

LAW OFFICE OF MARC R. DESHAIES, P.C.

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January 10, 2024

Nazih Elkallassi, Chairman
Wareham Zoning Board of Appeals
48 Marion Road
Wareham, Massachusetts 02571

By Email to: sraposo@wareham.ma.us &
kbuckland@wareham.ma.us

Re: Reconsideration of Petitions for Relief of Angela McKeowen
Case # 21-23

Dear Mr. Chairman:

This office represents the Trustees of the Emma Louise Reed Irrevocable Trust who are statutory abutters to the project site. We seek to inform the Zoning Board of Appeals (the "Board") that the reconsideration of the vote of November 8, 2023, is barred for 2 years under the provisions of M.G.L. c. 40A Section 16.

Facts

Petitioner filed an application with the Board for a Special Permit, Variances and Site Plan Approval for the development of the property at 386 Main Street into 10 residential units in 4 buildings on a parcel of 41,000 square feet (the "Project"). The Project is to be serviced for purposes of access by an 18 foot right of way. Multiple meetings were held to consider all aspects of the Project. The Board heard and received testimony in favor and opposed to the Project. On November 8, 2023, the Board conducted a roll call vote on the grant of the Special Permit for the Project. The Board voted 3 in favor with 2 abstentions. The Chair asked if any member wanted to reconsider their vote and no member moved to change their vote. The Special Permit failed on a procedural vote because of two abstentions. The application was posted as "closed" until the instant application for reconsideration was made to the Board.

The application for reconsideration is both procedurally defective and contrary to M.G.L. c. 40A Section 16.

Discussion

M.G.L. c. 40A Section 16 provides in pertinent part:

"No appeal, application or petition which has been *unfavorably and finally acted upon* by the special permit granting or permit granting authority shall be acted favorably upon *within two years* after the date of final unfavorable action unless said special permit granting authority or permit granting authority finds, by a unanimous vote of a board of three members or by a vote of four members of a board of five members or two-thirds vote of a board of more than five members, specific and material changes in the conditions upon which the previous unfavorable

action was based, and describes such changes in the record of its proceedings, *and unless all but one of the members of the planning board consents thereto.*" (Emphasis Added)

The purpose of this provision is to give finality to administrative proceedings.

There are procedural matters that the statute requires:

1. The Planning Board must provide notice to parties in interest of the proceedings at which its consent will be considered.
2. All but one of the members of the planning board must give consent for the application [reconsideration] to proceed.
3. The Special Permit Granting Authority must weigh the reapplication [reconsideration] and find that "specific and material changes" have occurred in conditions upon which the unfavorable decision was based.
4. The Special Permit Granting Authority must describe such changes in the record of the proceedings.

Here, even assuming *arguendo* that there were "specific and material conditions" to consider, which there were not, the notice of the reconsideration was given by the Board and not the Planning Board. Further, the Planning Board has not consented to the reapplication or reconsideration before the Board rendering this hearing procedurally moot.

Further, the Board did not act favorably on the petition because of the abstentions. There were no conditions attached to the vote as the petition failed on a procedural basis.

This matter before the Board tonight is not a reconsideration of the Project because nothing has changed in the Project. This is an artifice to have member recast or change votes on a matter and not the changes to the Project.

This "reconsideration" hearing is defective on procedural grounds and constitutes a repetitive petition prohibited from consideration unless there are specific and material changes in the Project for two years under M.G.L. c. 40A Section 16.

Very Truly Yours



Marc R. Deshaies

cc: Jillian Morton, Esq. By Email