

**Minutes
Topsfield Zoning Board of Appeals
Virtual Meeting
May 25, 2021**

Chairman Bob Moriarty called the meeting to order at 7:03PM. Board members present included Chairman Moriarty, David Merrill, Gregor Smith, Alternate, Kristin Palace, Jody Clineff and Dave Moniz. Donna Rich, Community Development Coordinator, was also present.

Visitors names on screen via zoom: Town Administrator Kevin Harutunian, Select Board members: Lynne Bermudez and Dick Gandt, applicant Michael Larkin, Cameron Beauport, Perkins Landing LLC, Conservation Agent Heidi Gaffney, Mass Housing Partnership consultant Paul Haverty, Boxford Cable Access TV and many others. Total participants were 28.

GOVERNOR’S ORDER

Chairman Bob Moriarty stated “Pursuant to Governor Baker’s March 12, 2020 order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor’s March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Zoning Board of Appeals will be conducted via remote participation to the greatest extent possible. Specific information and the general guidelines for remote participation by members of the public and/or parties with a right and/or requirement to attend this meeting can be found on the Topsfield website at www.topsfield-ma.gov For this meeting, members of the public who wish to watch or listen to the meeting may do so in the following manner: Video conference (see log-in information below.) No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means”.

Chairman Bob Moriarty continued by stating documents for the meeting can be found on the Town website: www.topsfield-ma.gov / Zoning Board / A 40B Project-Perkins Landing (blue tab).

Chairman Bob Moriarty read the following Announcement: “The meeting is being recorded via ZOOM and it will be available on the Topsfield website Cable Video on Demand page. Is there anyone else present who wishes to record the meeting?”, hearing none, the meeting was called to order at 7:07pm.

Public Hearing: *Continued*

371 Boston Street – Sabino/The Morin-Cameron Group, Inc: Chairman Bob Moriarty made a motion to continue the hearing until June 22nd, seconded by Dave Moniz; motion carried with a roll call vote as follows:

Chairman Bob Moriarty-yes

Clerk Dave Merrill-yes

Member Gregor Smith-yes

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Member Dave Moniz-yes
Member Jody Clineff-yes
Alternate Member Kristin Palace-yes

Public Hearing: *continued*

57 Perkins Row – Perkins Landing LLC / The Morin-Cameron Group, Inc.

Chairman Moriarty announced that the Massachusetts Housing Partnership (MHP) has provided the Town, through a grant, a technical assistance consultant, Paul Haverty. Paul Haverty, introduced himself as an attorney who has been involved with the MHP program as a consultant for 6 years and through that has represented 20 – 30 ZBA projects. Chairman Moriarty again reminded citizen that comments should be communicated through email and that they would be posted to the website, the location of these items were reviewed. It was relayed that the board views themselves as a semi-judicial board in its manor of operation and therefore requires comments/concerns in writing which would provide a historical record. In addition, Chairman noted that the Ipswich River Watershed and Department Heads concerns were also available for citizen to review on the town website ZBA page, tab entitled A 40B Project. The ZBA would be reviewing all concerns that have been stated and taking them under advisement during the hearing process. Chairman explained that the search for Peer Review firms has been slow. Gregor Smith, David Merrill and Donna Rich were charged with identifying appropriate firms and asked for a report on their findings. Gregor Smith noted that we are not prepared to make a recommendation at tonight's meeting. Many firms contacted have either a conflict with the project or did not have the resources available to assist the Town. Larkin requested that it be an approved process for the developers engineer to speak with the Town's consultant to move the process along between meetings? Haverty stated that this has been an acceptable process in previous projects, it is a board decision. Chairman stated that it would be acceptable to have the two firms work cooperatively outside the meetings. Chairman also stated that deadlines to certain topics would be imposed so that the deliverable of information could be distributed to members ahead of a meeting to ensure a constructive discussion at the meetings.

Chairman Moriarty noted that a consistent issue, stated by many, is with respect to the wetland's delineation and the establishment of the Ipswich River line, clearly this is an issue that the Board would have to look at. The specific delineation will have to be established first because without an accurate delineation on where the lines are the Board cannot determine if something can be located in a certain area or not. Chairman asked if the Conservation Agent, Heidi Gaffney, would provide a brief summary as to the Conservation Commission's issuance of existing permits. Gaffney began by stating that there was an Order of Resource Area Delineation that confirmed certain portions of resource areas on the property, but that has expired. There was also an Order of Conditions issued in 2015, was extended, and was based on just a roadway construction, restricted to only that portion of the work. Gaffney noted that the submitted plan lacks a critical piece of information, the Mean High Water of the Ipswich River, which has not been reviewed, delineated or determined under the Wetland Protection Act. Typically, an ANRAD (Abbreviated Notice of Resource Area Delineation) process would determine this, and to date this request has not been submitted to the Conservation Commission, and could be reviewed concurrently with ZBA application. As other entities have noted, confirming the wetland resource areas is a critical piece, and there are wetland resource

areas stated on the plan that have not been reviewed or confirmed that could affect the project and would affect the scope of review of the project. Larkin stated he could have his engineers address the concerns noted at the June 22nd meeting, or move it out to a later date, 90 days. Chairman Moriarty asked that the wetlands be addressed at the next meeting. Moriarty expressed that he would like to spend some time on this topic to have a better understanding of the developer's consultants view of how we address both the state and local wetlands bylaw. Moriarty noted that this would assist in the determination of what portions of the local bylaw would be critical to local needs and therefore not be overridden by the 40B decision. Larkin agreed to provide an initial conversation and stated that it will also have to be discussed at a later date. Chairman Moriarty repeatedly noted that the location of the resource areas and river front line need to be identified as the proximity of the proposed improvements to the river front early on, and then again in more detail later on. David Merrill commented that he thought that the Conservation Commission and Board of Health both retain jurisdiction over the project. Haverty confirmed that yes, they do. Further explained, Conservation retains all jurisdiction under the Wetland Protection Act, the ZBA acts as the Conservation Commission administering the local Wetlands Bylaws. It was noted that same with Board of Health, they issue the disposal work permit for the septic system under Title V and the ZBA acts as the granting authority as it relates to any regulations beyond the Title V. Merrill asked if the other applications should be filled with the Conservation and Board of Health at this time. Haverty explained that the applicant cannot be required, however with this project and the wetlands delineation of the river front area it is so central to the issue of the design of the project, the Board can request the applicant submit the information, especially under the local Wetlands Bylaw.

The discussion was then directed toward the requested waivers. Haverty noted that after review of the applicants requests for waivers he notes that the waivers appear to blanket requests. He reports that as the application stands, the Board would be unable to grant waivers of local rules and requirements without having specific information necessary to understand the waiver requests, and if the applicant is unwilling to provide the information it would be a basis for denial of the project. Haverty explained that the applicant is entitled to wait, due to the lengthy process of the Comprehensive Permit. Kristin Palace asked if the 180-day time-line apply for the Conservation and Board of Health in terms of the state regulations, Haverty stated no. Haverty stated it does not preclude the applicant from filing the wetland delineation. There was discussion on allowable conditions that can requested of the applicant. Larkin stated that they would be filing with the Conservation and the Board of Health. Chairman Moriarty asked for clarification of when that would occur and stating the ANRAD would be critical to this Board. Larkin noted he would speak with his consultants to identify the timeline of those applications. Palace asked for clarification of the existing Order of Conditions (OoC) expiring in 2021. Gaffney explained that the existing OoC is specific to a roadway and stipulates that if there are considerable changes to the work area that a new Notice of Intent would be required. It was explained that the plans submitted for this project are considerably different. It was also clarified that the OoC that is referenced is under the Wetland Protection Act only and was denied under the Wetland Bylaw, and therefore with no local OoC issued, it has no bearing for this Board. Merrill asked if the Board should be engaging with Peer Reviews for Conservation and Board of Health topics, and it was explained that yes it would be helpful to have the input in these areas. Haverty

explained that the waiver requests are very vague and should be more specific than currently are. The Board should not be issuing blank waivers, as requested, they should be substantive. Larkin requested a proposed scheduled: Initial Review of the Wetland on June 22nd, Architectural and Landscaper review on June 22nd, first Engineering review on July 25, the Conservation and Traffic at the August meeting and then back and forth for the engineering in September. Moriarty circled back and requested that an initial review of the wetlands at the June 22nd meeting.

Moriarty made a motion to appoint a subcommittee of Gregor Smith, David Merrill and Donna Rich to select a Peer Review for the project, seconded by Dave Moniz; motion carried with a roll call vote as follows:

Chairman Bob Moriarty-yes

Clerk Dave Merrill-yes

Member Gregor Smith-yes

Member Dave Moniz-yes

Member Jody Clineff-yes

Alternate Member Kristin Palace-yes

Donna Rich requested clarification for the process for choosing the consultants. Haverty explained that the developer has two basis that they can object to the consultant, one being a conflict of interest, or that the peer review consultant does not possess the technical expertise required.

Chairman Moriarty made a motion to continue the Public Hearing until June 22, 2021 at 7pm, seconded Kristin Palace; motion carried with a roll call vote as follows:

Chairman Bob Moriarty-yes

Clerk Dave Merrill-yes

Member Gregor Smith-yes

Member Dave Moniz-yes

Member Jody Clineff-yes

Alternate Member Kristin Palace-yes

Dave Moniz asked if the meeting schedule would increase, Moriarty stated that it would not be unusual for more meetings to added.

Minutes: Dave Merrill made a motion to approve the April 27, 2021 minutes as written, seconded by Dave Moniz; motion carried with a roll call vote as follows:

Chairman Bob Moriarty-yes

Clerk Dave Merrill-yes

Member Gregor Smith-yes

Member Dave Moniz-yes

Member Jody Clineff-yes

Alternate Member Kristin Palace-yes

At 8:09pm Dave Merrill made a motion to adjourn, seconded by Jody Clineff; motion carried with a roll call vote as follows:

Chairman Bob Moriarty-yes

Clerk Dave Merrill-yes

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Member Gregor Smith-yes
Member Dave Moniz-yes
Member Jody Clineff-yes
Alternate Member Jody Kristin Palace-yes

Respectfully submitted,

Donna C. Rich
Community Development Coordinator

Per the Open Meeting Law, the documents that were either distributed to the Zoning Board of Appeals before the meeting in a packet, or at the meeting were:

1. Agenda
2. Minutes of April 27, 2021

Approved as written at the June 23, 2021 Zoning Board of Appeals meeting.

Pursuant to the 'Open Meeting Law,' G.L. 39, § 23B, the approval of these minutes by the Committee constitutes a certification of the date, time and place of the meeting, the members present and absent, and the actions taken at the meeting. Any other description of statements made by any person, or the summary of the discussion of any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Committee as to the completeness or accuracy of such statements.
