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**MINUTES OF THE HEARING ON THE PETITION OF
MARSH VIEW LLC, 93 CENTRAL STREET**

HEARING # 09-03

A public hearing of the Acton Board of Appeals was held in the Town Hall on Wednesday, February 24, 2010 at 7:30 pm on the petition by Marsh View, LLC for approval of a Comprehensive Permit on a parcel located at 93 Central Street, Acton, MA, Parcel 123 on Map G-2 of the Acton Town Atlas. The petitioner proposes four single family dwelling units with one of the units being affordable.

Present at the hearing were Ken Kozik, Chairman; Jonathan Wagner, Member; Richard Fallon, Alternate member; Scott Mutch, Zoning Enforcement Officer and Assistant Town Planner and Cheryl Frazier, Board of Appeals Secretary. Also present was the Petitioner, James D'Agostine, and many interested abutters.

Ken Kozik reconvened hearing #09-03, and read the new submissions into the record which included an updated Planning Department memo, a letter from Acton Survey & Engineering, an email from the Fire Department, several emails from abutters and interested parties and a memo from the Engineering Department dated January 14th. Mr. D'Agostine submitted for the record a document from the Board of Health some new information from the Board of Health dated February 24th.

Ken Kozik wanted to remind everyone that procedurally once the hearings are closed there will no longer be any input from the public or the petitioner. They may deliberate at a later date and the public would be invited to attend without further input.

Ken asked Scott if there are any remaining health or safety issues that have not been resolved. Scott Mutch, Zoning Enforcement Officer said Engineering and the Fire Chief are now comfortable after their meeting with Mr. D'Agostine. Mr. D'Agostine said the Board of Health wanted the verbage changed which the applicant has addressed and submitted for the record.

Ken Kozik said in summary, in his view, the Board has received many public comments in regards to design and screening issues and specific questions regarding road maintenance. Town Counsel and the abutters attorney have submitted their comments for the record.

Ken Guditz, of 81 Central Street has three issues. The first is the information he submitted on January 25th regarding the elevations. The second issue is regarding the FAR and the third is the Town of Acton Comp Permit policy and although it's not a rule or regulation it's the town's guidelines. At one of the meetings Mr. Guditz attended, he submitted a letter that was read into the record and discussed. He continued stating that the elevation drawings were never addressed. Scott responded by saying the elevations of the project were submitted in the beginning with the original application. Mr. Guditz brought up the BOS letter that was submitted earlier in the hearing process. He was wondering if the Board of Appeals took into consideration the BOS concerns and comments as they did with Board of Health and Engineering. Ken believes that all the BOS issues have been looked at and will be addressed. As far as the elevations, Mr. Guditz said the plans and elevations that he drew up and submitted to the Board were not to be used to help the developer. Ken Kozik asked Mr. D'Agostine about the elevations that were submitted for this project. Mr. D'Agostine stated that the elevation drawings that were submitted with the application were drawn up specifically for this project and not for another project. Mr. Guditz continued with the comments from the BOS and what they were looking for from the petitioner. He read Section 3 of the Comprehensive Permit Rules and Regulations. He said at the last hearing he brought up Section 3.14 which requires that Architectural sheets and floor plans be submitted. He recommends the board denies this application until the applicant can submit the Architectural sheets and floor plans.

Maureen Ryan Friend, of 40 Tuttle Drive wanted to know as the Board moves into the deliberation process how do they integrate the outpouring of abutter information that came in. Ken Kozik stated that the Board can do one of three things. Deny it outright, grant the decision, or grant it with one or more conditions.

Deborah Piper said they have been to meetings over and over through this process and when the developer is asked for more information he never gets it to the Board. If this project does in fact happen what will happen with the abutter Gwen Horsburgh's home when the right of way is under construction. Ken Kozik said there would be conditions with time restraints etc.

Ken Guditz said Gwen Horsburgh and her property would be impacted by the construction when the project begins. Jon Wagner responded by saying they have always addressed these kinds of issues in their decisions.

Gwen Horsburgh said with the density of the property her driveway would be impacted and obstructed quite a bit.

Maureen Ryan Friend, of 40 Tuttle Drive asked a question on behalf of Gwen Horsburgh. She said before this process is completed and the hearing is closed, Gwen would need to submit her concerns for the decision. Ken Kozik said Gwen and her attorney have stated their concerns for her property at an earlier date and the board will take their statements into consideration.

Jon Wagner added they collect information and make a decision. A 40B has certain guidelines they need to follow and it's up to the Board's discretion whether or not they grant it or not.

Gwen Horsburgh said at the last hearing she asked what the penalty was to the Town of Acton if the Board denies this permit. Ken said their hands are tied because until the town reaches the 10% they are hard pressed and their hands are tied. Ken continued by saying it's more of a compromise than a mandate. If the applicants proposal were to be denied the applicant has the right to appeal to Housing Appeals Court. The Housing Appeals Court can overturn a denial and potentially grant the developer's original application design. Jon Wagner in following up said he feels the abutters think the town is under some kind of penalty but that is not the case. The developer can come in and have all the zoning requirements waived to do the project. Jon Wagner added if they deny 40B's the developer can go to Housing Appeals Court as Ken mentioned. The only significance of the 10% is the 40B is unique because the Board of Appeals makes the decision.

Ken added that outside of the 40B it's the Zoning Enforcement Officer that oversees all building, zoning and construction of the project.

Ken asked for comments from the two board members. Rick Fallon had a question regarding the architectural drawings that were submitted and asked shouldn't the board require the developer to address and submit plans with an Architect's stamp.

Scott Mutch read the sections out of the Town Policy Comp Rules and Regulations that refer to the submitted plans. Ken asked the other Board members what they want to do in regards to the stamped Architectural Plans being submitted. Jon Wagner and Rick Fallon would like the plans submitted before the close of the hearing.

The petitioner stated he does not want to extend the hearing past the required 180 days.

The Board continued the hearing to Wednesday, March 10, 2010 at 7:30 pm in the Francis Faulkner Room, room 204. Jon moved to continue the hearing, Rick Fallon seconded.

Respectfully submitted,



Cheryl Frazier
Board of Appeals Secretary



Ken Kozik
Chairman, Board of Appeals