716 KB |    |
|  | SDA PP Slide Deck 2 -5-6-19                              | planning | 05/02/19      | 307 KB |    |
|  | SDA PP Slide Deck 3 -5-6-19                              | planning | 05/02/19      | 330 KB |    |

For additional materials used during the meeting, please visit: <http://doc.acton-ma.gov/dsweb/View/Collection-10518>

Respectfully Submitted,

Vivian Birchall  
Land Use Department