



February 13, 2022

**BY ELECTRONIC MAIL: [hunterg@manchester.ma.us](mailto:hunterg@manchester.ma.us)  
AND FIRST CLASS MAIL**

Ms. Sarah Mellish, Chair  
Manchester Zoning Board of Appeals  
Manchester Town Hall  
10 Central Street  
Manchester-by-the-Sea, MA 01944-1399

Re: Application for Comprehensive Permit – School Street, Manchester

Dear Chair Mellish:

As you know, this firm represents the Manchester Essex Conservation Trust (“MECT”). I am writing to follow up on the issues that were discussed at the Board’s February 9, 2022 public hearing session.

1. Test Pits on the Project Site

As early as September, 2020, the Project’s site plans have shown test pit locations on the Project Site, labelled “TP – 1” through “TP – 17.” At an earlier Zoning Board meeting, the Applicant Geoff Engler denied that any test pit logs existed, but on February 9<sup>th</sup> he conceded that “informal” soil and groundwater elevation data had been collected, and was included in the geotechnical report that was filed with the Board last month. However, that report does not contain the kind of test pit logs we would expect for the holes dug on the Site. Mr. Engler also stated an earlier Board meeting that test pits were witnessed by “DEP,” although no evidence of that has been provided. The Department of Environmental Protection would not be involved in this Project unless and until the Applicant starts the groundwater discharge permitting process. The first step in that process is requesting DEP approval of a scope of work for a hydrogeological study of the Site. Notice of that application must be filed in the Environmental Monitor, a public website.<sup>1</sup> No such notice has been filed.

Mr. Engler stated at the February 9<sup>th</sup> hearing session that he was instructing his team to do a new round of test pits “next week.” Given the shifting explanations and critical importance of this data to the design and feasibility of the Project, we respectfully request that the Board require the Applicant to have any test pits and data collection performed on the Site witnessed by a qualified agent of the Town of Manchester. We recommend that Beals and Thomas witness

---

<sup>1</sup> <https://eeaonline.eea.state.ma.us/EEA/MEPA-eMonitor/home>

these test pits, since they will be peer reviewing the engineering components of the Project for the Board.

## 2. The Dead-End Driveway

The issue of the Project's long, dead-end driveway was discussed at the February 9<sup>th</sup> hearing session. According to your traffic peer reviewer, Environmental Partners, the driveway is approximately 1,800 feet, from its entrance on School Street to the front door of the apartment building. The driveway has a "boulevard" entrance, which transitions to a single, 24-foot wide road. The elevation at the School Street entrance is 51 feet (above sea level), and rises to 114 feet at the end of the driveway. The maximum grade of the driveway is 8%, on the west side of the building. The driveway is essentially an un-closed loop that snakes around the exterior of the building. For most of the length of the driveway, the outer side of the driveway slopes steeply away from the pavement; the inside of the driveway also features steep slopes at the beginning.

As Environmental Partners correctly noted, the Manchester Zoning Bylaws restricts the length of common driveways to 500 feet. See, ZBL, § 6.9.8. Mr. Engler stated at the February 9<sup>th</sup> hearing session that he does not need a waiver because he is not proposing a subdivision. However, Section 6.9.8 does not apply to subdivisions, it applies to any "common driveway," which this is. Curiously, Mr. Engler has not requested a waiver from this provision despite the fact that the Project clearly needs one. Even if Section 6.9.8 did not exist, the Board would be justified to consider the road design standards found in the Planning Board's Subdivision Rules and Regulations, which limits dead-end roads to 500 feet.<sup>2</sup>

Coincidentally, the state Housing Appeals Committee has adjudicated several cases involving long, non-conforming dead-end roads and access driveways. As I mentioned at the February 9<sup>th</sup> hearing session, the seminal case was a project denied by the Waltham Board of Appeals in 2002, which featured a 1,000-foot dead-end access driveway serving a 36-unit project.<sup>3</sup> The access road climbed 75 feet from its intersection on Lexington Street to the entrance of the project's building, on top of a hill. The maximum grade of the driveway was 10%, with steep slopes on both sides. There was testimony that if the access road was blocked, "emergency personnel would be required to climb the access road or adjacent hill by foot, carrying heavy gear, increasing response time by 45 minutes."<sup>4</sup> It was observed that automatic sprinklers inside the building improves fire protection, but are "not a substitute for access to the site for firefighting, and they do not protect against medical emergencies."<sup>5</sup>

As here, the Waltham developer testified that the driveway length and design "are consistent with generally recognized design standards and provide adequate emergency access to

---

<sup>2</sup> Many municipalities do not allow multiple dwelling units on a single tract of land outside of the subdivision context. As such, they do not have equivalent road design performance standards for non-subdivision multi-family developments. Recognizing this, Chapter 40B regulations specifically authorize zoning boards to review the conformity of Chapter 40B projects with subdivision regulations. See, 760 CMR 56.05(7).

<sup>3</sup> *Lexington Woods, LLC v. Waltham ZBA*, HAC No. 02-36 (Feb. 1, 2005), copy attached as Exhibit A.

<sup>4</sup> *Id.*, at \*31.

<sup>5</sup> *Id.*, at \*33.

the site and building without need for alternative access.”<sup>6</sup> However, the HAC found that the “combination of problematic elements” with the design of the access driveway, including its length and grade, justified the denial by the local zoning board.<sup>7</sup>

A year later, the HAC affirmed the denial of another Chapter 40B permit, this time for a 100-unit condominium project in Braintree that would have been served by two dead-end driveways, one 1,550 feet long, and the other 1,250 feet long.<sup>8</sup> The maximum grade of the road was 8%, and the road was unique in that it featured two, 18-foot-wide travel lanes separated by a 16-foot-wide mountable landscaped island. The HAC commented, as it did in the *Waltham* case, that long dead-end roads without a secondary or alternative access present a public safety concern, “when homes may become isolated from the town’s street network because of a single point of entry to the development.”<sup>9</sup> The HAC further observed that “[i]t is a concern that increases not only with the length of the cul-de-sac, but also with the number of homes that are located at a distance from the street network.” The HAC held that “[e]ach such roadway must be considered on its own merits based upon ‘an analysis of all the characteristics of the roadway taken together.’”<sup>10</sup>

In 2011, the HAC rejected a 2,120-foot dead-end access road with a maximum grade of 6% providing access to a 52-unit project in Norwell. The Norwell ZBA had conditioned its approval of the project on the road not exceeding 1,150 feet, which the HAC found reasonable under the “consistent with local needs” balancing test.<sup>11</sup>

Importantly, the HAC has stated that the width of the proposed road “is rarely the most important factor. More typically it is the number of units isolated on the single--access roadway and the length of the roadway, as well as unusual factors specific to the site that are most important.”<sup>12</sup> On two occasions, the HAC overturned a local zoning board decision and *allowed* a dead-end road, but both cases are distinguishable from the present situation. In the *Wenham* matter, the access road was only 1,120-feet long and served just 20 units. Similarly, in *Green View Realty, LLC v. Holliston ZBA*, HAC No. 06-16 (Jan. 20, 2009) (Exh. E), the project had two dead-end roads of 600-700 feet in length, serving between 30 and 32 unit. From my survey of the relevant HAC caselaw, this Manchester project has the largest number of housing units served by the dead-end road, and the second longest dead-end road. See, Table 1 below.

---

<sup>6</sup> Ibid.

<sup>7</sup> Id., at \*41-42.

<sup>8</sup> *O.I.B Corp. v. Braintree ZBA*, HAC No. 03-15 (Mar. 27, 2006), Exh. B.

<sup>9</sup> Id., at \*16.

<sup>10</sup> Ibid., citing, *Lexington Woods, LLC v. Waltham ZBA*, supra.

<sup>11</sup> *Simon Hill, LLC v. Norwell ZBA*, HAC No. 09-07 (Oct. 13, 2011), Exh. C..

<sup>12</sup> *Burley Street, LLC v. Wenham ZBA*, HAC No. 09-12 (Sept. 27, 2010), at \*\*9-10. Exh. D.

**Table 1**

HAC Case	# Units	Length of Road	Max. Grade	Town Regulation	Decision
Waltham	36	1000 ft.	10%	500 ft.	<i>denied</i>
Braintree	100 <sup>13</sup>	1550 ft.	8%	400 ft.	<i>denied</i>
Norwell	52	2120 ft.	6%	550 ft. <sup>14</sup>	<i>denied</i> <sup>15</sup>
<b>Manchester</b>	<b>108</b>	<b>1800 ft.</b>	<b>8%</b>	<b>500 ft.</b>	<b>??</b>
Wenham	20	1120 ft.	n/a	500 ft.	<i>allowed</i>
Holliston	30-32	600-700 ft.	n/a	500 ft.	<i>allowed</i>

The HAC decision cited by Attorney Talerman during the February 9<sup>th</sup> hearing session concerned a 40B project in the town of Sunderland, and is inapplicable.<sup>16</sup> The HAC overturned the local zoning board’s denial, which was based on the town’s concern with providing fire protection to a 42-foot-tall building without a ladder truck. The case did not concern access roads at all.<sup>17</sup>

3. Fire Flow – Adequacy of the Town’s Water System

During the February 9<sup>th</sup> hearing session, the Fire Chief dismissed comparisons of the 40B Project Site with two recent house fires in town. Specifically, he referenced a fire at 30 University Lane that occurred after a snow storm in 2019, in which fire apparatus could not climb the steep driveway leading up to the house. He noted that the driveway was steeper than what is proposed here. The Chief also referenced a house fire on Old Essex Road last summer, where water pressure in the hydrant was deficient due to the location being at the “dead-end” of a water main. However, that situation is present with the 40B project site as well – there is currently no municipal water service in School Street north of Route 128. The Applicant intends to extend the water main across Route 128; presumably, this would also result in a “dead-end,” at the top of Shingle Place Hill.

Protecting the future building and its residents, as well as all of the undeveloped land surrounding Shingle Place Hill, is a “local concern” that outweighs any need to produce more affordable housing. It is therefore imperative that the Applicant demonstrate that sufficient water pressure will be available along the 1,800-foot driveway and at the top of the hill for domestic water and fire suppression purposes. This is ordinarily accomplished through a water capacity study prepared by a water systems engineering, under which existing water pressure during peak

<sup>13</sup> The entire project in *Braintree* had 119 housing units, but only 100 would have been served by the 1,000-foot dead-end road.

<sup>14</sup> In the *Norwell* case, it was noted that the length of a dead-end road could be allowed for up to 1,000 feet by special permit.

<sup>15</sup> The HAC affirmed the ZBA’s condition that limited the length of the road to 1,150 ft.

<sup>16</sup> *Sugarbush Meadow, LLC v. Sunderland ZBA*, HAC No. 08-02 (June 21, 2010), Exh. F.

<sup>17</sup> The town’s defense was undercut by the fact that its zoning bylaw allowed residential buildings of up to 45 feet, and that the project was located on the Amherst town line, and the Town of Amherst had a ladder truck.

hours is measured, and future water pressure is estimated through hydraulic modeling. The Applicant should be required to prepare and file such a report with the ZBA and the Department of Public Works while this public hearing is still open, to enable constructive public review and comment.<sup>18</sup>

Thank you for your attention to these matters.

Very truly yours,

/s/ Daniel C. Hill

Daniel C. Hill

Enc.

cc: Clients  
Manchester Board of Selectmen  
Manchester Department of Public Works  
Beals and Thomas

---

<sup>18</sup> In its “Existing Conditions Narrative” provided in the 40B application, Allen & Major acknowledges that a water main extension will be required, but provides no construction details and provides no data on existing water pressures in the line, or projected future water pressures based on modeling.

**EXHIBIT A**

**EXHIBIT B**

**EXHIBIT C**

**EXHIBIT D**

**EXHIBIT E**

**EXHIBIT F**