

TO: Zoning Board of Appeals
FROM: Board of Selectmen
RE: Comprehensive Permit Application for 104 Boston Post Road
DATE: September 12, 2017

As the Zoning Board of Appeals (“ZBA”) nears the conclusion of the public hearing on the Comprehensive Permit Application by 104 Stony Brook LLC (the “Developer”) to construct 150 residential rental units on 2.1 acres of buildable land at 104 Boston Post Road (the “Project”), a density of almost 75 units per acre, the Board of Selectmen (“BoS”) wishes to itemize the local concerns the BoS believes are present that outweigh the regional need for affordable housing. The BoS believes that the local concerns would support a denial of the relief and we urge the ZBA to deny the relief for these reasons or, if the ZBA does not deny the relief, we urge the ZBA to impose conditions to address and properly mitigate the local concerns. We have enclosed a copy of our April 6, 2017 letter to the ZBA regarding the Project for your convenience.

The BoS has reviewed the materials submitted to the ZBA and those materials, including, particularly, the peer reviews provided to the ZBA and feedback from other Town entities, and has identified the following major local concerns:

1. Traffic Safety at Route 20 (Boston Post Road) and Sibley Road.

The Project would result in a huge increase in vehicle turns that would be made against traffic in this very heavily travelled commuter corridor. As you know, a huge number of vehicles use this corridor to gain access to and to exit from the Route 128 Interchange and there is an existing traffic signal in close proximity to Sibley Road that serves Biogen, diagonally across Boston Post Road from the Project. The Project will generate dangerous turns against traffic as residents and visitors exit the Project from Sibley Road and then turn left down Boston Post Road. This will interfere with vehicles using the traffic signal to take a left out of the Biogen driveway and with other traffic traveling in the Boston Post Road lane closest to the Project. The Project also will generate dangerous turns against traffic as residents and visitors turn left into Sibley Road, after exiting from the Route 128 interchange. The BoS believes that these traffic concerns are local concerns that outweigh the regional need for affordable housing and urges the ZBA to deny the Project due to this local concern.

Certainly, if there is a local concern that outweighs the regional need for affordable housing, the ZBA still is required to grant the comprehensive permit relief if there are conditions that can be imposed that would mitigate the local concern. So, the ZBA will need to consider whether there are traffic interchange improvements (perhaps a widening of the road, the addition of turning lanes, and the installation of new signals, and perhaps the imposition of conditions that there shall be no left hand turns out of Sibley Road and no left hand turns into Sibley Road). The BoS urges that the Developer be required to pay for all necessary improvements.

2. Pedestrian Safety for Residents of the Proposed Project.

There are no sidewalks on the side of Boston Post Road that abuts the Project and no safe means to reach the traffic signal to safely cross the road and reach the sidewalk on the opposite side of the road. The only amenity that could be safely accessed by residents of the Project on foot would be the nearby gas station (with a Dunkin Donuts), and this means that the residents (and their children) will not be able to walk from the Project site to other area amenities. Attempts by pedestrians to cross Boston Post Road to reach the sidewalk across the street would be extremely dangerous, particularly for children and particularly when it is dark.

The only way to provide for adequate pedestrian safety would be to install a sidewalk from the Project site down Boston Post Road, until the traffic signal is reached. This would require the Developer to obtain land or an easement from the City of Cambridge. We strongly recommend, if the comprehensive permit relief is granted, that the Developer be required to design and install the necessary sidewalk connection at the Developer's sole expense. The additional sidewalk would allow for safer school bus pick up and drop off, which is of critical importance to protect the children who would live at the Project (though we also note, support, and refer the ZBA to the August 8, 2017 letter from the School Committee explicitly supporting a bus stop located on the Project, which is not currently included, and opposing a cluster stop on Boston Post Road, regardless of sidewalk).

3. Sewage and Wastewater Treatment

The BoS understands that the ZBA will not provide relief to permit the proposed sewage facilities as that relief involves a state permit, not a local one, so the comprehensive permit will not specifically address the issuance of the necessary relief to allow construction of the proposed wastewater facility; however, the Weston Board of Health has adopted sewage disposal regulations that do apply to the Project, despite the fact that the Developer asserts that the regulations are not applicable. The Board of Health's regulations (known as "Chapter VI of the Board of Health's Regulations") specifically acknowledge that "much of Weston is located within the city of Cambridge watershed" and that this watershed requires an enhanced level of protection and, as a result, Chapter VI includes requirements that expressly provide for a "more environmentally restrictive code for the design and construction of subsurface sewage disposal systems than required under Title V." The Board of Health's Chapter VI §2.5 Distance Requirements expressly provides that: "No foundation wall or footing shall be located within ... 10 feet of a septic tank." The wastewater treatment facility proposed for the Project, which will include one or more septic tanks, is proposed to be located inside the proposed building for the Project, and this is expressly prohibited under the local regulations, which are more restrictive than Title V; and, no waiver has been requested.

The location of the wastewater facility within the building (in violation of the setback requirement imposed under Chapter VI, §2.5 that is designed to protect the Cambridge Reservoir and its watershed) is a basis upon which the ZBA may deny the proposed comprehensive permit relief, as Chapter VI §2.5 and its prohibition against the proposed location of the facility presents a local concern that outweighs the regional need for affordable housing. There is no doubt that the vast majority of the property where the Project is to be located and where the wastewater facility would be located are within the Zone A, which is afforded specific and express protection under the Board of Health's Regulations.

Certainly, the Cambridge Reservoir is a critical asset as a source of drinking water, not only for the City of Cambridge, but for the entire Commonwealth as Cambridge is a member of the MWRA and would have the right (and the need) to access the MWRA's drinking water, should the Cambridge Reservoir become contaminated. This would have far reaching implications for the entire Commonwealth. While the Project may not, by itself, lead to immediate contamination of the Cambridge Reservoir, the Project still should not be allowed for two reasons. First, the land where the Project is located provides valuable treatment for the stormwater runoff that leads to the reservoir and the cumulative impact of allowing exceptions to the Zone A protections precludes allowing any exception. Second, it is certainly possible that an accident could occur at the Project, were it allowed, and that the holding tanks proposed for the subbasement of the proposed Project could leak and flow directly through fissures to the Cambridge Reservoir, causing contamination. This risk should not be allowed.

4. Stormwater Management

Under Weston General By-law Article XXVII Stormwater and Erosion Control §VI.C and Weston Stormwater & Erosion Control Regulations §7.A Stormwater Management Design and Performance Criteria, the Project is required to satisfy all of the Massachusetts Stormwater Standards and the Stormwater Management Handbook, which includes an express prohibition against siting the Project in the Zone A. This is a local concern, to protect the Cambridge Reservoir and its watershed and the impact that contamination of Cambridge's water supply would have on the MWRA, that outweighs the regional need for affordable housing.

5. Conclusion

While there is a presumption, if a 40B safe harbor does not exist, that there is not a local concern that outweighs the regional need for affordable housing, that presumption is rebuttable, with the burden of proof on the ZBA to prove that there is a local concern or set of local concerns that outweigh the regional need for affordable housing and that there are not conditions that can be imposed that would mitigate against the local concerns. The local concerns identified, in broad terms above and in greater detail in the ZBA's record of proceedings, outweigh the regional need for affordable housing.

The BoS has been tentatively amenable to the suggestion that a significant reduction in the scope of the Project might allow it to proceed without giving rise to such substantial local concerns as highlighted above. This is one reason that the BoS sought a site analysis from the Planning Board. However, as that site analysis concludes, there does not appear to be capacity that could be developed at this site greater than what exists there already.

As noted above, the BoS believes that the local concerns highlighted above are sufficient grounds to deny the Comprehensive Permit for this Project. If instead the ZBA decides to grant a Comprehensive Permit, we encourage the ZBA to condition it appropriately, to make sure the local concerns are addressed sufficiently – and we note our belief that the potential harm to the adjacent water supply (whether the cumulative harm that would result due to loss of watershed protection or the direct harm that would result from an accident that would cause direct contamination) cannot be mitigated.

We encourage the ZBA to deny the proposed relief or, at a minimum, to include sufficient conditions to protect the Project’s future residents, the Town, members of the public who use Route 20 and Sibley Road, the City of Cambridge, and the MWRA, including sureties to protect against damages and consequences – and if the Developer is so sure of the public representations that these specified problems will not arise, the Developer should be willing and able to provide such sureties.¹

The BoS obviously wants the ZBA to abide by state law in rendering its decision, with the good guidance of town counsel. Nonetheless, to the extent state law allows (or is subject to interpretation), the BoS encourages the ZBA to diligently safeguard the interests and the substantial local concerns highlighted above (as well as other local concerns that the ZBA may identify but that are not highlighted herein). More specifically, the ZBA should not be concerned that it will somehow be blamed or culpable if with town counsel’s guidance it renders a decision that it believes is legally permissible and defensible but then is contested by the Developer or anyone else, in court or otherwise. The BoS on behalf of the Town will support the ZBA in its efforts to satisfy local and state law and to defend the local concerns identified by the ZBA.

We note that the BoS is committed to increasing affordable housing, as called for under the Town’s Housing Production Plan (“HPP”), which was approved by DHCD on June 27, 2016, as

¹ As an example, the Developer proposes to use a wastewater treatment system that is essentially untested in similar residential complexes. The Developer and the system’s engineer (Stantec) insist that this system will work, based on other but not similar uses, but even if Weston has to be a guinea pig for such an installation, it should not have to bear the consequences if the system turns out not to work as well as promised. Accordingly, the Developer should have to post sureties against the consequences of the system failing and the Project becoming uninhabitable as a result, including for the relocation of all residents and the continued education of resident schoolchildren in Weston schools (either per relocation within Weston or per other arrangements with the School Committee, the objective being that students and families should not suffer because the Developer and engineer were wrong about the success of this relatively untested system). Again, if the Developer and engineer are so sure of the system, they should be perfectly willing and able to provide these sureties.

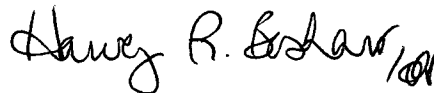
Likewise (and perhaps even more importantly), an additional condition should be that the Developer (for all successors) explicitly disavows any right, claim, or necessity to hook the Project into a sewer line, even if its proposed system fails and the Project would otherwise be uninhabitable. If this Project were ever permitted to hook into a sewer line, it could have far-reaching negative consequences for planning and zoning throughout Weston, which will not be detailed here but should be recognized as an outcome to be avoided at all costs.

further evidenced by the BoS's support for other projects in Town, including one proposed for 133 Boston Post Road, which would produce far more affordable housing in a more appropriate and much safer location, a project that does not give rise to the type of serious local concerns that are itemized above.

Finally, we extend our sincere thanks to the ZBA for the time, attention, and diligence the members have given to this difficult and complicated matter (and to the other recent and pending projects).



Douglas P. Gillespie, Chair



Harvey R. Boshart



Christopher E. Houston