



Dennis A. Murphy, Esq.
dgusmurphy@gmail.com
781-588-7881

April 23, 2024

BY EMAIL: jeanne.guthrie@sherbornma.org

Sherborn Zoning Board of Appeals
19 Washington Street
Sherborn, MA 01770

Re: Comprehensive permit application for 55-65 Farm Road, Sherborn MA

Dear Members of the Board:

On behalf of direct abutters Brian and Mary Moore of 49 Farm Road, I have submitted prior letters outlining several legal reasons to deny a permit for this project: title restrictions (Aug. 30, 2023), excessive nitrogen from the 8350 GPD septic system (Nov. 7, 2023), and commercial solar (Jan. 15, 2024), which has since been removed from recent plans. The purpose of this letter is to outline more generally how the Board should evaluate these Local Concerns as you consider waivers from local protections requested by the Applicant.

Chapter 40B requires zoning boards to weigh competing public interests to balance Housing Need, the “need for Low and Moderate Income Housing”, against Local Concerns, the “need to protect the health or safety” of residents, and “to protect the natural environment”. 760 CMR 56.02. In balancing these interests, your resulting decision should be Consistent with Local Needs, so the imposition of local bylaw protections (called Local Requirements and Regulations) to effectuate Local Concerns is reasonable when compared to the Housing Need. *Id.*

Chapter 40B regulations set forth in detail the parties’ respective burdens and evidence to be considered in reaching such a determination: “In its conduct of a hearing, the Board should make itself aware of the detailed provisions for burden of proof and evidence, set forth in 760 CMR 56.07(2) and (3)”. 760 CMR 56.05(4)(b). Under those provisions, you should consider evidence of Local Concerns that affect “Health, Safety and the Environment”, including:

- “Adequacy of sewage arrangements”, which includes septic systems, and
- “Adequacy of water drainage arrangements”, which includes water supply and stormwater management. 760 CMR 56.07(3)(d)(2) & (3).

In the Balancing regulation, you are asked to assess whether the Housing Need outweighs these Local Concerns using a sliding scale such that “the weight of the Local Concern will be commensurate with the degree to which the health and safety of occupants or municipal residents is imperiled, [and] the degree to which the natural environment is endangered”. 760 CMR

56.07(3)(b)(2). In determining whether, and to what extent, to waive local bylaws, rules or regulations, you must also balance “the degree to which the Local Requirements and Regulations bear a direct and substantial relationship to the protection of such Local Concerns”. Id.

These regulatory directives provide the Board with explicit guidance on how to evaluate waivers from Local Requirements and Regulations requested by the Applicant. For example, there are several Board of Health regulations that protect drinking water more strictly than state DEP regulations, including specifications about depth, distance, location and yield. (BOH regs. 6.0, 8.1, 8.2, 8.5, 11.0) Another regulation applicable to the project requires an Environmental Health Impact Report (BOH reg. 3.1), which requires data to evaluate cumulative impacts on public health and safety.

These BOH regulations directly address the Local Concern to protect health and safety with respect to the adequacy of sewerage, water and drainage arrangements for the project. Given the degree to which the Moore’s property would be imperiled from the waiver of these local protections, as detailed by their own letters and those of Mr. Horsley, the application of Chapter 40B regulations dictates such waivers be denied. The imposition of Local Requirements and Regulations like the local BOH regulations is reasonable under these circumstances, therefore “Consistent with Local Needs”. 760 CMR 56.05(4)(a)(“General Principle. Consistency with Local Needs is the central issue in all Comprehensive Permit applications before the Board.”).

I hope you find this information helpful. Thank you all for your diligent attention to these issues, which I look forward to discussing at the hearing tomorrow night.

Very truly yours,

/s/ Dennis A. Murphy

Dennis A. Murphy

cc: Paul Haverty, Esq.
Clients