



MANCHESTER-BY-THE-SEA

ZONING BOARD OF APPEALS

Manchester-by-the-Sea, Massachusetts 01944-1399
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DECISION ON COMPREHENSIVE PERMIT APPLICATION UNDER G.L. c. 40B, Sec. 20-23

Applicant:

Geoffrey Engler, SLV School Street, LLC

Property Subject of Application:

School Street, Assessor's Map No. 43, Lot No. 18

I. PROCEDURAL HISTORY

On September 27, 2021, the Applicant, Geoffrey Engler, SLV School Street, LLC ("Applicant"), filed a G.L. c.40B comprehensive permit application seeking approval of a 136-unit apartment complex on an undeveloped 23-acre parcel located off School Street ("Project"). The Applicant obtained a Project Eligibility Letter dated September 16, 2021 from the Massachusetts Housing Finance Agency ("MassHousing") just prior to filing his comprehensive permit application with the Board, and was thus eligible to proceed with his application. MassHousing subsequently suspended the Applicant's right to proceed with 40B applications as the result of misrepresentations he had made concerning a project in Wellesley. However, the suspension did not revoke his right to proceed with other then-pending project proposals listed in the suspension letter, including the current proposal which is the subject of this decision.

The Zoning Board of Appeals (“Board”) opened the public hearing on the application on October 26, 2021, and conducted further public hearing sessions on November 16, 2022, December 8, 2021, January 12, 2022, January 26, 2022, February 9, 2022, March 9, 2022, April 5, 2022, April 13, 2022, April 27, 2022, May 11, 2022, May 25, 2022, June 8, 2022, June 22, 2022, July 13, 2022, and July 27, 2022, when it voted to close the public hearing by the Applicant’s agreed extended deadline of July 28, 2022. The voting members on the application are Sarah Mellish (Chair), John Binieris, James Mitchell, Brian Sollosy, and Kathryn Howe. The Board was assisted during the public hearing process by Town Planner, Sue Brown, Administrative Assistant, Gail Hunter, Town Counsel, KP Law, P.C., and MassHousing Partnership Consultant, Ezra Glenn. The Board solicited and received comments from Town Boards and Departments, and received and considered written reports and oral testimony during the public hearings from peer review consultants: Greg Lucas, P.E., from Environmental Partners, on traffic and site design issues; Beals & Thomas on environmental and engineering issues; and Cliff Boehmer, of Davis Square Architects, on architectural and site design issues.

The Applicant spoke on behalf of himself at the public hearings, and also presented evidence from consultants in support of the Project, including: Carlton Quinn, Civil Engineer and Surveyor from Allen & Major Associates, Inc.; Jeffrey Dirk, from Vanasse & Associates on traffic, Dan Riggs, of Embrac, on architectural issues; and Goddard & Associates on environmental issues. The Board also received technical reports and comments from consultants on behalf of the Manchester Essex Conservation Trust: John Chessia on engineering and stormwater management issues; Scott Horsley on environmental issues; Pat Garner on environmental issues; and David Black on traffic

engineering issues. The Board also received oral comments and written letters in opposition to the Project from members of, and counsel to, the Manchester Essex Conservation Trust and the Citizens Initiative for Affordable Housing, Inc. Numerous members of the public spoke in opposition to the Project throughout the public hearing process. The Board also received over 50 letters in opposition to the Project, as well as signed petitions urging denial of the Project from 681 residents of Manchester and surrounding towns, which have been entered into the record. The Board did not receive any public letters or comments in support of the Project.

The Applicant proposes construction of 136 apartments, consisting of one to three bedrooms, in a single building three stories tall, with an additional one story below for parking. Proposed utilities include water, gas, and electric, with a 3,700-foot water line proposed to connect to Town water. The Applicant originally proposed construction of an on-site private wastewater system but then changed the proposal in the middle of the public hearing process to propose a connection to Town sewer. The intended Project site is located north of Route 128, west of School Street, and east of Old School Street, with frontage along School Street on the northeast portion of the site. It is located in the Limited Commercial District and Water Resource Zone 3, in an area providing groundwater recharge for approximately 50% of the Town's water supply. The site is undeveloped land topographically comprised of high areas, with substantial ledge and steep slopes to the property edges, and includes a confined depression on the west side, and a steep valley on the east side sloping off the site. Wetland resources include Vernal Pools, Bordering Vegetated Wetlands, and Isolated Land Subject to Flooding.

As more fully described in the Findings section below, there are substantial areas of ledge and steep grades located on the Project site, which would require extensive blasting should the Project proceed. This, combined with the environmentally sensitive areas in which the Project is located (which includes Vernal Pools and a Certified Cold Water Fishery in the adjacent Sawmill Brook that would be adversely impacted by any change in tree cover or hydrology) present extraordinary challenges as a suitable site for development. During the course of the public hearing, the Board did its best to solicit and digest all relevant data and technical information in an effort to determine whether approval of the Project could be appropriately conditioned in order to ameliorate health, safety, and environmental concerns. The Board was able to formulate a number of proposed conditions agreed to by the Applicant, as set forth in the attached Exhibit A. The Board was also able to formulate a number of additional conditions based on peer review, and local departmental input, as set forth in the attached Exhibit B. However, the conditions noted in Exhibits A and B have been rendered moot by the need to deny the Project, as discussed below.

Although it was presented in a summary manner very late into the public hearing process, the Board was receptive to the Applicant's proposed project change from an on-site wastewater treatment facility to a proposed connection to Town sewer, to avoid adverse impact of leeching fields in environmentally sensitive areas. This would require a waiver, as the property is outside the Town's sewer district, and also presented challenges arising from the extensive related infrastructure which would be required, including but not limited to crossing beneath Route 128. The Board indicated a willingness to grant the waiver for an extension outside the sewer district if it could be

proven to be feasible and susceptible to adequately protective conditions, and consistent with the Town's Comprehensive Wastewater Management Plan. The Board received comments and a number of proposed conditions relating to the proposed public sewer connection from the Town's DPW Director, Charles Dam, P.E. These are set forth in the attached Exhibit C, but have been rendered moot by the denial of the Project.

The Manchester Essex Conservation Trust ("MECT") raised a number of questions and concerns over the potential grant of a sewer connection. MECT argued that the plans and data in support of the sewer connection were inadequate, as set forth in paragraphs 34-66 of correspondence to the Board from counsel, dated July 27, 2022. Because the sewer proposal was presented so late in the application process, and the Applicant refused to entertain a further extension of the public hearing deadline past July 28, 2022, there was insufficient opportunity to address these issues during the public hearing.

In addition to the conditions the Board considered in its effort to achieve an approval of the Project with conditions, the Board also indicated a willingness to grant certain waivers needed under the Town's Zoning Bylaw in order to build the Project on the size and scale proposed. However, the Board was unable to resolve insurmountable obstacles concerning certain fundamental problems with the Project. These included the proposed approximately 1,800-foot single means of access and egress to the Project, and environmental constraints, including adverse impact on Vernal Pools and related hydrology issues, as more fully described in the Findings section below. In addition to an apparent lack of consideration and willingness to discuss potential design adjustments to address these issues, the Applicant often took a condescending and aggressive approach

and threatened the Board with litigation on multiple occasions. While the Board recognizes the need for objectivity when ruling on issues in its jurisdiction, the aggressive nature and consistency of the threats, combined with a lack of any meaningful substantive arguments to address the concerns noted, raised questions concerning the practical willingness of this Applicant to work cooperatively and effectively with the Town while building a large-scale development on an incredibly challenging building site.

During deliberations held on August 3, 2022, the Board members expressed concern over the unacceptable safety risk of approximately 7% of the Town's population who would be living in one isolated building served by a single means of access and egress, as well as the risk of harm to the environment based on substantial evidence presented to the Board during the public hearing. The Board's consensus was to direct counsel to prepare a draft denial decision and to hold further deliberations to consider the draft decision on August 16, 2022. On August 16, 2022, the Board met for continued deliberations and voted to deny the Project and issue this denial decision.

II. GOVERNING LAW

Under 760 CMR 56.05(8)(b)3., the Board may deny a comprehensive permit as not consistent with local needs "if the Board finds that there are no conditions that will adequately address Local Concerns." Under 760 CMR 56.02, the regulations define issues of local concern as follows:

Local Concern – means the need to protect the health or safety of the occupants of a proposed Project or of the residents of the municipality, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning, or to preserve Open Spaces.

See 760 CMR 56.02.

The Board addresses the factors noted in the foregoing definition in the following Findings.

III. FINDINGS

A. Health and Safety

1. The Applicant proposes a single means of access and egress to the Project consisting of a 24-foot-wide driveway that would be approximately 1,800-feet in length and bounded by retaining walls 25-feet or higher, with grades as high as 8%. This poses unacceptable risk to the health and safety of the residents of the Project.
2. Section 6.2.8 of the Zoning Bylaw prohibits common driveways from exceeding 500 feet in length, and the same requirement is contained in the Town's Subdivision Rules and Regulations at Section 8.3.7.
3. The Board's peer review consultant recommended that a second means of emergency access and egress be provided, as did consultants retained by other parties.
4. If the single access driveway were blocked or obstructed during any number of reasonably foreseeable events, such as a heavy snow or ice event, a vehicle crash, fallen tree, etc., and the obstruction occurred during a fire or during a medical emergency, or other public safety event requiring emergency access or evacuation, the result would be catastrophic. With 25-foot and higher retaining walls surrounding the building there is no alternate escape route.
5. The Town's Fire Chief stated that the single means of access and egress is not covered by the State Fire Code, and that the building otherwise complied with the Code, in terms of sprinkler system, smoke and carbon monoxide alarms, building materials, etc. That does not mean that a single means of access and egress in the manner proposed is safe and does not mean it does not violate the above cited local zoning regulation which is in effect for the purpose of public safety in accordance with the Town's authority under the Massachusetts Zoning Act.
6. The risks posed by a single means of access and egress by way of a steeply graded, relatively narrow driveway more than 1,300-feet beyond the limit allowed under the Town's local regulations are simply too great, even when balanced against the need for affordable housing, and constitute grounds, alone, for denying the comprehensive permit application.
7. The driveway, as proposed, also has challenges concerning snow removal, raising an obvious safety problem in people being unable to get in or out of the development during a heavy snow event. The only way to clear the site of snow

after repeated snow events such as in the winter of 2015, or even a single heavy snow event, would be with a commercial snowblower on a skid steer or wheel loader. There is no way a traditional snowplow could push heavy snow up the steep grade, particularly in the sections where adjoining shoulders are either very steep or constrained by retaining walls. Clearing the adjacent sidewalk after a heavy snow event would be equally difficult, making pedestrian access even more problematic. This is exacerbated by the Applicant's failure to produce an engineered drawing showing the sidewalk. Even at the more level areas of the drive, in front of the entrance, there is no place to push the snow.

B. Natural Environment

8. The Town's local Wetlands Bylaw and Regulations ("Bylaw" or "Regulations") are more restrictive than the Massachusetts Wetlands Protection Act ("WPA") concerning protection of Vernal Pools, which are of particular importance at the proposed building site at issue.
9. The Bylaw designates Vernal Pools as wetland resource areas, not merely habitat when that habitat is within another wetland resource area as provided under the WPA. This includes identified or potential Vernal Pools, and not just state-certified Vernal Pools.
10. The Bylaw treats the resource area as extending 100-feet from the border of the Vernal Pool, and provides an additional 100-foot buffer beyond that first 100-feet as part of the resource area, with a 25-foot no disturb zone and 50-foot no-build zone within that outer 100-foot buffer.
11. The Board's environmental peer reviewer noted that the Applicant had not provided sufficient information concerning the Project's impact on the hydrology of the Vernal Pools and raised concern over the adverse effects from blasting in the vicinity of Vernal Pools. The consultants retained by the MECT, Mr. Horsley and Mr. Garner, raised similar and additional concerns, particularly those concerning the adverse effects on the Vernal Pools through the decrease in the volume and quality of water in the Vernal Pools.
12. The Chair of the Conservation Commission also raised unanswered questions and concerns over adequate protection of the Vernal Pools, and adverse impact to the Cold-Water Fishery, both orally during the public hearing, and in written comments dated July 11, 2022.
13. With respect to requested Vernal Pool-related waivers, the Board's environmental peer reviewer focused on providing recommended conditions based upon the Applicant's claim that without the waiver, the Project was "unbuildable," (See, for example, the conditions listed on Exhibit A), but not whether the Applicant had satisfied the substantive requirements otherwise needed for a waiver.

14. Substantive issues and deficiencies in the Applicant's Vernal Pool analysis are well-summarized in oral and written reports of Scott Horsley, Water Resources Consultant retained by the MECT.
15. As noted by Mr. Horsley, the Applicant's Bylaw Buffer Exhibit, dated 5/24/22, reflects Vernal Pool impacts requiring waivers under the Bylaw.
16. To obtain a waiver, the Bylaw requires an "Alternatives Analysis" and an assessment of "significant immediate or cumulative adverse effects." Section 9.7 of the Bylaw provides as follows:

Prior to issuance of a permit for work or activity which alters a Vernal Pool, the Applicant shall demonstrate by clear and convincing evidence as set forth in the Alternatives Analysis that there is no Practicable Alternative to the work or activity proposed. Any Alternatives which impact the topography, soil structure, plant community composition, vegetation canopy or understory, hydrologic regime, drainage patterns, migratory paths of Vernal Pool species and/or water quality of a Vernal Pool shall be presumed to have a significant immediate and cumulative adverse effect to the Vernal Pool and the wetlands values protected by the Bylaw.
17. No Alternatives Analysis has been provided to support the requested waivers. The Board credits Mr. Horsley's testimony that if the Project were reduced in size, the loop road circling the building could be kept outside the no-build and no-disturb zones. Without the required Alternatives Analysis, the Board is unable to grant, or properly consider, the requested waiver.
18. The local Regulations also require a "cumulative impact analysis" which the Applicant refused to provide. The Board credits Mr. Horsley's opinion that there are three probable impacts that need to be evaluated: (1) hydrologic alterations; (2) thermal impacts; and (3) chlorides (salt) from de-icing applications.
19. With respect to hydrologic impacts, the proposed stormwater system for the Project proposes to direct stormwater from the impervious sources within the Vernal Pool recharge area to a large infiltration system outside the recharge area, resulting in a net reduction of groundwater recharge at 40-50% to the northern Vernal Pool. As noted by Mr. Horsley, the Applicant claims that a water budget analysis is not required under the MassDEP Stormwater Handbook that states that "water budgeting is not required if the recharge is directed to the same subwatershed where the impervious surfaces are proposed." However, Mr. Horsley notes this is clearly not the case for this Project, as the site plans depict that stormwater runoff from impervious areas within the watershed to the northern Vernal Pool is directed outside of the recharge area to the large infiltration system on the southern portion of the site, thus requiring a hydrologic budget analysis.

20. On the issue of thermal impacts, the site is adjacent to Sawmill Brook, a Cold-Water Fish Resource that is highly sensitive to thermal impacts. The Board credits Mr. Horsley's opinion that the extensive clearing of trees and construction of impervious surfaces in close proximity to the Brook will dramatically impact the microclimate, specifically the temperature of stormwater that is recharged to groundwater.
21. As noted by Mr. Horsley, groundwater in the immediate area has been measured at 47° Fahrenheit and provides an important cooling baseflow to the Brook under existing conditions. According to Mr. Horsley, whose opinion on these issues was uncontested by the Applicant, stormwater runoff from solar heated impervious surfaces can exceed 95° Fahrenheit, thus requiring analysis of thermal impacts.
22. The Board also accepts and credits Mr. Horsley's uncontested opinion that the Project fails to meet the standards set forth under Section 9.5 of the Bylaw which with respect to streams provides:

Prior to the issuance of a permit for work or activity which alters a stream, the Applicant shall demonstrate by Clear and Convincing Evidence as set forth in an Alternatives Analysis that there is no Practicable Alternative to the work or activity proposed. Any alteration which may adversely affect the water quality of a stream (as measured by sediments, nutrients, bacteria, temperature, dissolved oxygen, and toxic chemicals) or its ability to support fish and other aquatic life shall be presumed to have a significant Immediate and Cumulative Adverse Effect to the Stream and values protected by the By-law.

23. With respect to de-icing chlorides, the Board credits Mr. Horsley's uncontested opinion that vernal pools and streams have been significantly impacted by excessive chlorides commonly derived from de-icing salts. Mr. Horsley noted that the U.S. EPA has established water quality standards for chlorides and acute toxicity (killing fish quickly) at 860 mg/liter and chronic toxicity (killing fish slowly) at 230 mg/liter, and that the Board's environmental peer reviewer, Beals and Thomas, had noted in their July 12, 2022 Supplemental Environmental Peer Review that the Applicant's analysis concerning de-icing impact was deficient, as follows:

We also note the potential chemical and/or thermal impacts from de-icing salts/chemicals and stormwater runoff on the vernal pools. Design confirmation that treated water will be infiltrated vertically completely through the soil profile and only break out at the natural location (wetland edge) should be provided.

24. Mr. Horsley and the Conservation Commission Chair noted that on the issue of burden of proof, Section 12 of the Bylaw provides as follows:

Except where a higher burden of proof is specified in this By-law or any rules or regulations promulgated hereunder, the applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the NOI will not have adverse effects, immediate or cumulative, upon the Resource Area.

25. As noted by Mr. Horsley, the Applicant has failed to present analysis with respect to probable impacts of the Project on the hydrologic regime of the Vernal Pools, or the thermal impacts to the Cold-Water Fishery.

26. The importance of Sawmill Brook was emphasized in a letter to the Board dated February 3, 2022 from the Coldwater Fisheries Project Leader for the Massachusetts Division of Fisheries and Wildlife (“MassWildlife”). According to MassWildlife:

Sawmill Brook is a designated Coldwater Fish Resource (CFR) under Massachusetts regulation 321 CMR 5.00. This brook is one of only a handful remaining in northeastern Massachusetts that still provide water quality (e.g., temperature) and habitat to be able to support populations of Wild Brook Trout. Wild Brook Trout were found in electrofishing surveys in Sawmill Brook in 2007, 2008, and as currently as 2019. Cat Brook, a tributary to the Sawmill downstream of the proposed development, is another one of those rare wild trout resources. Furthermore, the mouth of Sawmill Brook offers Brook Trout limited access to saltwater habitat, thus making the Sawmill/Cat Brook system extremely rare as the only potential sea-run Brook Trout habitat known along the North Shore. Because of the rare and unique status, Sawmill Brook is being considered for inclusion into the statewide list of Outstanding Resource Waters recognized by MassDEP.

27. With respect to the Project, MassWildlife noted as follows:

In general, allowing a large development along any wild trout stream could have potentially negative impacts on water quality, streamflow, and instream habitat with concurrent negative impacts to the wild trout population in the system. Brook trout require water temperatures consistently under 68 degrees Fahrenheit to reproduce, grow, and survive, so any additional stressors in the system that may lead to increased water temperatures are problematic. Major concerns with any development project are loss of riparian and upland forest cover followed by conversion to impervious surfaces, stormwater runoff, and increased water use.

28. Based upon the foregoing issues and concerns, the Board cannot condition this Project to adequately protect the natural environment.

C. Site and Building Design in Relation to Surroundings

29. Development of this site in the size, scale and manner proposed is inconsistent with the character and scale of the Town and surrounding area. There is not a single residential building like this in all of Manchester or its neighbors.
30. The Project is inconsistent with the Town's Open Space & Recreation Plan, 2021-2027, approved by the State, as well as the Town's Master Plan, 2019.
31. The site is adjacent to and not compatible with the Town's 1,600-acre Wilderness Conservation Area and Sawmill Brook.
32. The Board also notes and credits the opinions of John Chessia, in his reports dated April 13, 2022, and May 25, 2022, concerning deficiencies in the Applicant's proposed stormwater management design, and deficiencies in the design of retaining walls, some up to 28-feet within 5-feet of the property line, some proposed on slopes steeper than 3:1, and some terraced up to 42-feet.
33. The Board also notes that the sewer-design related deficiencies noted in counsel's letter on behalf of the MECT, dated July 27, 2022, at paragraphs 34-66 have been left unanswered due to the Applicant's late submission of the public sewer proposal and his insistence the public hearing be closed by July 28, 2022.

D. Open Spaces

34. Development of the site in the manner proposed is inconsistent with open space values and public enjoyment of the conservation areas and natural resource areas immediately adjacent to the site.

DECISION

Based upon the findings above, the Board hereby denies the comprehensive permit application pursuant to 760 CMR 56.05(8)(b)3., on the grounds that approval cannot be conditioned in a manner that will adequately address issues of Local Concern, as that term is defined in 760 CMR 56.02.


RECORD OF VOTE

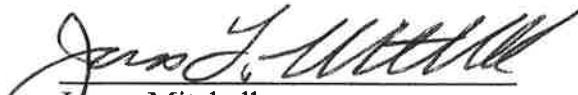
In deliberations conducted on August 16, 2022, the Board voted 5-0 to deny the application.


SIGNATURE PAGE FOLLOWS

Members in favor of denial:


Sarah Mellish, Chair


John Binieris

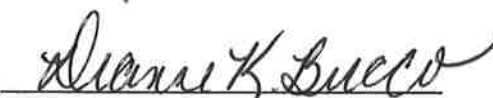

James Mitchell


Brian Sollosy


Kathryn Howe

Dated: August 25, 2022

Filed with the Town Clerk on August 30, 2022.


Town Clerk

Notice: Appeals, if any, by any party other than the Applicant, shall be made pursuant to G.L. c. 40A, §17, and shall be filed within twenty (20) days after filing of this notice in the office of the Town Clerk, Town Hall, Manchester-by-the-Sea, MA. Any appeal by the Applicant shall be filed with the Housing Appeals Committee pursuant to G.L. c. 40B, §23, within twenty (20) days after the filing of this notice in the office of the Town Clerk.

EXHIBIT

A

40B MBTS Conditions Applicant Agreed

1. As may be required under DEP guidelines and regulations, additional stormwater management information shall be provided for third-party review during the Notice of Intent process as indicated in the Vernal Pool Considerations section herein.
2. As part of the Construction Management Plan (CMP), the Applicant shall deploy additional silt fence at specific points in the breeding period to preclude amphibians from being stuck within the limit of work; and create additional dead woody debris piles on the forest floor.
3. The Applicant shall submit the CMP to the Building Inspector and the Board's Agent for review and approval for consistency with this permit as a condition to receiving a building permit.
4. The Town shall retain a third-party consultant to review the CMP and provide comment to the Building Commissioner and the Applicant prior to finalization. The Third-Party Consultant will provide consultative services during construction to confirm the CMP measures are being properly implemented. The scope of such review and the fees shall be paid by the Applicant pursuant to G.L. c. 44, §53G.
5. As part of the CMP, and as a pre-requisite to receiving a building permit, the Applicant shall submit an invasive species management plan. This plan shall also be reviewed and approved by the Board's Third-Party Consultant in accordance with accepted guidelines for invasive species management.
6. As part of the CMP, the Applicant shall specifically identify how the means and methods will address the protection of the Vernal Pools. The Board's Third-Party Consultant shall review this plan and provide additional suggestions to the Plan if necessary to confirm adequate Vernal Pool protection measures are in place, consistent with this permit and accepted standards for protection of Vernal Pool function.
7. The Applicant shall place a Conservation Restriction on a portion of the property as shown in Exhibit A after the Applicant has received all necessary permits and no appeals are pending; and prior to the commencement of any site work.
8. The Applicant shall submit a NPDES permit application and provide a copy of the application to the Zoning Board of Appeals. The Applicant shall keep the Board apprised of the compliance process with both the 2022 CGP and the relevant US Fish and Wildlife requirements.
9. The Applicant shall undertake additional evaluation of the erosion controls during the Notice of Intent process to address peer review Comment 9 in the Beals and Thomas, Inc. letter dated July 12, 2022, and as otherwise necessary.
10. Upon receipt of a building permit, The Applicant shall submit an application to the NHESP to have on-site potential Vernal Pools as documented by the Applicant through the Vernal Pool investigations conducted to date, not limited to potential Vernal Pools identified by the Commonwealth. Ultimately, the certification shall be determined by NHESP, but the Applicant shall provide all necessary information and analysis in a timely manner in support of the certification process.
11. The Applicant shall identify and commit to other proposed aspects of the Project that may count toward mitigation, such as the meadow habitat. The Applicant shall identify

and quantify other possible mitigation measures that would enhance wildlife habitat in the project site.

12. The Applicant shall conduct pre-construction monitoring of the site during typical non-drought conditions, to assess conditions of both the Vernal Pools and Sawmill Brook (the site of a Cold Water Fishery and a feeder to the Lincoln Street well Town water supply) of important factors that have not been investigated to date, including hydroperiod, water level, pH, turbidity temperature, salt or other chemicals used as a deicer.
13. The Applicant shall conduct annual monitoring of the Vernal Pools for a period of 5 years upon the anniversary date of the building permit receipt and for at least a three-year period subsequent to the completion of construction and all landscaping. The scope of the monitoring shall be submitted as part of the CMP for review and approval of the Town and its Third-Party Consultant prior to receipt of a building permit. The monitoring shall address activities such as conducting a visual assessment of the resource area health, breeding amphibian surveys (for Vernal Pools), and measurement of water level, pH, turbidity temperature, salt and other chemicals used as deicers. The findings and analysis of the annual monitoring reports shall be submitted to the Zoning Board of Appeals annually at the end of each monitoring year. The monitoring of the Vernal Pools shall meet the Mass Surface Water Quality Standards (SWQS, 314 CMR 15.00) for Class A waters.
14. Final stamped construction plans shall be reviewed by the Board's Third-Party Consultant for consistency with this decision and other relevant project approval documents.
15. The Applicant shall conduct an improvement study for the Route 128 northbound and southbound ramp intersections with School St, the results of which shall be provided to the Town. In addition, the Applicant will make a fair share contribution to the Town as a condition of receiving a building permit equal to 5% of the cost to design and construct the improvements, based on the projected construction costs, approved by the DPW, in effect when the building permit is issued.
16. Since the Project will contain the only residential dwellings in Manchester north of Mill St. and the apartment building is within 1.5 miles of the school, requiring students to walk to school, the Town will extend the sidewalk on the east side of School Street from Mill Street to the driveway of the Project, approximately 1,500 feet. The Applicant shall make a fair share contribution as a condition for receiving the building permit equal to 12% of the cost to extend the sidewalk based on the cost typically established by the MBTS DPW at the time the building permit is issued.
17. Since the apartment building will be within 1.5 miles of the school, requiring students to walk to school, the Applicant shall construct an ADA accessible sidewalk from the main entrance of the building to School Street. The sidewalk shall meet the Massachusetts Architectural Access Board requirements and Americans with Disabilities Act Requirements in effect when the sidewalk is constructed.
18. The Applicant shall purchase and install two (2) radar speed feedback signs to be installed on School Street north of the Project site driveway (for southbound motorists) and south of Atwater Avenue (for northbound motorists). The location of the radar

speed feedback signs shall be determined in consultation with the Police Chief and DPW Director.

19. The blasting of the site and cut and fill work anticipates 100,000 cubic yards of material to be exported resulting in 3,850 full truck trips and the same number of empty return trucks. The Applicant shall require all these truck trips to use the School Street exits for Rte 128 and shall not travel on any local roads in Manchester or Essex. No blasting shall occur between March 1st and May 31st, the season for spawning in the vernal pools and the Cold Water Fishery.
20. The proposed grading for the Project will include multiple retaining walls over 25' high. Since the structural details were not provided to the Board, the Applicant shall provide proper documentation and design review, stamped by a MA board certified structural engineer, approved by the Town, prior to the issuance of a building permit.
21. The walls of the Underground Infiltration System-1 and Underground Infiltration System-2 shall contain an impermeable vertical barrier to ensure that the subsurface conditions throughout the systems (soil texture, presence of restrictive layers and/or refusal) will insure the vertical flow of infiltrated water, rather than a horizontal flow.
22. The Applicant shall create a Lawn Multi-Use Open Space of approximately 30,000 sq. ft. as depicted on the schematics which shall not be used for snow storage. A fence with a minimum height of 6' shall be constructed on the retaining wall and steep slope for the safety of the residents, as reflected in revised landscape plan L-100, L-200 & L-300 prepared by BOHLER dated 5/31/2022 which were provided by the Applicant to the ZBA on 6/1/2022.
23. The Applicant shall construct a Nature Themed Play Area containing playground equipment suitable for young children (infant to age 12) as reflected in the revised landscape plans provided to the ZBA on 6/1/2022.
24. The Applicant shall install four season visual screening of the apartment complex from School Street and shall install evergreen trees placed strategically to screen the view of the building from Old School Street and the conservation trails.
25. The Applicant shall construct a covered waiting area at the base of the driveway on School Street in conjunction with the pump house.
26. The exterior of the building shall be constructed using earth tone colors in order to blend into the surrounding tree canopy to be less visible from School Street and the many walking trails in the adjacent 1,500-acre conservation area.
27. The Project shall contain the Universal Design Features described in a memo from EMBARC to the ZBA dated 5/31/2022.
28. The Project shall contain the sustainability features outlined in the memo from EMBARC to the ZBA dated 5/31/2022. In addition, if feasible, the Applicant shall include photovoltaic and/or geo-thermal features. The garage shall contain 10 Level 2 EV spaces available to all residents. 146 bike parking spaces shall be provided, including 8 exterior ground level and 138 vertical mount spaces in the garage.
29. The Affirmative Fair Housing Marketing Plan and lottery shall include local preference of 70% of the affordable units for existing Manchester residents, Town employees, employees of local businesses and families with children who currently attend the MERSD memorial School or the Middle/High School.

30. No additional density or building expansions shall be allowed on the property.
31. Since structural details, calculations and design were not provided to the Board by the Applicant, the Applicant shall have the final design stamped by a structural engineer, approved by the Town, and shall provide it to the Town prior to the issuance of the building permit.
32. The Snow Storage Plan shall be in accordance with the Snow Storage Plan C-106 prepared by Allen & Major Associates dated 5/5/22. The snow shall be removed from the driveway, all sidewalks, including the ADA sidewalk along the driveway and the second emergency egress. No snow shall be stored on the Lawn Multi-Use Open Space area or Nature Themed Play Area.
33. Trash and Recycling shall be handled by a private contractor.
34. All costs of connecting to the municipal water and sewer, including any requirement to replace existing pipes with larger pipes shall be paid by the Applicant.

EXHIBIT

B

40B MBTS Additional Conditions

1. The Applicant shall provide proof the Project has received fully committed equity and debt funding for the entire Project and lease up based on final construction documents and permitting requirements prior to the issuance of a Building Permit.
2. The Applicant shall provide to the Town a payment and performance bond equal to the entire projected cost of the Project based on final construction documents and permitting requirements prior to the issuance of a Building Permit.
3. The Applicant shall provide the Town with a written commitment from a snow removal firm that they can execute the snow removal plan without depositing any snow on Town property or in Vernal Pools.
4. The Applicant shall install a row of evergreen trees and shrubs at the top of the meadow in front of the row of arborvitae along the driveway to provide a more natural layered look screening from School Street.
5. Due to the height and prevalence of the retaining walls, the final design shall be reviewed and stamped by a structural engineer and fences or protective railings shall be installed in the shrubs to protect against falls for the safety of the residents.
6. All lighting on the property shall be dark sky compliant and any pole lights shall be as low as possible with safety in mind and to decrease the amount of light seen from School Street and the abutting conservation areas.
7. The Applicant shall construct walking trails in the 13.2 acres which will contain a conservation restriction and connect the apartment complex to the existing trail system.
8. Since a portion of the building is very close to the driveway and could be subject to an exterior fire limiting access to the driveway and since there could be 200 children and 400 total residents in the apartment complex, the Applicant shall create a second emergency egress for the safety of the residents.
9. Since the blasting and cut & fill will require the export of 100,000 cubic yard of debris, which will require 3,850 trips out along School Street to the nearby Rte. 128 ramps and a like number of empty truck trips back in and since School Street is the main traffic corridor between Essex and Manchester, the Applicant shall consult with the Police Chief and MESRD, to determine whether a police detail will be required and whether truck traffic will need to be stopped during the school commuting hours.
10. The Applicant shall obtain a blasting permit and fire detail from the Fire Chief and shall conform with the MA state Code for blasting. Only perchlorate-free blasting materials shall be used and precautions shall be taken as outlined in the letter to Mr. Engler from Rubicon Builders, which was provided to the Board on June 1, 2022, to protect the environment, particularly the Vernal Pools.
11. The Applicant shall improve the streetlights in the area as determined to be appropriate by the Police Chief and DPW Director.
12. Since the Town is extending the School Street sidewalk on east side of School Street and the Project is on the west side of School Street, the Applicant shall install pedestrian crossing lights at the base of the internal sidewalk to cross School Street, similar to the lights at Sweeney Park, as determined by the Police Chief to be necessary for public safety, particularly for the 100 – 200 children who will need to walk to school. In addition, the Applicant shall install pedestrian lights at the southbound ramps for Rte. 128.

13. Conditions outlined in the Fire Chief's letter dated 6/29/22.
14. Conditions outlined in the DPW Director's letter dated 7/27/22.
15. No municipal water shall be used for irrigation or exterior landscape maintenance.
16. Since the design of the water system booster pump was not provided to the Board, the Applicant shall demonstrate the final design provides adequate water pressure to the residences with review and approval from the Fire Chief and DPW Director prior to the issuance of the Building Permit.
17. Since test pits were not performed during periods of high ground water and incomplete data was submitted to the Board, the Applicant shall perform additional testing during final design to ensure excavation does not occur within four feet of the high groundwater elevation. The Applicant shall have the report reviewed by a third-party consultant, approved by the Town, and provide the report to the Board prior to the issuance of the Building Permit.
18. The Applicant shall provide a letter from National Grid certifying there is sufficient capacity in the grid to allow the apartment complex to be connected to the National Grid infrastructure prior to the issuance of the Building Permit and prior to disturbing any land. Since the Project abuts a 1,500-acre conservation area, the aesthetics are important, so all line shall be underground unless National Grid REQUIRES overhead lines.
19. The Stormwater Management Plan shall conform with MassDEP Standard 6, Standard 8 and Standard 10. Since Applicant did not submit a Stormwater Pollution Prevention Plan (SWPPP), which is required under the EPA NPDES Program, a fully compliant SWPPP shall be reviewed by a third-party consultant, approved by the Town, and shall be submitted to the Board prior to the issuance of a Building permit, or disturbance of the land. The construction shall meet the calculations contained in the Drainage Report prepared by Allen & Major Associates, dated 5/25/2022.
20. Since insufficient information was provided by the Applicant to the Board, the Applicant shall complete additional geotechnical investigation and soil testing which shall be reviewed by a geotechnical expert approved by the Town and the report shall be submitted to the Board prior to the issuance of the Building Permit or disturbing the land.
21. Since the Applicant must directional drill under Route 128 to connect to municipal water and sewer and no specific information was provided by the Applicant to the Board that the State will actually issue the permits and whether it is feasible, the State permits must be received and the directional drilling under Route 128 shall be completed before the land on the property is disturbed.
22. The Applicant shall obtain approval from Mass Wildlife that the Project and reduction in tree canopy will not adversely affect the Cold Water Fishery in Sawmill Brook which is adjacent to the property.

EXHIBIT C



MANCHESTER-BY-THE-SEA

DEPARTMENT OF PUBLIC WORKS

TOWN HALL, 10 CENTRAL STREET

Manchester-by-the-Sea, Massachusetts 01944-1399

Telephone (978) 526-1242

FAX (978) 526-2007

Memorandum

To: Sarah Mellish, ZBA

From: Charles Dam P.E., DPW Director

Date: July 27, 2022

Re: DPW Recommended Conditions for Water and Sewer Utilities

The following is a list of recommended conditions for the water and sewer utilities based on the plans reviewed as of July 27, 2022. NOTE: these conditions are relevant to the construction/ Town acceptance of utilities depicted in the plans and memorandum regarding water and sewer utility capacity/connections/extensions for the subject property at 0 School Street – The Sanctuary. The proposed conditions do not represent additional requirements that may be required for local and state environmental impacts, Mass DOT or other authorities having jurisdiction.

- All materials shall be approved for use in municipal water and sewer applications in accordance with federal, state and local regulations. All permit and design drawings shall be stamped by a professional engineer registered in MA.
- DPW will be copied on all permit and design submittals of proposed applicant owned water booster pump station and the waste water pump station, directional drilling, and appurtenances (pipes, valves etc.). Town shall be provided opportunity at the 30%, 60%, and 90% design and permitting phases to provide comments on the design to the applicant. Where DPW does not have the technical expertise to comment a peer review will be required at the Applicants expense.
- Redundant pumping system and/or bypass piping/hookups shall be hard piped at the water booster pump station and waste water pump station and shall be designed to allow the stations to be taken offline for maintenance with portable pumps hooking up to the bypass piping to continue to provide service.
- The Town will provide a full time Clerk of the Works (agreed upon and paid for by the applicant) for the duration of construction. The Clerk will monitor daily construction activities and submit reports directly to DPW.
- DPW will be copied on all construction phase material/product submittals provided by the contractor to the design engineer. Clerk of the Works will verify materials provided in the field are as submitted and approved by the design engineer.
- Contractors engaged to perform the work shall meet the performance and experience standards as typically specified by the Town for municipal utility construction.
- A licensed third-party operator will be responsible for the daily operation and maintenance of the applicant owned water booster pump station and the waste water pump station.
- Water and sewer billing will be based on the metered flow at the applicant owned water booster pump station and the waste water pump station. Meters shall be calibrated twice per year by a third

party. Rates will be as established by the Select Board annually. Tenants will not be billed individually by the Town.

- DPW will receive hard and PDF copies of required facility O&Ms of the applicant owned water booster pump station and the waste water pump station
- DPW and/or its agents reserve the right to access the applicant owned water booster pump station and the waste water pump station when in operation.
- Emergency power (48 hour minimum) will be provided to applicant owned water booster pump station and the waste water pump station
- DPW will receive a copy (electronic preferred) of all ongoing O&M reports/information submitted to regulating authorities (e.g. DEP, EPA)
- Town shall have exclusive ownership of the utility within the School Street ROW. Land ownership and/or easements shall be granted to the Town where the utility is outside of the Town ROW including MDOT property used for installing utilities under Route 128.
- Applicant will be required for annual maintenance/clearing of easements for accessing monitoring points.
- A sleeve (casing pipe) the next nominal size up (or larger) shall be provided for the proposed 12-inch water and 4-inch sewer force main (proposed to be directionally drilled). In addition to the 4-inch sewer force main, a spare 2" line shall be provided for the sewer between the monitoring points.
- Provide monitoring points (manholes, vaults) on each side of Route 128 (likely to coincide with directional drill launching and receiving pits).
- Provide odor control at the transition manhole from sewer force main to gravity sewer.
- Hydrants and isolation valves shall be provided on each side of Route 128 within the School Street ROW in close proximity to the directional drill access pits.
- Maintain 10-feet of horizontal separation between the sewer and water utilities, where 10-feet cannot be achieved, provide a sleeve the sewer force main.
- Paving disturbed within the Town ROW shall consist of initial trench paving a minimum of 4-in thick (2-2-inch lifts) followed by full width 1.5-inch mill and overlay.
- A shut off valve shall be provided in the street at the edge of Town ROW and the applicants access driveway.
- A 6-inch water and 2-inch sewer service connection with shut off valves will be provided to the edge of ROW at the driveway of 197 School Street
- A 6-inch water and 2-inch sewer service connection with shut off valves will be provided to the edge of ROW at the driveway of 156 School Street
- A 6-inch water and 2-inch sewer service connection and shut off valves shall be provided to the edge of ROW at Kit Glass Drive
- A 8-inch valve and water stub and 2-inch sewer service connection and shut off valve shall be provided to the edge of ROW at Atwater Avenue.
- Replace existing 6-inch sewer and appurtenances (SMH 22-24) on School Street with 8-inch sewer.
- CIPP line the remaining unlined section(s) of the existing School Street sewer and manholes (between Central Street and Hidden Ledge Road).
- Replace the existing 6-inch watermain and appurtenances within School Street from Essex County Club to Mill Street with 12-inch watermain.
- Building permit will be subject sewer flow permit with DPW (Bedroom count fee, \$1650/BR as of July 2022)
- No municipal water will be used for onsite irrigation except to establish new plantings.
- All required permits for construction of utilities will be issued prior to work being completed onsite (both within the School Street and the subject property).