

Zoning Board of Appeals

Minutes

April 25, 2019

Members Present: Paul Giunta-Chairman, Thomas Pope and Ralph Loftin

Absent: Robert Levine and Thomas Golden

Also present were Donald Rider, City Solicitor and Atty. Paul Momnie, of Goulston & Storrs PC, 400 Atlantic Ave. Boston, MA 02110 - representing Avalon Orchards on Boston Post Rd. East.

6:00 PM Executive Session: Discussion strategy with respect to litigation involving property off Kosmas St., because an open meeting may have a detrimental effect on the litigating position of the Zoning Board of Appeals (ZBA). Under MGL Chapter 30A, s21(a)(3).

Open Session

Discussion:

- Avalon Orchards – 91 Boston Post Rd. East – Update on Comprehensive Permit – Conditions # 10 and 11 (Page 15) and Conditions #18 & 20 (Page 16). ZBA Case # 1239-2000.

Donald Rider opened the discussion with a little history of this Comprehensive Permit of 156 rental units issued by the Zoning Board of Appeals for this location back in the year 2000. Mr. Rider realizes that the current ZBA members did not sit on this Comprehensive Permit filing. Paul Giunta stated he has sat on a Comprehensive Permit filing in the past, but the other members have not. Mr. Giunta also mentioned the City of Marlborough has reached above the 10% State required of low to moderate income housing under Chapter 40B.

Condition #10 A Conservation Restriction shall be recorded on approximately nine acres of the site shown on the above referenced plan. The restriction shall be held by the Marlborough Conservation Commission. The terms of the restriction shall be as approved by the Marlborough Conservation Commission. The location of the conservation area shall be determined by the Conservation Commission and the Applicant. **(This has not been recorded)**

Condition #11 As part of said Conservation Restrictions, a ten-foot-wide trail easement, following a route agreed to by the applicant and the Marlborough Conservation Officer, will be granted to the City of Marlborough Conservation Commission allowing public pedestrian access. Applicant shall construct within the easement area a soft-surface pedestrian trail approximately five feet wide. **(This is in Conservation Restriction (CR), submitted to the State for review)**

A Conservation Restrictions (CR) was sent to the State. The process is it goes to EOE, then to DCS who will review the Conservation Restrictions. A baseline report will be prepared.

After some adjustments of the Conservation Restrictions, it will go to DCS and if all is o.k. the Conservation Restrictions (CR) will go to the Conservation Commission for review and then to the City Council.

Atty. Paul Momnie explained the Baseline Report will be completed within 2 weeks. 4-6 weeks turnaround and the (CR) will take 6-9 weeks. Then to the City Council for review and back to DCS.

Condition #18 The low and moderate-income units shall remain low and moderate income in perpetuity. A covenant in a form approved by the City Solicitor shall be recorded in the Registry of Deeds detailing this provision.

(No covenant went to the Registry of Deeds.)

Condition #20 Applicant agrees not to convert the units to condominiums for a period of 20 years. In the event of a conversion after 20 years, the affordable units would remain affordable in perpetuity as either home ownership units or rental units as may be agreed to by the applicant and the ZBA. **(Year 2020 = 20 years)**

Subsidize Housing Inventory (SHI) – 156 rental units are 100% as affordable housing goes into the SHI. If they are converted into condos, the city's 10% of affordable housing will be in jeopardy.

As a rule, of the 156 rental units, 25% is set aside for affordable units. Thus 39 units is affordable in perpetuity. If taken away, 117 units will be taken away from the (SHI).
(156 units – 39 units = 117 units)

The existing Regulatory Agreement will come to an end in the year 2020. Avalon Orchards agree that under a new Regulatory Agreement they will keep these 156 units as rental till the year 2045. (2020 – 2045 = 25 years) So, the city will not go below the 10%.

It was mentioned that CDA keeps track of the affordable units in Marlborough.

Donald Rider stated he has drafted a new Regulatory Agreement to be added into the City Council Agenda. This agreement will run with the property.

Adjournment – With no other business to discuss, a motion was made by Paul Giunta, seconded by Thomas Pope to adjourn the meeting.

Respectfully submitted,

Paul Giunta
Chairman
Zoning Board of Appeals