

PEMBROKE ZONING BOARD OF APPEALS MEETING MINUTES FEBRUARY 13, 2019

BOARD MEMBERS PRESENT: Frederick Casavant, Chairman; Christine Griffin, Vice Chairman; James Gallagher, Clerk

TOWN COUNSEL FROM KP LAW, P.C. PRESENT: Amy Kwesell

PUBLIC HEARING FOR COMPREHENSIVE PERMIT CASE #48-18 AT 274 WATER STREET PURSUANT TO G.L. CHAPTER 40B FILED FOR FOURTEEN (14) 1.5 STORY RESIDENTIAL TOWNHOMES CONTAINING FIFTY-SIX (56) CONDOMINIUM UNITS FOR SALE, 11 TWO BEDROOM AND 45 THREE BEDROOM UNITS, OF WHICH NOT LESS THAN 25% OR FOURTEEN (14) UNITS SHALL BE RESTRICTED AS AFFORDABLE FOR LOW OR MODERATE INCOME PERSONS OR FAMILIES, TO BE CONSTRUCTED ON THE PROPERTY LOCATED AT 274 WATER STREET, CONTAINING 48.9 ACRES +/- OF LAND AREA.

Mr. Casavant opened the public hearing for the requested comprehensive permit, case #48-18, to construct fourteen (14) 1.5 story residential townhomes containing fifty-six (56) condominium units for sale, 11 two bedroom and 45 three bedroom units, of which not less than 25% or fourteen (14) units shall be restricted as affordable for low or moderate income persons or families, to be constructed on the property located at 0 and 274 Water Street, containing 48.9 acres +/- of land area shown on Assessor's map as E15, 17 and 17A.

Mr. Warren Baker and others from Braverman, Baker and Barbadoro were present with the applicant. There were approximately thirty abutters present.

Mr. Casavant introduced Town Counsel attorney Amy Kwesell of KP Law who stated that under the 40B statute and regulations there are eight safe harbor options under which the town can rebut that the affordable housing needs outweigh the local needs. One of these safe harbors occurs when the town reaches 10% of the SHI or subsidized housing inventory; the last SHI is dated December of 2017 which put the town at 9.6%. It has been updated by the town to include units not counted properly or not counted at all since the 2017 SHI. Ms. Kwesell stated that it is her understanding that the Town Manager has a report which puts the town over 10%. Ms. Kwesell stated that the Zoning Board of Appeals, on behalf of the town, can invoke a safe harbor and if so, then vote to do one of two things. The ZBA can vote to deny the project or vote to continue with the project, hear the entire project and listen to the merits of the project, all the while reserving the ZBA's rights under the safe harbor to either deny the project or condition the project by approving the project with conditions.

Mr. Casavant introduced Town Manager Edwin Thorne. Mr. Thorne stated that the Town of Pembroke has worked assiduously over the last decade to promote and encourage appropriate and sustainable affordable housing in our Town. Additionally, the Town has partnered with various organizations to advance our commercial and residential construction and development plan in coordination with these efforts. Expending significant man hours and expense diligently working over the course of several years, the Town has appropriately and meaningfully updated Pembroke's Housing Production Plan (the HPP). We were pleased to receive the approval of the HPP by the Department of Housing and Community Development effective November 15, 2018 as developed and reviewed in accordance with 760 CMR 56.03(4) and DHCD guidelines. The last published list of Subsidized Housing Inventory (the SHI) by the Department of Housing and Community Development (the DHCD) was in September of 2017, over a year and a half ago. It is not current, and the figures contained therein are outdated. The Town of Pembroke asserts that the Town of Pembroke's Subsidized Housing Inventory (SHI) reflects 10.05% of affordable housing stock, in excess of the statutory minima outlined in 760 CMR 56.03 (a) requiring a

10% total housing unit minimum. The Town of Pembroke has 651 units of subsidized housing within its 6,477 total housing units, or 10.05%. It is the Town's position that, under General Laws chapter 40B, §20, 760 CMR 56.03(3)(a) and (8)(a), that the Zoning Board must consider that a denial of the requested comprehensive permit or the imposition of conditions or requirements upon the requested comprehensive permit would be consistent with local needs as a matter of law. Mr. Thorne stated that this is submitted for the ZBA's consideration and will be submitted to the DHCD as required.

Mr. Casavant requested that Ms. Kwessell respond; she stated that exceeding the 10% SHI meets the presumption that the town is meeting the affordable housing needs of the town and may thereby deny the project or invoke the safe harbor and reserve the ZBAs rights to hear the project on its merits and, at the end of the hearing process which would be 180 days without extensions, then decide whether to deny or approve the project with conditions.

Mr. Casavant advised that he is inclined to invoke the safe harbor; applicant's attorney Mr. Baker stated that there is a presumption that the DHCDs list is correct under the statute and if the town is going to assert the safe harbor within fifteen days of the opening of the hearing, then it is the town's obligation to notify the applicant's attorneys. Mr. Baker advised that the applicant essentially then has fifteen days to object to the assertion and appeal to the DHCD.

Mr. Gallagher stated that he is in favor of invoking the safe harbor and continuing on to hear the applicant's presentation and Ms. Griffin concurred.

Ms. Griffin moved that the Board determines that the Town of Pembroke has achieved one of the statutory minima standards set forth under G.L. c.40B, §§20-23 and 760 CMR 56.03(3) as the Town's Subsidized Housing Inventory, on the date that the Application was received, was over the 10% minimum based upon a report presented by the Town Manager Mr. Thorne; and the Board determines, under 760 CMR 56.03(8)(a), that the Board considers that a denial of the requested comprehensive permit under the Application by River Marsh LLC for a project located at 274 Water Street, Pembroke, or the imposition of conditions or requirements upon the requested comprehensive permit would be consistent with local needs as a matter of law; and the Board determines that, since the Town has achieved the ten percent statutory minima under G.L. c.40B and 760 CMR 56.03(1), the Board elects to proceed with the full local hearing, and ultimately to make a determination whether or not a Comprehensive Permit is issued, even though the safe harbor has been achieved; and, the Board does not waive its rights to deny the comprehensive permit or its right to impose conditions upon the issuance of any such permit and with such denial or conditions to be deemed consistent with local needs as a matter of law. Mr. Gallagher seconded the motion. The vote was unanimously in favor 3/0.

Ms. Kwesell stated that the Board has a letter prepared to send to the applicant with a copy to DHCD, therefore a vote is needed to allow the chairman to finalize that letter with town counsel. Ms. Griffin moved to allow the chairman to finalize a letter with the assistance of town counsel; Mr. Gallagher seconded the motion. The vote was unanimously in favor, 3/0.

The Zoning Board with town counsel consulted the meeting calendar; Ms. Kwesell advised that DHCD has thirty days after the applicant's fifteen or a total of forty-five days to respond. Consensus was achieved on continuing the hearing to April 10th with applicant's counsel agreeing to the continuance.

At 7:15 pm, Ms. Griffin moved to continue the public hearing on the application on case #48-18 to Wednesday, April 10, 2019 at 7:00 pm in room #6 at Pembroke Town Hall; Mr. Gallagher seconded the motion. The vote was unanimously in favor 3/0.