



POSSIBLE CONDITIONS FOR THE 40B PROJECT – DRAFT 1/21/21, SUBJECT TO FURTHER MODIFICATION

FISCAL IMPACTS:

1. Reduce the number of apartments; Reduce height to 3 main floors

Response: *The Applicant will investigate the following:*

- A. *Eliminating the 4th residential, without the loss of units. Effectively changing the footprint of the building and fitting the same number of units across three residential levels.*
- B. *Eliminating part of the 4th floor, likely resulting in the loss of between 10 and 22 units.*

The Applicant will not eliminate the current version of the 4th floor and the 41 units represented on the current plan set.

The scope/amount of units to be eliminated in scenario “B” would be dictated by the Town’s ability to satisfy the conditions enumerated in “Footnote #1 & #2”. Likewise, if the Applicant is able to maintain a consistent density (150 +/- units) across three floors, and the Town satisfies the conditions in Footnote #1 and/or #2, then the Applicant will commit to the additional mitigation identified by the Town in #9a and #9c.

2. Maintain the same proportions of 3/2/1/1+BR units as in the original proposal

Response: *Should the Applicant eventually agree to a density reduction (under any scenario) within the structure of a Development Agreement, the Applicant would undertake best efforts to maintain the same proportionality of bedroom styles as represented in the current proposal. But depending on changes to the building, an exact proportionality could be challenging. The Applicant recognizes that were a density reduction effectuated, the Applicant would then not make dramatic changes to the unit mix (e.g. converting lots of 1BRs to 3BR units). That would not be the intent nor in the spirit of the agreement. But the Applicant cannot agree to exact proportionality until further reviewing the design. Moreover, the Development Agreement would need to be structured/written in such a way that these redesign would be a condition to submit as part of the Comprehensive Permit application as we are not going to redesign the building, and then learn that we **can** reach a deal with the BOS. If we have an agreed upon Development Agreement, we can make future submissions conditional on us satisfying the proportionality concern.*

3. Preclude any future additions/expansions

Response: *Agreed.*

4. Provide local preference for 70% of the affordable units

Response: *The Applicant will work with the Town to satisfy this request and feel comfortable the Local Preference condition can be achieved. Per DHCD regulations, the municipality (not the Applicant) has to “demonstrate a need” for Local Preference. This is not a high hurdle based on the Applicant’s and its consultant’s experiences. We would instruct our affordable housing lottery agent to work with the designated municipal*

representative (e.g. Sue Brown) to prepare that “demonstration of need”, which according to regulations needs to be submitted by Town to SHCD shortly after the issuance of a final and recordable Comprehensive Permit decision.

5. Reduce to 60% of AMI for half of the Affordable units

***Response:** The Applicant cannot agree to this request. On a capitalized basis, that affordable rent decrease/write down would be about \$85,000 per unit. The Applicant can provide the financial analysis which supports this assertion. As 60% rents are not required under the 40B program, we are not willing to make this commitment, particularly in lieu of other BOS requests.*

6. Pay for water main extension along School Street across Route 128 overpass to site

***Response:** Agreed. Please see Footnote #1*

7. Pay for individual unit water meters

***Response:** Agreed.*

8. Pay for all professional fees and expenses incurred by the Town for engineers, architects, landscape architects, financial consultants including CPAs, lawyers, hydrologists and hydrogeologists and wetland scientists.

***Response:** The Applicant, per 40B requirements, commits to pay for all the retained professionals during the Comprehensive Permit public hearing process. Moreover, should a development agreement be successfully executed, the Applicant also agrees to pay for fiscal peer review and traffic peer review conducted to date. The Applicant would consider paying for Mr. Witten’s services (not CPA work as we have never heard of that being required under 40B) if a development agreement is successfully executed and that fee is capped at a reasonable total consistent with what is customarily paid to municipal 40B consultants/advisors. The Applicant would also ask for the Town to identify a cap to the fees, as a blank check book for municipal permitting fees will make pre-development financing/investment extremely challenging.*

9. Pay one-time contributions toward capital needs:

- a. \$500,000 toward the purchase of a new ladder truck

***Response:** The Applicant could agree to this contribution, but only if Footnote #1 and #2 are satisfied and based on the number of units the Town would want the Applicant to remove. Payment would be made prior to the first certificate of occupancy.*

- b. \$500,000 to the CPC Land Conservation Fund

***Response:** The Applicant will agree to this contribution, but only if the Manchester Essex Conservation Trust agrees to support this application and agrees to no future litigation. Otherwise, the Applicant will not agree to any financial contributions to Conservation Land initiatives at this time.*

- c. \$500,000 toward Turf Field project.

***Response:** 40B case law is clear that a municipality cannot ask for mitigation that has no relationship to the pending 40B Application. This request clearly falls within that category. However, The Applicant would commit to this financial*

request if the Town satisfies both Footnote #1 and #2 and based on the number of units the Town would want removed from the Program.

ENVIRONMENTAL IMPACTS

1. Maintain no net gain in stormwater runoff from property during and post construction
Response: *Being assessed...*
2. Achieve no net gain in nutrient/chemical loading beyond the boundaries of the project parcel during and post construction; applies to wastewater disposal operations, fertilizing, de-icing and stormwater
Response: *The Applicant respectfully believes this request is both too vague and not feasible. There is no mechanism to measure existing nutrient/chemical loading, and thus no way to prove no net increase without a baseline. The Applicant would agree to meet the requirements imposed on other multi-family projects and single family houses built in Town; as well as meeting all requirements promulgated by MassDEP. At this time, and based on current design, we do not believe any waivers will be required for this work.*
3. Retain forest vegetation/plant heavy screenings between development and MECT lands
Response: *The Applicant believes the submitted plan set already reflects its intention to retain and protect existing forest vegetation. As this area is heavily wooded, the Applicant will not agree to an excessive amount of additional plantings along the property line, but can commit to selective new/additional plantings strategically placed along the property line with the MECT land to augment and supplement all of the existing forest and vegetation already present.*
4. Restrict any land not used for buildings or parking to conservation use only for the longest period allowable by law.
Response: *Agreed. The Applicant requests the language in the development agreement indicates that any land included in a conservation restriction will/would not be necessary for the Applicant to satisfy all current and future conditions enumerated in the Comprehensive Permit and Order of Conditions.*
5. Require the use of alternative blasting chemicals that are non-toxic; require extensive monitoring of structures against damage from blasting including pre and post blasting structural surveys; provide surety bond to cover any blasting damages
Response: *The Applicant, and its construction team, are not familiar with “non-toxic explosives”. Perhaps, the Selectmen are referring to perchlorates; which have been shown on limited instances to impact water quality. Most reputable blasting contractors, including the ones we would retain, have already banned using explosives that contain perchlorate. The Applicant would be comfortable committing to a blasting process that uses only perchlorate-free blasting agents.*

Although NOT required by the State, The Applicant could also offer to implement a water quality monitoring program -- collecting and testing surface water bodies around the blasting area for blasting chemicals before blasting commences, again during blasting, and after blasting has been completed. The Applicant could identify a reasonable number of sampling areas with the Town as part of the Comprehensive Permit process which could be included as a condition of the permit.

The blasting contractor will have their own seismographs on-site during the blasting. That data will help to ensure against exceedances of the blasting parameters (by measuring the peak particle velocities during blasting and comparing those to standards). Mass. regulations require a 250-foot radius pre-blast survey. Although not required, The Applicant would be willing to consider increasing that radius another 100 feet to 350 feet outward as measured from the edges of the blasting area. And finally, a surety bond is a requirement and standard part of the blasting procedure.

6. Provide proof of annual inspections and full permit compliance of the on-site wastewater system and stormwater management system

Response: Agreed

7. Use environmentally friendly construction techniques including: high energy efficiencies; electric heat pump HVAC; Solar, LEED certification; extra low-flow water fixtures and gray water capture for non-potable uses; no potable water use for landscaping/irrigation, except as required for establishing new plantings; EV charging stations in parking garage; native plantings for landscaping; organic care; shielded, down directed outdoor lighting

Response: It is too early for the Applicant to identify all of the various design elements and finishes this program will feature as we are still in a schematic design. The Applicant will design the building to be fully compliant with local and state energy codes and the International Building Code including: high efficiency lighting fixtures and HVAC systems, low-flow plumbing fixtures, and energy-star appliances. The project will also feature dark-sky compliant exterior lighting.

The Applicant can also commit to the irrigation requirements, EV charging stations, native planting. The Applicant will not be doing a LEED Certification, using electric heat pumps or using gray water. The project will be designed to be solar-ready, but it is too early to determine if will be using solar panels. The Applicant commits to working through these considerations with the Town before the ZBA as many of these design characteristics are important to us too. But The Applicant simply implement all of the design requests as it becomes cost prohibitive.

8. Require adherence to the Manchester wetlands protection bylaws

Response: The Applicant is assessing this request. It is likely that a few waivers from local wetlands protection bylaws will be necessary in order to construct the development as represented. The Applicant will identify what those waivers are in the near future.

Obligating the Applicant to adhere to all local Manchester bylaws is tantamount to stopping or denying the project. The Applicant could commit to requesting as few waivers as possible to local wetlands bylaws, and also complying with all DEP regulations; which is obviously a requirement anyway.

TRAFFIC IMPACTS

1. Contribute to new transit service: Annual contribution to new Town Shuttle possibly run by CATA - \$50,000 annual payment with CPI annual escalation

***Response:** The Applicant will consider making a one-time capital contribution of \$25,000 to the Shuttle system. 50% payable upon receipt of a building permit, and 50% once the Town has established the route, identified an operator, and a schedule. On an on-going basis, The Applicant would agree to make payments consistent with the fees charged of other stops/users. Based on past experience with other shuttle services at other projects, The Applicant we would expect ridership from the development to be extremely low, and not warrant or justify the large annual payments contemplated in this request.*

2. Fund the construction of a left turn lane to the property on School St, heading north.

***Response:** The Town's own peer review consultant has already opined that the installation of a left-turn lane is not warranted based on the speed and volume of traffic along School Street, and the analysis provided by VAI did not indicate residual vehicle queuing on School Street for vehicles turning left into the project site. Instead, The Applicant would agree to provide \$50,000 for the design and construction of a widened shoulder. This would be more beneficial to the Town and this project.*

OTHER IMPACTS

1. Redesign to fit character of Town – seaside New England shingle style with facade of sloped roofs and variations in massing

***Response:** In general, The Applicant would agree to work with a designated Town consultant or municipal design review board on the architecture. The Applicant likes the proposed design but will consider design suggestions and attempt to implement those modifications/changes into the final design. The Applicant would ask the Board of Selectmen to be mindful that sloped roofs increase height; and The Applicant had believed height was an important consideration to the Town.*

2. Agree not to appeal the conditions associated with the Selectmen's LIP endorsement nor the conditions contained in the ZBA comprehensive permit that may be issued.

***Response:** As written, The Applicant cannot agree to this. Obviously, if The Applicant executes a development agreement with the Board of Selectmen, The Applicant would be accepting the conditions to that agreement. However, as the Applicant does not have a Comprehensive Permit, the Applicant cannot agree to not appeal something without the benefit of a full review. The Applicant believes it can work with Town counsel to*

structure language that includes something indicating that the Applicant would agree to not appeal if the Comp Permit and its conditions, if those conditions allow the project to be constructed as proposed, without additional financial obligations beyond what is contained in the development agreement and without additional conditions that prohibited material elements of the project from being constructed.

This request, as written, cannot be complied with.

3. Continue to work on safety of access road and the accommodation of pedestrians and bicyclists

Response: *We are committed to working with the Town's Traffic Peer Review Engineer throughout the process to identify opportunities to enhance the access road/driveway. However, The Applicant will not be adding a sidewalk to the roadway for a number of reasons.*

Footnotes:

1. *The Town will direct its Planning and DPW Departments to work with the Applicant to prepare a Massworks Grant. This Grant would go to offset the costs associated with the Applicant designing and constructing an 8' water line to the proposed development site. The Grant could also be used to offset costs associated with the infrastructure costs associated with bringing municipal sewer to the site.*

The MassWorks Infrastructure Program is a competitive grant program that provides the largest and most flexible source of capital funds to municipalities and other eligible public entities primarily for public infrastructure projects that support and accelerate housing production, spur private development, and create jobs throughout the Commonwealth.

The Massworks Grant will ask for the maximum possible award based on the size and scope of the work proposed. Should the Applicant receive \$1,000,000 or more as part of the Grant (the total cost of the infrastructure program is likely going to be \$3,000,000 to \$6,000,000), than the Applicant will be committed to some combination of a density reduction and/or mitigation payments highlighted in #9.

A Grant may likely be awarded after the Applicant has concluded the Comprehensive Permit public hearing process. In which case, the Applicant would be required to file a "modification request" with the Manchester ZBA inclusive of plans showing the density reduction. The Town has over 12 months from execution of a Development Agreement to submit and secure a Massworks grant, but the Applicant would need to know if the Massworks grant is awarded prior to filing for a building permit, as the

density reduction has significant ramifications (e.g. financing, preparing construction documents, etc.)

2. *The Town, and necessary municipal and elected officials, will work with the Department on Environmental Protection to remove the DEP issued current Consent Order on the Town's municipal sewer system. Once the consent order is satisfied, the the Town will secure/petition to DEP to allow the Applicant to tie into the existing municipal sewer system (at the Applicant's expense to deliver the necessary pipe/infrastructure to the site). The Town has already confirmed it has excess capacity and more than enough capacity to include anticipated flows from the proposed development at 157 units. The Town will need to satisfy this condition within 12 months of execution of the Development Agreement in order to effectuate the contemplated density reduction.
The elimination of the Consent Order and the allowance for the Applicant to tie into the municipal system would need to be confirmed by the time the Applicant receives its Comprehensive Permit. Should the Town successfully achieve this outcome, the Applicant would be required to file a "modification request" with the Manchester ZBA inclusive of plans showing the density reduction.*