



**BOXBOROUGH PLANNING BOARD**  
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Cindy Markowitz, Chair    Mark White, Clerk    Abby Reip    Nancy Fillmore    Rebecca Verner

Received on October 25, 2019, November 6, 2019 response

Mr. Bentley Herget  
Building Commissioner / Zoning Enforcement  
Town of Boxborough  
29 Middle Road  
Boxborough MA 01719

Re: 700, 750, 800 Massachusetts Avenue (The Enclave) Construction Process

Dear Bentley:

It has come to the Planning Board's attention that during the week of October 14, 2019 the entire site for the Enclave project was cleared by the Applicant/Developer Boxborough Town Center, LLC (Applicant) initiating the start of construction of the Enclave project. It is not clear that the Applicant had demonstrated full compliance with certain pre-construction Conditions of the Site Plan Approval filed with the Town Clerk on August 19, 2019, prior to the start of such clearing.

As you are aware, the Planning Board worked diligently to develop Conditions of Approval to ensure the protection of residents, particularly abutters to the project site. While the Applicant submitted a package of information to the Planning Office on October 8, 2019, neither the Planning Board, nor the Town's consulting engineer (Places Associates, Inc.) had provided review comments prior to the start of clearing. The Planning Board only received the Applicant's submittal package on October 17, 2019, prior to its regularly scheduled meeting of October 21, 2019. Review comments from Places were also received by Planning Board members on the day of their October 21 meeting. Several of the Conditions required the Applicant to submit items that are "acceptable" to the Planning Board or other entities. It does not appear that the Applicant waited for any such response, but went ahead with the start of clearing operations regardless.

Specifically, Conditions that do not appear to have been met by the Applicant that were required prior to the commencement of any site work are listed below:

**Condition 2 - The Applicant/Owner shall notify the Planning Board in writing within 24 hours after a Massachusetts Policy Act (MEPA) filing has been made. No sitework shall commence until the Secretary has issued a Certificate for the project under MEPA or other official communication that the MEPA process is complete.**

While the Applicant submitted a Notice of Project Change, a Certificate from the Secretary has not yet been received by the Planning Office and provided to the Planning Board prior to the

start of construction (site clearing). While the Notice of Project Change was filed with MEPA on September 11, 2019, and a copy was submitted to the Planning Office, the MEPA Process includes a 20-day public comment period which ended October 1, 2019. Through a review of the MEPA files, a Certificate from the Secretary of Energy and Environmental Affairs was issued to the Applicant on Oct 11, 2019. The Planning Board has not received this documentation, nor are we aware that it was provided to the Planning Office prior to the start of clearing.

RE: Condition 2. The Planning Department has received a letter from the Office of Energy and Environmental Affairs that states, "The project change significantly decreases impacts and, therefore, no longer warrants additional MEPA review or preparation of an EIR".

**Condition 37. Prior to the commencement of any site work, the Applicant/Owner shall:**

**37b. File an Approval Not Required (ANR) Plan Application with the Planning Board for review and endorsement. If this ANR Plan places the wells and the housing development on separate parcels, it shall be accompanied with legal proof that the Applicant/Owner and/or Condominium/Homeowners' Association will maintain control over, and record rights of access to, the wells and the associated buffer zone, per Massachusetts Department of Environmental Protection regulations, which will supply the development with public water supply. Once endorsed, the Applicant/Owner shall record this ANR Plan and such instruments as are necessary to establish record rights of access to the designated public water supply, with the Middlesex South Registry of Deeds and provide verification of recording to the Planning Board.**

An ANR was submitted to the Planning Office by the Applicant on October 10, 2019. However, the ANR had not been reviewed by the Planning Board nor the town's consulting engineer prior to the start of construction. The ANR, while meeting state law requirements, did not include the requirements associated with the Site Plan Approval Conditions 37b and 38 (see below). At the October 21st Planning Board meeting, the Board agreed to approve the ANR conditioned upon the Applicant submitting a revised version prior to the end of the 21-day time period (October 31), by which time constructive approval would be granted regardless. This put the Planning Board in an awkward position. Additionally, no legal proof has been provided to demonstrate that the Applicant/Owner and/or Condominium Association will maintain control over and record rights of access to the wells and the associated buffer zone, as required in the Condition.

RE: Condition 37b. The Planning Department has communicated with Ducharme & Dillis stating that if the ANRs do NOT match the Site Plan Approval (Approval and Settlement Agreement), building permits will NOT be issued. Following correspondence with Ducharme & Dillis, the Planning Department has received a draft revised ANR, which was reviewed by Town Staff and the Town's Consulting Engineer and was determined to be sufficient. Ducharme & Dillis has submitted the revised ANR for Planning Board approval and endorsement.

**37e. Formulate a Construction Management Plan that is acceptable to MassDOT, the Boxborough Police and Fire Departments and the Planning Board and that will ensure safe conditions at the intersection of the construction access road and Massachusetts Ave/Route 111. All costs incurred for the development and implementation of this plan,**

**including Police detail, as necessary, shall be paid by the Applicant/Owner.**

A Construction Management Plan was submitted by the Applicant on October 8, 2019. This Plan evidently addressed some but not all items identified in a Construction Sequencing Plan (requested as a separate document in Condition 39). The Planning Board has not been made aware as to whether the Mass DOT, and the Police and Fire Departments have reviewed the Plan prior to the start of clearing. The Planning Board received this document just hours prior to its October 21st, meeting so did not have a chance to review it prior to the start of clearing. In a letter from Places dated October 18, 2019 (attached), several deficiencies were identified in the Construction Management Plan/Construction Sequencing Plan.

RE: 37e. The Planning Department has received and reviewed the Construction Management Plan. The Town's Consulting Engineer made an excellent recommendation stating that the content of the Plan ought to "... be incorporated into a full-size plan with verbiage on one sheet and the details on a sheet similar to Sheet C3.1." Ducharme & Dillis has agreed to revise the 9/27/19 Plan Set to identify the location of the stone crushing operations, temporary structures (sales trailers), and temporary signage on one sheet with the details presented in the Construction Management Plan, as well as provisions to minimize impacts to Sherriff's Meadow residents.

**37g. Flag the areas of vegetation to be preserved to be verified by Town staff or their designee, such as a Massachusetts Licensed Arborist, to ensure healthy trees and viable areas will remain. After the completion of clearing operations, all tree lines to remain shall be reviewed by a Massachusetts Licensed Arborist and the recommendations of the**

**Arborist shall be implemented. Any tree scheduled to remain that is removed or significantly damaged shall be replaced at a 2:1 ratio (minimum 3-inch caliper).**

The Applicant response in the submittal package of October 8 indicates only that, “the limit of work has been staked in the field”. There is no evidence that town staff or the town’s consulting engineer approved the limit of work as staked in the field prior to clearing. There is also no evidence that a licensed (certified) arborist or town staff were asked to identify any trees to be saved. It is our understanding that the Applicant verbally stated to the town’s consulting engineer, after the clearing occurred, that an arborist was part of the crew prior/during clearing operations; however, there is no evidence that there were any attempts to meet the requirements of this Condition, as most, if not all, trees appear to have been cleared from the site, and possibly even beyond the approved limit of work identified on the plans. An assessment should be made (either via aerial photography or other means) as to whether any healthy trees that should have remained were removed and whether any replacement trees should be installed at a 2:1 ratio per this Condition. Documented evidence that all remaining tree lines have been reviewed by a certified arborist should be provided per this Condition.

RE: 37g. I have conducted a site visit with Town’s Consulting Engineer. I have been in conversation with Ducharme & Dillis, and Town Center LLC regarding this documentation. Following these discussions, the Planning Department expects to receive this documentation promptly.

37i. Provide evidence to the Planning Board that MassDOT access permit has been approved for construction access from Route 111/Massachusetts Avenue.

The Applicant's response in the October 8, 2019 submittal that, “the Applicant is working directly with MassDOT relative to the use of the existing curb cut for construction access” does not adequately address the required evidence that Mass DOT has modified any existing access permit or issued a new approved access permit. Evidence must be provided to the Planning Board regarding approval of the access permit by MassDOT.

RE: 37i. The Planning Department is corresponding with Ducharme & Dillis, and Town Center LLC on this matter. Following these discussions, the Planning Department expects to receive this documentation promptly.

**Condition 38. An Approval Not Required Plan (ANR) shall be submitted for the Planning Board’s endorsement creating Lot 1 containing 24.6 acres of land as shown on the Preliminary Plan of Land submitted with the plans identified in Condition 1. This plan shall show all easements including those related to the well (access, utility, protective radius), fire pond and drainage.**

As noted above in Condition 37b and as identified by the town’s consulting engineer in the October 18, 2019 letter, the ANR was deficient with regard to showing the easements and aforementioned ownership documents.

RE: Condition 38. SAME COMMENTS AS ABOVE “RE: Condition 37b”

**Condition 39. Applicant shall provide a Construction Sequencing Plan to be reviewed by the Planning Board and the Consulting Engineer. It shall indicate which features will be**

**constructed in conjunction with the access road through Sheriff's Meadow, temporary structures for construction and sales, temporary signage and other temporary appurtenances. It shall include as a minimum:**

- a. Location of temporary building being used for sales and related parking, construction trailer and associated storage, port-a-john etc.**
- b. Any required drainage structures, utilities to be completed prior to binder pavement. Provisions to minimize impacts to Sheriff's Meadow residents including screening, dust control and signage**
- c. Target dates for Construction and bond releases (non-binding).**

As noted above, the Applicant merged the Construction Management Plan and elements of the requested Construction Sequencing Plan into one document (The Construction Management Plan). The Construction Management Plan does not identify when the construction activities are to begin (no dates provided) and made no mention of site clearing beginning the week of October 14. The Construction Management Plan had not yet been reviewed by the Town nor the Town's consulting engineer who found several deficiencies as noted in the October 18, 2019 letter to the Planning Board, including items a, b, and c above, prior to the start of clearing. It appears that no on-site Construction Kickoff Meeting was held with all of the appropriate parties prior to the start of clearing.

As noted, target dates for construction were not provided in the Construction Management Plan. Notably, the Landscape Plan was specifically developed to ensure vegetation buffers and screening were in place for the residents of Sheriffs and Tisbury Meadows prior to the start of construction. The Planning Board prioritized an additional meeting in August in order to expedite the Site Plan Approval so that vegetation could be planted during the remainder of the fall growing season to help mitigate construction impacts to these residents. Apparently, the Applicant determined work along the Access Easement C would be deferred until the spring; however, the residents received no benefit of any landscape screening from the now-cleared site.

Several other documents were submitted to Places (and presumably the Planning Office) as noted in the town consulting engineer's October 18, 2019 letter to the Planning Board. The Planning Board has not had an opportunity to review these documents. However, as noted in the October 18 letter, several additional deficiencies were found by the town's consulting engineer in those documents.

RE: Condition 39. The Planning Department is corresponding with Ducharme & Dillis, Town Center LLC, and Toll Brothers on this matter. Condition #39 is related to Condition #26 regarding the on-site construction trailers. Town Center LLC may or may not need an approval from the Zoning Board of Appeals depending on the structure(s) they choose to propose. All parties are aware of Section 7602 of the 2012 Boxborough Zoning Bylaw. I will continue to correspond with Ducharme & Dillis about the Construction Sequencing Plan next week. The Planning Department will receive this documentation promptly.

In summary, it is clear that there are several major issues that need to be addressed:

- 1) A formal mechanism needs to be in place to indicate the town's approval and authorization has been granted before work can proceed. Town staff must communicate to the Applicant that simply submitting required documents does not mean the Applicant is authorized to proceed with work.
- 2) Site Inspections by town staff and/or the town's consulting engineer will need to be frequent (town staff need to determine how often) and be well-documented. Verbal commitments made by the Applicant in the field will need to be documented by town staff and agreed upon in writing by the Applicant.
- 3) Internal Communication between town staff, the town's consulting engineer and the Planning Board must be well coordinated.
  - a. The Site Plan Approval Conditions require review and/or enforcement by different

personnel (Town Planner, Building Inspector, Consulting Engineer) depending on the item. This effort must be coordinated among these three parties and regular communication is paramount.

I agree with 3a. completely. Communication between Town Staff and communication with the Town's Consulting Engineer will be coordinated by Boxborough's Planner. Ducharme & Dillis and I have scheduled weekly phone calls where the ongoing site work, Conditions of the Approval, and general requirements are discussed at length. I have created a system for sharing documentation that allows me to disseminate information to the appropriate Town Departments in an organized fashion. I encourage the public to get in touch with me with any questions or concerns.

- b. Time-sensitive documents for Planning Board review need to be transmitted to Planning Board members upon receipt and communicated as time-sensitive. The Planning Office must inform the Planning Board when approval and/or other action is required.
- c. The Planning Board is requesting that the Town Planner provide a regular project status update at our meetings for the foreseeable future, or at least until project activities and reporting mechanisms are well-established.

- 4) A review of the clearing that has occurred to date, the role of the certified arborist review process and an evaluation of the potential for replacement of trees in accordance with Condition 37g should be addressed formally with the Applicant.

The Town has expended significant legal funds to ensure that the project is developed with the best interests of the town and its residents. The Planning Board's expectation is that compliance with all of the Conditions of the Site Plan Approval will be addressed appropriately, including those Conditions that need to be met prior to the start of site work, during construction and after completion of construction.

I trust you will take the appropriate measures to ensure that the Applicant is complying with all requirements of the Site Plan Approval and will take whatever actions you deem appropriate if you determine that they are not.

Sincerely,



Cindy Markowitz, Chair  
Boxborough Planning Board

Encl: Places Associates, Inc. letter dated October 18, 2019

Cc: Simon Corson, Boxborough Town Planner  
Susan Carter, Places Associates, Inc.  
Ryan Ferrara, Boxborough Town Administrator  
Maria Neyland, Boxborough Select Board Chair  
Boxborough Planning Board Members