

TOWN OF WENHAM

Zoning Board of Appeals  
Meeting of November 5, 2014  
Bessie Buker School, School Street

Pursuant to the Open Meeting Law, M.G.L. Chapter 30 A, §18-25, written notice posted by the Town Clerk delivered to all Board members, a meeting of the Zoning Board of Appeals (ZBA) was held on November 5, 2014 at 7 PM in the Multi Media Room of the Bessie Buker School.

With a quorum present, the meeting was called to order at 7:03 PM.

ZBA Members Present: Jeremy Coffey, Anthony Feeherry, and Associate Member Shaun Hutchinson

Also present: Emilie Cademartori, Coordinator; Catherine Tinsley, Minutes Secretary  
Judy Barrett, Financial Analyst (A 7:14 PM)

Town Officials present but not participating: Selectman Harrison; Selectman Whittaker; Planning Board Chair Geikie, Community Preservation Committee Chair Davis; Affordable Housing Trust Chair Anderson; Conservation Commission Chair Colarusso

Public Information:

The meeting was recorded with permission by HWCAM  
Portions of the meeting were also recorded by Cross Keys

Agenda

62 Maple Street Packet

Opinion Letter

Minutes - *August 6, 2014; August 21, 2014; August 27, 2014; September 3, 2014; September 24, 2014*

Mr. Feeherry announced that the public hearing for 41 Cherry Street and the public hearing 36 Essex Street would both be continued, formally, later in the meeting. He asked for questions or comments regarding either hearing; receiving none, Mr. Feeherry continued to the next agenda item.

New Public Hearing

62 Maple Street (Map 23 Lot 16)

Request for a Comprehensive Permit pursuant to MGL CH 40B

Applicant: Maple Woods Housing LLC

Proposal: Construction of sixty, age restricted, rental units in a single structure, constructed in two phases, on land comprising of approximately 3.5 acres

Mr. Feeherry reviewed that Chapter 40B is a state law allowing for a multi-family residential development that includes a minimum of 25% of the units offered as low/ moderate income housing, and which can override local zoning laws that otherwise would not allow such a development. The proposed Maple Woods Project is a 40B project:

- Sixty, one-bedroom rental units
- Age restricted 55+ (additional unit tenants/roommates 18+ years old allowed)
- One structure to be built in two stages
- The project would be located on 3.5 acres
- The applicant has been informed that there will be an obligation on the applicant's part to pay for a technical consultant.

Andrew DeFranza, Executive Director Harborlight Community Partners was present. He introduced those present with Harborlight: Counsel - Attorney Theodore Regnante, Regnante, Sterio, and Osborne, LLP, Wakefield  
Chief Design Engineer - Charles Wear, III P.E., Meridian Associates, Beverly  
Traffic Consultant – Robert Michaud and Daniel Mills, MDM Transportation Consultants, Marlborough  
Wastewater Consultant – Chuck Johnson, CG Johnson Engineering, Hamilton  
Architects- Thaddeus Siemasko, AIA, and John Harden, NCARB, Siemasko & Verbridge, Beverly

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Not Present: Landscape Architect - Matt Ulrich, Ulrich Bachand Landscape, LEED AP Beverly

Mr. DeFranza went on to explain that Harborlight Community Partners is a local non-profit affordable housing developer/manager affiliated with the First Baptist Church of Beverly. The two stated primary goals of Maple Woods are to create affordable, supportive housing for seniors in the community, and to help the Town of Wenham reach the affordable housing threshold under 40B. Mr. DeFranza referenced some local Harborlight Developments such as Turtle Creek and Turtle Woods in Beverly, and Firehouse Place in Hamilton.

Mr. DeFranza reviewed that Harborlight has been looking for a location, and talking with neighbors, community members, and committees, over the past year. But when concerns regarding the proposed project were raised, Harborlight put the process on hold to address those concerns and provide additional details to the community. Mr. DeFranza referenced a PowerPoint presentation to give a summary of the proposed Maple Wood senior housing 40B project.

- This included aerial views of the property with the proposed project shown as an overlay
- The proposed project will be on 3.5 acres off of Maple Street (this is not the Christmas tree farm)
- The position of the building has been turned so the narrow side of the building faces the majority of the neighbors
- The building is staked out on the lot
- The parking lot was reduced in size
- The building is 45 feet off the lot line, 283 feet from the closest home & 500 feet from Maple Street
- Conceptual drawings of the building were provided
- The building is three stories with a maximum height of 35 feet tall (by comparison, Wenham town hall is 39 feet tall)
- Mansard roof style, white shingles, black shutters, and brick accent trim
- Sixty, one-bedroom units of 650 square feet with balcony/patio (33% less units than Enon Village)
- Age restriction changed from 62+ to 55+ to increase opportunity for eligibility for certain state funding
- Sixty-six parking spaces
- All units will be “affordable” based on median income guidelines
- Water – The goal is for the project to be “water neutral”. Mr. DeFranza explained the term “water neutral” to mean using native drought resistant plants (without a need for ongoing irrigation), harvesting rainwater onsite, and the installation of high efficiency water systems i.e. faucets. To off set the water usage of Maple Woods, mitigation would also be offered to the town. Mr. DeFranza explained mitigation efforts might include Harborlight facilitating a reduction in water usage elsewhere in town, such as by providing efficient water systems to the municipal buildings (e.g., Town Hall).
- Septic system (Waterloo Bio Filter System) would be located under the parking lot
- As a result of the Traffic Analysis, a single entrance would be made combining three driveways and a speed sensor sign would be installed on Maple Street
- Landscaping would be a mix of pines, evergreens, shade trees, and river birch. New trees would be planted at 12 to 14 feet in height. The present hedge would remain. Where the gas lines run through the property, some type of cedar fencing would be installed
- The driveway lighting would be twelve feet in height with LED lighting with the ability to install shields. Posts would be installed sixty feet on center long the drive
- Maple Woods would pay taxes. Harborlight estimates the annual property tax at \$50,000, which is a higher proportionate tax payment than the current owner is paying now on the same parcel.
- Although outsourced to subcontractors, Maple Woods would manage it is own trash pick-up/disposal, plow the driveway, and maintain the landscaping

Mr. DeFranza reviewed the timeline saying construction would be done in two phases with about 18 months between the first and second phases. The first phase would take about 18 months and include site work, one wing of thirty units, and most common spaces; the second phase would take about 12 months and include the other wing for the additional 30 units.

Mr. DeFranza explained the dominant financing of affordable housing is through the state housing tax credit. The state has one or two application rounds per year and out of the 85 to 100 applications received for tax credit, the state funds

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about 25 applications per round. If everything were to go smoothly, construction could begin in (estimated) 2018. But Mr. DeFranza noted this would be an ambitious schedule. Mr. DeFranza stated that Harborlight believes this is a viable project with the state. Mr. DeFranza described the projects financing as having “zero active debt” (explained to be debt requiring current service). There would be “subordinate” debt with the state with a 30-year term that would not require current servicing as long as the project is managed as an affordable housing, as proposed. Harborlight must capitalize operating and capital reserves. The Board asked for as much detail as possible regarding the financing.

Mr. Feeherry opened the meeting to the public.

*Donald Duffy, Maple Street*, identified his concerns as: 1. About the water usage for the proposed project, on the town’s wells, noting the Town already has a mandatory water restriction, and 2. The effects of the septic from the proposed project on the Wenham Swamp/Ipswich River as a drinking water supply.

*Sarah Peckhem, William Fairfield Drive*, asked: 1. What the property is currently generating for taxes” – Ms. Cademartori stated that because of the farming designation of the property, the portion of the land being proposed for housing pays less than \$500 a year in taxes. 2. How water mitigation would be applied? - Harborlight is suggesting low flow equipment be installed in town buildings to off set the water usage.

*Lisa Terranova, Maple Street*, questioned: 1. Whether Harborlight has built other projects of this size? – Mr. DeFranza confirmed Harborlight has built and managed larger properties. 2. What is the total cost? - Harborlight has estimated the total project at \$22 million; this includes capital reserve accounts as required for operating costs and replacement costs at \$5,000 per unit with an annual contribution. 3. How long Harborlight intends to own the building? - Harborlight does not intend to sell, has never sold a unit, and is willing to attest to own it in perpetuity. 4. How the Mullen property would affect the water usage? - This is being addressed separately.

*Jared Ward, Mayflower Drive*, asked, if the comprehensive permit is issued, would that stop other potential 40B projects from building in town? - It was confirmed that other 40B projects are staved off when the permit is issued and while it is pending.

*Paul Mendonca, Arbor Street*, asked: 1. What was Harborlight’s financial expectation of the Town e.g. Community Preservation Act funds? - Funds were previously requested and approved by the Community Preservation Committee (CPC) and the Affordable Housing Trust (AHT), but were not approved at the authoritative level, to allow Harborlight to address concerns raised. 2. What is the size of the storage space for each unit? - There is no separate storage outside of what is planned in the unit; the storage closet planned for each unit is four feet by five feet (claimed not to be of sufficient size to be converted to a second bedroom). 3. Why there were only three handicap accessible units? - Mr. DeFranza responded that state law requires for 5% of the units to be handicapped accessible; additional accessible units could be required by the ZBA as a condition in the permit.

*Lou Terranova, Maple Street*, asked if Harborlight currently has an option to purchase on the 3.5 acres of the property? - Mr. DeFranza confirmed Harborlight does have a purchase agreement for \$1.8 million.

*Patrick Waddell, Great Pond Road*, asked 1. Whether the property had been appraised and what was the appraisal? - The appraisal was \$1.5 million, plus costs of principal and interest for holding the property for multiple years during the permitting process. 2. How important town funding was to get the project built? - Mr. DeFranza said local funding commitment is very important as a “huge element of leverage” with the state (as it demonstrates the town’s commitment to, and support of, the project), especially since this project is senior housing and gets the town over the 10% affordable housing goal (both of which factors are viewed negatively by those making funding decisions at the state level). Local Wenham funding might also be used as leverage to negotiate for Wenham residents to be given priority to become future residents of the Development (although such a preference might not, ultimately, be allowable). Mr. Waddell opined about the importance of the remaining acreage of the property being in conservation to protect the watershed area.

*William Wilbur, William Fairfield Drive*, commented that there are places in the southwest where water restrictions are very serious and cautioned about the overuse of water.

*Vivien Sears, Burley Street* noted: 1. A concern, as a retired nurse, about the mosquito/tick-borne illnesses, noting this property borders swampland heavily infested by such insects. 2. The response time of emergency services to this property, and questioned the cost to the town for increased services and transportation. Ms. Sears also provided written comments to the Board.

Mr. Feeherry stated that the ZBA gets input from Fire/Police regarding the proposed project. Mr. DeFranza noted that the building would be constructed to code, including with the installation of sprinklers. Regarding the additional needs of the senior residents, he explained that this is “supportive housing” where onsite services are offered, such as home

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health aids, and transportation. Mr. DeFranza said that Harborlight has a lot of experience regarding supportive housing and invited people to visit other senior housing managed by Harborlight.

*Bill Nichols, Topsfield Road*, asked what percentage of the units would be affordable? - Mr. DeFranza responded that there are no market units in this project; all the units are affordable, at different levels, based on percentages of median income.

*Dacia Rubel, Puritan Road*, said she was most concerned about the increase of traffic and elderly drivers this project would bring to the area and the safety of pedestrians. Mr. DeFranza deferred to the traffic study that was done for this project to address this concern. The details of the traffic study were deferred to later in the hearing.

Mr. Feeherry questioned if there was a sidewalk on Maple Street, and it was noted that there is a sidewalk on one side of the street.

*Leo Maestranzi, Larch Row*, commented that without the 10% affordable housing Wenham is susceptible to a larger, more expansive 40B development. He referenced the state regulations that 40B projects are only required to have 25% affordable units, suggesting that another project could result in greater burdens on town resources than the Maple Street project is expected to impose. He observed elderly have less impact on the town and would use a fraction of the services compared to a family development. Mr. Maestranzi said that he lives near Enon Village and there are no traffic concerns or noise issues and the people are “a credit to the neighborhood”.

*Selectman Catherine Harrison* made a point of clarification regarding town funding as previously referenced, saying although the AHT and the CPC approved the use of funds, the process ended and was never brought to the Board of Selectmen for a final vote of authorization; Harborlight must reapply for funding.

Charlie Wear III, Civil Engineer gave a short presentation regarding water drainage saying all the runoff from impervious surfaces will be directed into a catch basin, and into a drainage infiltration “Cultech System” to re-feed the water basin after removing contaminants.

Dan Mills, Traffic Engineer, gave a brief overview of the traffic study saying this included Maple Street, the proposed site driveway, and the Topsfield Road/Maple Street intersection.

- Burnett’s garage entrance, Maple Woods driveway, and a residential driveway were combined to a single entrance off Maple Street.
- Maple Woods site would generate an estimated 30 to 40 additional cars at “peak hours” in the morning and afternoon; Maple Street and Topsfield Road (intersection) are both designed to handle this traffic.
- The site distance from the driveway is 400 feet; this is in excess of the safety requirement of 300 feet.
- The average travel speeds are exceeding the speed limit of 30 MPH. There was a side discussion that since the road was paved in May, the speeds on Maple Street have increased dramatically. The engineer was asked to address the concern of elderly people coming out of that driveway with the rate of speed being traveled; a speed recognition sign in the area of the Maple Woods driveway has been recommended by the police department.

Chuck Johnson, Civil Engineer, gave an overview of the septic system. Mr. Johnson noted that he has designed many systems in the Wenham area and was familiar with the local soils and water tables.

- The soil at this site is considered Class 1 sand / gravel and is rated as the best soil for filtering waste water
- The water table, or depth of the water on site is favorable, and would be approximately 8 feet below the button of the system (which is in excess of the distance required by law).
- The proposed system includes a tank with a pump chamber, Waterloo Biofilter secondary treatment unit and pressure distribution leach field that reduces the effluent by 95%. This same bio filter system was recently installed at the Maples on Main Street in Wenham. This is the best type of system for this project and site. The technology for this system has been around for 25 years.

Mr. Johnson was asked if medications and personal products are filtered out in by the Waterloo Biofilter system. Mr. Johnson has asked a specialist in this field to opine. This information was not available at the time of this meeting. Mr. Johnson was asked to prepare a report regarding this information for the ZBA.

Attorney Theodore Regnante offered an explanation that Maple Woods would generate (about) 6,600 gallons of wastewater, using the calculation of 110 gallons per day, per bedroom. This amount of wastewater mandates a certain type of septic system that is overseen by the local Board of Health. Concerning the Mullen property newly proposed use, this is a different permitting process because the wastewater usage is over 10,000 per day, and therefore must get a “Ground Water Discharge Permit” that is issued by Department of Environmental Protection and requires a sewage treatment plan.

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In closing, Attorney Regnante said the goal for the evening was to give an overview of the whole Maple Woods project so the Board, and residents, have a general idea of what is being proposed. He stated Harborlight intends to work with the residents and Town for the “best project possible that can be designed”. He suggested the ZBA seek independent peer reviews on what Harborlight has proposed and that these be discussed over the next few meetings.

Ms. Barrett noted this public hearing begins the 180-day timetable within which the public hearing process must be completed (unless extended).

The Board agreed to continue the hearing to a date certain of December 10, 2014 at 7:30 PM in the Bessie Buker Elementary School Multi Media Room.

*\*Mr. Feeherry moved, and it was seconded, to continue the comprehensive Permit for Maple Woods to December 10 2014 at 7:30 PM in the Bessie Buker Multi Media Room. The motion carried unanimously.*

Attorney Dan Hill introduced himself as a 40B attorney, representing four families in the neighborhood. He identified that he has many questions regarding the proposed project for Maple Woods, which he would be asking at future meetings.

The ZBA encouraged him to submit his comments in writing, especially those concerns he wants the peer review to include. Mr. Feeherry stated that the Planner and Consultants may make recommendations for peer reviews at the next ZBA public meeting on November 19, 2014 as an administrative process.

Ms. Barrett recommended the ZBA include “Procurement for Design Review” by an Architect.

Mr. Feeherry called a five-minute recess.

### **Administrative**

#### **76 Topsfield Road Appeal Withdrawal**

Present: Attorney Mark Bobrowski, Special Counsel for the Town; Paul Weaver, Town Counsel

Mr. Feeherry reviewed that the ZBA voted and reached a decision regarding Cross Keys’ claimed entitlement to a Dover Amendment exemption (which had previously been denied by the Wenham building inspector), and thereafter circulated a draft of the decision that was signed by all members and filed with the Town Clerk on October 20, 2014. At that time, without the knowledge of the ZBA, there were settlement discussions ongoing between the Town and the applicant that contemplated withdrawal of the appeal to the ZBA of the building inspector’s denial of Dover Amendment applicability.

Following the filing of the written decision with the Town Clerk, the ZBA was informed that the town and applicant had agreed, in principle, to a settlement of litigation commenced against the town by the applicant in federal district court. Special Town Counsel indicated that, in his opinion, a withdrawal of the applicant’s appeal could be effected even without the consent of, or a decision by, the ZBA. Mr. Bobrowski issued an opinion letter dated October 31, 2014, that Chapter 40A is silent on withdrawing an administrative appeal on a determination of the Building Inspector. The ZBA expressed no view on that the effect of the claimed withdrawal of the appeal, but noted for the record that it had rendered a decision that was recorded with the Town clerk and that a withdrawal had been indicated by the applicant.

The opinion letter from Attorney Bobrowski was marked “Privileged and Confidential and Not a Public Record”. Mr. Bobrowski confirmed he did not want the opinion letter a part of the record.

Larry Miller, Topsfield Road, and his attorney, Ben Tymann were present and participated in the discussion asking for clarification and understanding.

*Mr. Feeherry moved, and it was seconded, the ZBA submit the Opinion Letter regarding 110 Inc, (Cross Keys) from Attorney Bobrowski, dated October 31, 2014 with the Town Clerk. The motion carried unanimously.*

*Mr. Feeherry moved that the ZBA authorize him to sign the letter stating the ZBA’s vote at this meeting. The motion carried unanimously.*

ZBA Alternate applicant Chris Vance was present at this hearing and introduced himself to the Board.

*Mr. Feeherry moved, and it was seconded, to request the BOS appoint Shaun Hutchinson as a full serving member of the ZBA and the Chris Vance be appointed as an alternate member. The motion carried unanimously.*

\* The Board took a formal vote to continue the Comprehensive permit hearing for Maple Woods.

36 Essex Street - RCA requested to continue the public hearing.

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*Mr. Feeherry moved, and it was seconded, to continue the public hearing for 36 Essex Street to a date certain of November 19, 2014 at 7:30 PM in Town Hall. The motion carried unanimously.*

Ms. Cademartori requested the board authorize her to pay invoices related to 36 Essex Street as they are submitted.

*Mr. Feeherry moved, and it was seconded, to allow the Planner to pay invoices as they come in. The motion carried unanimously.*

41 Cherry Street - The applicant for 41 Cherry Street requested the hearing be continued.

*Mr. Feeherry moved, and it was seconded, to continue the public hearing for 41 Cherry Street be continued to November 19, 2014 at 7:30 PM in the Town Hall. The motion carried unanimously.*

Ms. Cademartori informed the ZBA that the Building Inspector issued a Cease and Desist Order for Middlewood condos after a number of violations were cited. All building permits have been revoked and construction has stopped.

### Minutes

*Mr. Feeherry moved to adopt the ZBA minutes of **August 6, 2014; August 21, 2014; August 27, 2014; September 3, 2014; September 24, 2014.** The motion carried unanimously.*

### Adjournment

The ZBA unanimously adjourned at 10:25 PM.

Respectfully submitted by

Catherine Tinsley  
11.12.14