

Great Barrington Zoning Board of Appeals

Minutes for Aug.20, 2015

Attending the meeting at Town Hall were Chairman Ron Majdalany, Vice Chairman Carolyn Ivory, Clerk Kathy Kotleski, Madonna Meagher and Don Hagberg.

The chairman at 7:30 p.m. opened the public hearing for **Construct Inc.**'s application for a Comprehensive Permit for affordable housing at 316 State Road at 7:30 p.m. The hearing had opened July 15, 2015, and was continued to Aug. 5, 2015. Because of the secretary's failure to post an agenda in time, the board met that night only long enough to continue the hearing to Aug. 20, 2015. Chairman Majdalany asked Mr. Hagberg to sit in on the hearing Aug. 20 in place of Michael Wise.

Brent White of White Engineering presented new documents including a revised site plan dated Aug. 5, 2015, and said there would be a reduction in impervious area at the site of .14 acres or 6,098 square feet. He reiterated plans for a retention pond on the property at 314 State Road and the diversion of runoff on 316 State Road to a rain garden, which will hold just under 1,000 gallons. He said Mass. DOT a year ago put in a culvert at 318-320 State Road but to run a 2-foot ditch 300 feet to connect with that culvert would offer no frost protection, would probably require a guard rail along the highway and was not likely to gain Mass. DOT approval.

From the audience, Sonny Zanetti, 324 State Road, asked if water that came down the hill on his property south of the affordable housing site could be diverted to the rain garden. Mr. White responded Mass. DOT's system was intended to take care of that runoff and property owners should be seeing a difference. In answer to a question from Ms. Meagher, Mr. Zanetti said the culvert has helped. Others said there are still water issues at the hatch home, 320 State Road. In answer to a question from Ms. Ivory about snowmelt, Mr. White said snow would be plowed into the rain garden without damaging the garden, and that holding area would handle snowmelt. If there is too much snow, he said, it would be removed from the property. He told Christine Hagen, 318 State Road, that vegetation and topography along the 316 State Road driveway would divert snow and runoff from her property.

The chairman closed the public hearing at 7:40 p.m. on a motion by Ms. Meagher, seconded by Mr. Hagberg and voted unanimously.

Town Counsel David Daneski had provided the ZBA with a checklist of findings it needed to make. The chairman read the items one by one, and board members discussed some of them. These are the first five:

Great Barrington does not have the minimum amount of affordable housing set by Chapter 40B, section 20 of the General Laws, and the development proposed in this application will not result in the Town meeting the minimum amount.

The Town has a great need for affordable rental housing in proximity to the Town center, and this project will provide such housing in a manner that is minimally intrusive to the neighborhood.

There are legitimate concerns regarding drainage and stormwater management for the project site, but the Applicant has addressed those concerns. The data and information presented indicate that the drainage system will be adequate to serve the level of development proposed, provided that the Applicant complies with conditions deemed necessary by the Board.

Sewer service to the project site will be adequate.

To address local concerns, it is necessary to impose certain conditions.

Then under the category of Conditions:

The project shall be developed per the plans presented, including new information in a revised site plan dated Aug. 5, 2015.

Final, detailed site plans, including a landscaping plan, lighting plan, and designated snow storage area, to be delivered to the Board at least 45 days prior to either the anticipated start of construction or submission of building permit application, whichever is earlier, to allow for review by the Board and any consulting engineer the Board may retain. No building permit shall issue and no construction shall start until the Board has approved the final site plans. Approval will be deemed given if there is no written response within 45 days after plan submission.

The Applicant shall retain as many of the existing trees on site as possible.

The Applicant shall obtain site plan review approval and approval of the Massachusetts Department of Transportation for access to, and for the parking lot and driveway configuration on, the lot at 314 State Road.

The final site plans for the project shall include a drainage system in compliance with the Board's comments and all best management practices and any Stormwater Management standards of the Commonwealth of Massachusetts or enforced by the Commonwealth as a designee of the E.P.A.

The residential units shall be restricted, in perpetuity, for rental at an amount that is deemed affordable for households earning no more than 60% of area median income. The deed rider and/or use restriction that is used must be approved by Town Counsel prior to the issuance of building permits, and evidence of the recorded restriction must be provided to the Board and the Building Inspector prior to the issuance of occupancy permits.

The Applicant shall designate a monitoring agent for approval by the Board. The Monitoring Services Agreement must be approved by Town Counsel and signed prior to the issuance of building permits.

The affordable units shall be subject to a Regulatory Agreement between the Town, the Applicant and Massachusetts Housing Partnership, with the form subject to Town Counsel's approval. No building permits to issue until the Regulatory Agreement is recorded.

The Applicant shall prepare the documents required by DHCD for inclusion of the 11 units in the project on the Town's Subsidized Housing Inventory.

The Applicant shall obtain public water supply connection approval from the Great Barrington Fire District.

As security for completion of construction, release of occupancy permits shall be subject to the following restrictions:

No occupancy permit for any building until: (1) the driveway and parking area shown on the final site plans have been installed; (2) all other improvements shown on the final, approved site plans, have been constructed and are functioning; and (3) compliance with any other construction requirements imposed by the Board.

Upon completion and approval of all improvements, the Board may authorize the issuance of occupancy permits.

No unregistered or abandoned vehicles to be kept on the Property, and this condition shall be reflected in the leases to the units.

During construction, the Applicant shall maintain all feasible and reasonable means of dust control and shall collect all debris on a daily basis. No construction may occur on Sundays or on New Year's Day, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas Eve or Christmas. No construction may begin before 7:00 a.m. nor continue past 5:00 p.m.

Snow and ice removal shall be the responsibility of Construct, Inc., as manager, and shall be undertaken as soon as practicable after snowfall. No sodium-based de-icers shall be used.

The structures in the development shall be considered non-conforming and no exterior alterations, expansions or changes that render them more non-conforming shall be permitted.

No building permits may be issued until Town Counsel reviews and approves a site management plan submitted by the Applicant.

Only environmentally friendly landscaping products and fertilizers may be used.

The final lighting plan shall ensure, to the maximum extent possible, that there is no light pollution from the project.

A directory-type sign may be placed at the site entrance, no more than 3 feet high and no greater in area than 1 foot by 2 feet.

Water-saving devices shall be utilized throughout the buildings.

The Applicant shall obtain final approval from Massachusetts Housing Partnership prior to issuance of any building permit. Any proposed change in the subsidy source shall be deemed a substantial material change requiring a hearing and approval of the Board.

The Applicant shall pay the costs and fees of any consulting engineer retained by the Board in performing any of the services required by the terms of the Comprehensive Permit.

Any and all easements that may be necessary shall be in a form approved by Town Counsel.

The Applicant shall be required at all times to maintain its status as a non-profit corporation. The permit may not be transferred without approval by the Board after a public hearing.

The permit shall expire if construction is not commenced within three years from the date it is filed by the Board with the Town Clerk. Commencement of construction shall mean full construction of the foundation for at least one building.

Any revision to the plans that requires additional or more expansive waivers than those granted by the Board must be approved by the Board.

STATE ON THE RECORD: The Board finds that these conditions will not make the project uneconomic. To the extent that any conditions make the project uneconomic, the Board finds that the local concerns requiring the conditions outweigh the potential benefits of the project's affordable housing units.

Ms. Ivory moved that the board adopt the above findings and conditions as written, Ms. Meagher seconded, all voted in favor.

The chairman then reviewed the eight requested waivers:

Lot width: 150 feet required, 125 feet proposed

Side yard: 20 feet required, proposed 5 feet 9 inches at building A and 1 foot 7 inches on the north side of building B

Parking: 22 spaces required, 19 proposed

Multi-family dwelling in an R2 zone

Number of principal buildings per lot: 2 allowed, 3 proposed

Signage: none permitted in R2; one small, stand-alone sign proposed with name and address

Use of driveway: no more than 3 units permitted to share a driveway; driveway proposed shall serve 11 units

Planning Board Site Plan Review

On a motion by Ms. Ivory, seconded by Ms. Meagher, all board members voted in the affirmative.

On four additional requested waivers, the board on a motion by Ms. Ivory, seconded by Mr. Hagberg and voted unanimously, said the request regarding PILOT based on current PILOT agreements and waiver of water hookup fee were not in the ZBA's purview (they were matters for the Board of Assessors or Selectmen and for the Great Barrington Fire District, respectively) and denied requests for waiver of \$6,600 in sewer and Board of Health fees and a \$15,000 in building permit fee as the town needs some way to recoup these expenses.

Then Ms. Ivory moved and Ms. Meagher seconded that the board approve the Comprehensive Permit subject to conditions and stipulations already voted. The vote was Dr. Majdalany, Ms. Ivory, Ms. Kotleski, Ms. Meagher and Mr. Hagberg all in favor. Town Planner Chris Rembold, who was at the hearing, and Town Counsel David Doneski will complete the decision and findings.

In other business, the board on a motion by Mr. Hagberg, seconded by Ms. Meagher, approved the minutes for the July 28, 2015, meeting

The secretary reported on a trial held that day at Superior Court in Pittsfield, Judge Daniel Ford hearing the case of **Claudia Shapiro/Daniel Bell vs. Great Barrington Zoning Board of Appeals and Berkshire Aviation**, challenging a special permit issued in 2013 for a deck and handicapped bathroom at the airport office. The secretary had been subpoenaed to appear as a potential witness regarding clerical and historical questions. Rick Solon, airport president, was also subpoenaed. Both parties agreed to certain documents, the appellants submitted other documents. The appellants made an opening argument but called no witnesses and presented no case. Christopher Hennessey, counsel for the airport, asked the judge for a directed verdict in the defendant's favor as the appellant had failed to present evidence of standing, that is, no evidence construction of the deck would in any way harm their property. The judge allowed the appellants five tries to describe their standing. The judge accepted the defense motion and the lawsuit was dismissed.

The board at 8:20 p.m. on a motion by Ms. Meagher, seconded by Ms. Kotleski, went into executive session to discuss pending Land Court litigation, **Lynn Hutchinson/Brian Schwab vs. Great Barrington Zoning Board of Appeals and the building inspector**, with the intent of returning to public session. The vote was unanimous.

The board returned to public session at 8:25 p.m. and Ms. Ivory moved the board vote to authorize special town counsel to proceed with dismissal of two Lynn Hutchinson/Brian Schwab lawsuits, with the understanding that the Conservation Commission's order of conditions to restore vegetation cut on their and Great Barrington Land Trust property within the buffer zone of Long Pond remains in force; that escrow funds would be set aside from sale proceeds to assure compliance; and that the building inspector's cease and desist order would become moot with sale to new owners of the Long Pond Road property and therefore would be withdrawn the date of closing. Ms. Meagher seconded the motion, all voted in favor.

The meeting adjourned at 8:30 p.m.

Respectfully submitted

Bernard A. Drew, Secretary

