



**BOARD OF APPEALS  
MINUTES OF THE HEARING  
August 12, 2010**

**93 Central Street/Comprehensive Permit (Hearing #09-03)**

A public hearing of the Acton Board of Appeals was held in the Conference Meeting Room in the Memorial Library at 468 Main Street on Thursday, August 12, 2010 at 7:30pm on the petition by Marsh View, LLC for approval of a Comprehensive Permit on a parcel located at 93 Central Street, Acton, MA, Parcel 123 on Map G-2 of the Acton Town Atlas. The petitioner proposes four single family dwellings units with one of the units being affordable under MGL Ch. 40B.

Present at the hearing was Mr. Kenneth Kozik, Chairman, Mr. Jonathan Wagner, Alternate and Mr. Richard Fallon, Alternate. Ms. Nina L. Pickering Cook, Town Counsel Representation for the Town; Mr. Roland Bartl, Planning Director and Ms. Kim Gorman, Planning Department Secretary (interim for Cheryl Frazier, Board of Appeals Secretary).

Attending the hearing for the applicant (MarchView, LLC – 93 MarshView) petitioner were Mr. James D'Agostine (D'Agostine, Levin, Parra PC), his engineer Mr. Mark Donohue (Acton Survey & Engineering, Inc.) and Mr. Peter L. Freeman (Freeman Law Group, LLC).

Also attending the hearing were abutters and interested parties from Acton.

Mr. Kozik opened the public hearing for the 93 Central Street at 7:30pm. Mr. Kozik reconvened the hearing #09-03. He explained how he would precede the meeting. Mr. Kozik stated "that is why we are here." He stated about 1 year ago, MarchView, LLC applied for a 40B Comprehensive Permit and the permit was denied. After the decision was filed with the Town Clerk, an appeal was filed with the Housing Appeals Court (HAC) and the HAC could deny or pass the appeal. MarchView, LLC wants and offered to have the settlement of the proposed project to be discussed in a public forum, as we are doing now. The project can be approved with settlement tonight or disapproved and have HAC go forward.

Mr. Freeman discussed the application. He stated he does not agree with the decision regarding the design, height and aesthetics, but it was well written.

Mr. D'Agostine discussed the concerned of the height. The previous plans had the homes to be 3 stores. They have now lowered the height to only 2 floors, have placed the garage under and it faces Central Street with the basements being in the ground. The landscaping, screening, leach field, T turn around and septic plan will be all the same, except the house size and height. He stated the driveways have changed, patios removed and more space between homes. The garage is smaller in 1 home. Mr. Freeman and Mr.

Donohoe discussed the change in the square footage and floor area ratios of the homes and distributed a comparison of project sheet.

Mr. Kozik moved on reading the new submission into the record which included a letter from Acton Survey & Engineering and a comparison of project sheet.

The Board members state the comparisons are helpful. To be able to make comparisons of the project: old vs. new.

Mr. Kozik asked the public for any comments or concerns they might have.

Mr. John Horne, 101 Central Street, stated there was very little time to look over documents. There were no documents to review. They were not in the Town's Website DocuShare System for public to view prior to the meeting. Mr. Horn stated the homes have been lowered but look worse. Mr. Horne asked is there are any concerns from fire. Mr. D'Agostine stated no change on the T turn around. Mr. Bartl stated there are no comments from Fire Dept. maybe due to the short turn around time and Engineering Dept has reviewed the turning radii and it works.

Mr. Horne stated that he works a lot and needs more time to review documents. Feels forced for a quick review and uncomfortable, not enough time to dig in. It is a large placement with in the neighborhood. The 3D maps I created helped and wants to work on that site plan. As a taxpayer, he would like to review this and did not receive enough time. It is a courtesy. Public hearing should be rescheduled and be given more adequate time to review and make decision.

Mr. Fallon stated he attended the pre-trial mandatory mediation meeting on June 9 in Wellesley, MA with the Housing Appeals Community (HAC) requesting to a compromise and a possible settlement. Mr. Fallon explained the role of the Board members.

Ms. Pickering Cook explained she is legal representation for the Town and Board. She stated it was not part of the original application but had gotten involved after the denial and appeal to HAC. There was no access to the documents due to privileged only through lawyer/counsel and applicant. Ms. Pickering Cook explained the process with HAC. Both parties kept lines of communications open. New plans were submitted to the Planning Department but disconnection of knowledge, there was a delay in getting the plans distributed. Once released, the plans went out immediately and were available.

Mr. Freeman stated he understands the timing of the new plans. Now that the facts have been heard and had time to review. This is different than a normal 40B. All the plans required were submitted and agreed with what was needed.

Ms. Gwynn Horsburgh, 89 Central Street, asked if the Floor Area Ratio (FAR) had changed of the 1<sup>st</sup> floor and basements. Applicant: Yes

Ms. Horsburgh stated the house deck was close to the driveway in Unit 1. Mr. D'Agostine stated there will be no patio entry. It was not centered and in way of the Fire Truck and the lightening will face the other direction.

Ms. Horsburgh stated the changes in the height and density issues are better than before but 4 houses that should only have 1 house on the lot, there is still an impact on me.

Mr. Freeman stated the subdivision consisted of the 2 lots. Complying with the legal standards for a 40B Special Permit. But does sympathize.

Ms. Maureen Ryan-Friend, 40 Tuttle Drive, is concerned that 2 homes will be facing me. Their house lights will be seen. Would like to have a fence. Mr. D'Agostine responded the lights will be over the garage and on the front of the house. The deck is on the opposite side of the house. Feels like the Board is rolling the dice and giving them what the applicant wants.

Mr. Kozik stated it is a matter of compromise. With the full litigation, there are more compromises.

Mr. Fallon stated the Board has a job, involved in looking at the plans and required to make a decision and agree with Town Counsel.

Ms. Diane Schaumburg, 37 Tuttle Drive, stated she was very upset regarding the issue of the easement, it is still part of the property. The houses are being built to close together.

Ms. Pickering Cook stated there were multiple real estate lawyers rendering an opinion on the legal use of the easement.

Mr. Freeman stated can not use as an argument of the easement. It is outside the scope of the agreement and it was not an issue.

Mr. Wagner stated it is making it a negative impact. An easement can still be discussed. The use is overburdened.

Mr. Fallon stated the result tonight will be approval or deny. If denied then HAC will continue. Ms. Pickering Cook stated if HAC continues, they will go forward with the applicant's original plan. Mr. Freeman confirmed.

Mr. Ken Guditz, 81 Central Street, gave his congratulations with the decisions regarding this present one and 113 Central Street. Stated he did his own renderings which took 200 hours. But thinks more time is needed. Would like to see DRB, Fire and Engineering comments. Would like to review the HAC public document. Stated no documents were online and no information was available until March 10, 2010. The comparison sheet was helpful.

Mr. Guditz stated there is a drastic reduction in vegetation. Maintain the trees in the construction environment. Worried the encroachment is will be into the buffer/wetlands. Nothing has been filed with conservation.

Ms. Pickering Cook stated the application will have to apply by the State Wetlands Protection Act, 100' buffer will be needed.

Worried the sandbags during construction will prevent Ms. Horsburgh to access her entrance. Applicant: Mr. Donohoe stated the sand bags will not be placed in front of her driveway. The check dams deflect run off.

Mr. Wagner asked Ms. Pickering Cook if the Board of Appeals denies the decision, then the HAC can overturn. Do the neighbors have the chance to appeal to the Superior Court? Ms. Pickering Cook replied stating “yes”.

Mr. Fallon stated he wanted to create a checklist of conditions. Add sand bags, check bags; keep all the existing (old) conditions in place; change the designs presented tonight (refer to recent site plan); wood fence instead of vinyl (complete length and same height); preservation of trees (stake out, to not encroach upon, keep existing tree line, limits of clearing, keep existing tree line and no clearing at right of way and at 85 Central St.); stone wall stays at the Town right of way; clarify the record plan to be more specific to drainage, easement to satisfy the Town; no snow storage at the end of both T turn arounds in rear; project sign will only be a temporary project sign, one unit floor plan has changed to 50 x 32 according to plan.

Mr. Horne asked if the floor area ration (FAR) should include stairwells? Mr. Bartl explained stairwells and interior parking spaces are not included. Mr. D’Agostine confirmed and stated that everything else was included.

Mr. Eric Johnson, 85 Central Street, why discuss snow storage? Someone will plow it. The Board explained if the condition gets violated, the zoning enforcement office will enforce and it can be written within the home owners conditions.

Mr. Guditz asked if project goes forward, what are limitations to additions? Mr. Freeman replied in stating that no changes are allowed. If the home owner decides to change or make additions, they will need to come back to the Board of Appeals for modifications.

Mr. Kozik asked for final comments prior to closing the public hearing. Mr. Freeman stated the comments were appropriate and standard and thanked the Board. Mr. Guditz asked for the Board of Appeals Secretary to email all comment to him as soon as possible. Mr. Wagner stated he will follow up on that. Ms. Pickering Cook stated she emailed the secretary. Mr. Kozik stated the plans are subject to the original conditions and conditions are articulated now.

Mr. Kozik made a motion to close the public hearing for 93 Central Street, Mr. Wagner 2<sup>nd</sup>, all in favor.

The Board began deliberations for the decision.

Mr. Fallon stated to keep with the previous coverage percentage, articulate the plans as of now, but the changes are clear and doesn’t seem like any more changes will come in.

Mr. Wagner stated why do we need more time? The changes are obvious but don’t know what else could come forward. Unfortunately, it’s the wrong project in the wrong place,

issues are still there but they have addressed them and the developer had accommodated the abutters. Feels the negatives out weight the positives. Shouldn't approve a project in fear what could happen.

Mr. Kozik stated that there is not much to say. Wants to approve it, if denied the HAC will overturn and none of the protections discussed would be in place from the original decision and from tonight's decisions.

The Board decided on additional conditions in the decision:

1. Add sand bags, check bags.
2. Keep all the existing and prior conditions in place.
3. Change the designs presented tonight (refer to recent site plan).
4. Wood fence instead of vinyl (complete length and same height).
5. Stone wall stays at the Town right of way.
6. Preservation of trees (stake out, to not encroach upon, keep existing tree line,
7. Limits of clearing, keep existing tree line and no clearing at right of way and at 85 Central St.).
8. Clarify the record plan to be more specific to drainage, easement to satisfy the Town.
9. No snow storage at the end of both T turn arounds in rear; project sign will only be a temporary project sign
10. Construction sign will only be temporary.
11. One house unit will be 50 x 32, according to plan.
12. Might not want to limit a placeholder; subject to conditions to original decision to be discussed in an open meeting with town staff and town departments before obtaining building permits (conditions not limited to...)

Mr. Freeman asked to have an opportunity to review the final draft decision and please reflect in the vote.

Mr. Kozik made a motion to approve the Comprehensive Permit for 93 Central Street subject to the conditions and to the denied decision, the Board voted two (2) in favor Mr. Ken Kozik, Mr. Richard Fallon and one (1) opposed Mr. Jon Wagner. Motion passed. Comprehensive Permit Approved.

Meeting adjourned at 10:00 pm.

Respectfully submitted,

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Kim Gorman, Interim for  
(Cheryl Frazier,  
Board of Appeals Secretary)

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Kenneth Kozik  
Chairman of the Board of Appeals

## 1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 The application for a Comprehensive Permit entitled "Marsh View" was filed with the Town Clerk on June 29, 2009. The drawings and documents submitted as part of the application and as revised throughout the course of the hearings are as follows:
- Certificate of Organization;
  - Letter from William Francis Galvin, Secretary of the Commonwealth, certifying that the provisions of the General Laws relative to corporations has been complied with and filed accordingly;
  - Draft Regulatory Agreement;
  - MassHousing Project Eligibility Approval Letter and related attachment dated June 23, 2008;
  - Letter from Applicant to MassHousing dated June 18, 2009 requesting change in Project Eligibility. The Applicant was seeking permission to modify the previously approved ownership status from a condominium form of ownership to fee simple ownership;
  - Copy of Purchase and Sale Agreement for the subject property between Charles D. Micol and Marshview, LLC.;
  - Letter from Gould Law Offices dated July 24, 2009 regarding Certificate of Title to Land described as 93 Central Street, Acton, Massachusetts, described in a deed to Charles D. Micol, recorded with Middlesex South District Registry of Deeds in Book 47301, Page 104;
  - Comprehensive Permit Development Impact Report;
  - Copy of 2006 Quitclaim Deed;
  - Certified Abutters List;
  - Plan of Land;
  - Draft "Declaration of Common Driveway Covenant Shared Maintenance Agreement Concerning the Sewage Disposal System, and Restrictive Covenants and Conditions for Marsh View, Acton, Massachusetts" and revised November 6, 2009;
  - Draft "Grant of Title 5 Covenant and Easement";
  - Stormwater Management Summary dated June 19, 2009 and revised September 21, 2009;
  - List of Zoning Bylaw Waiver Requests, revised November 6, 2009;
  - Comprehensive Permit Unit Composition Schedule;
  - Affordability Analysis;
  - Draft "Affordable Housing Restriction";
  - Comprehensive Permit Development Schedule and revised November 6, 2009;
  - Comprehensive Permit Development Pro Forma;
  - Letter from Stoneham Savings Bank dated March 17, 2009 stating bank's interest in providing financing to Marshview, LLC. for the proposed Project;
  - Letter from Hammond Residential – GMAC Real Estate identifying projected sale prices of homes, Marketing Proposal and Comparative Market Analysis;

- Developer/Applicant Qualifications;
- Local Needs Assessment and Analysis;
- Package of architectural drawings consisting of “Foundation Plan, First Floor Plan, Second Floor Plan, Front Elevation, Left & Right Elevations, Rear Elevation, and Main House Cross Section” prepared by Integrity Design, 498 Great Road, Acton, MA 01720, dated May 18, 2007;
- Package of drawings entitled “Marsh View” prepared by Acton Survey & Engineering, Inc., 97 Great Road, P.O. Box 666, Acton, MA 01720 and consisting of the following:
  - Cover Sheet, Marsh View, dated June 19, 2009
  - Master Plan, Marsh View, dated June 19, 2009, revised September 29, 2009, November 2, 2009, and January 6, 2010;
  - Recordable (Record) Plan, Marsh View, dated June 19, 2009, revised September 29, 2009, November 2, 2009, and January 6, 2010;
  - Existing Conditions Plan, Marsh View, dated June 19, 2009, revised September 29, 2009, November 2, 2009, and January 6, 2010;
  - Site Development Plan, Marsh View, dated June 19, 2009, revised September 29, 2009, November 2, 2009, December 9, 2009, December 15, 2009, January 6, 2010, January 19, 2010 and February 1, 2010;
  - Landscape Plan, Marsh View, dated June 19, 2009, revised September 29, 2009, November 2, 2009, December 15, 2010 and January 6, 2010;
  - Erosion and Sedimentation Control Plan, Marsh View, dated June 19, 2009, revised September 29, 2009, November 2, 2009 and January 6, 2010;
  - Proposed Subsurface Sewage Disposal System, dated December 24, 2008, revised November 2, 2009 and January 6, 2010;

Additional plans and documentation submitted as part of the application included the following:

- Architectural drawings entitled “Marsh View, Unit #1, Central Street, Acton, MA” consisting of pages “A-1: Exterior Elevations, A-2: First and Second Floor Plans, and A-3: Basement Plan and Building Section” prepared, signed and sealed by Concord Lumber Corporation, Littleton Lumber, Architecture Department, P.O. Box 1526, 2 Omega Way, Littleton, MA 01460 and dated March 8, 2010;
- Architectural drawings entitled “Marsh View, Unit #2, Central Street, Acton, MA” consisting of pages “A-1: Exterior Elevations, A-2: First and Second Floor Plans, and A-3: Basement Plan and Building Section” prepared, signed and sealed by Concord Lumber Corporation, Littleton Lumber, Architecture Department, P.O. Box 1526, 2 Omega Way, Littleton, MA 01460 and dated March 8, 2010;
- Architectural drawings entitled “Marsh View, Unit #3, Central Street, Acton, MA” consisting of pages “A-1: Exterior Elevations, A-2: First and Second Floor Plans, and A-3: Basement Plan & Building Section” prepared, signed and sealed by Concord Lumber Corporation, Littleton

- Lumber, Architecture Department, P.O. Box 1526, 2 Omega Way, Littleton, MA 01460 and dated March 8, 2010;
- Architectural drawings entitled “Marsh View, Unit #4, Central Street, Acton, MA” consisting of pages “A-1: Exterior Elevations, A-2: First and Second Floor Plans, and A-3: Basement Plan & Building Section” prepared, signed and sealed by Concord Lumber Corporation, Littleton Lumber, Architecture Department, P.O. Box 1526, 2 Omega Way, Littleton, MA 01460 and dated March 8, 2010;
  - “Marsh View” Site Overview prepared by Acton Survey & Engineering, Inc., 97 Great Road, P.O. Box 666, Acton, MA 01720 and dated September 17, 2009;
  - Letter from Applicant dated October 20, 2009 requesting continuance of October 20, 2009 hearing without discussion to future date;
  - Letter of Authorization from Charles D. Micol dated June 4, 2009 authorizing Marsh View, LLC. to act as purchaser and/or agent regarding development of subject property;
  - Letters from Applicant regarding potential language for Conditions to be inserted into any decision rendered by the Board regarding access to, or lack thereof being provided to neighboring property for landscaping or fencing purposes.

Exhibit 1.1 is hereinafter collectively referred to as the Plan.

1.2 Interdepartmental communications were received from:

- Design Review Board, dated August 5, 2009;
- Acton Community Housing Corporation, dated August 20, 2009;
- Transportation Advisory Committee, email dated September 2, 2009;
- Acton Housing Authority, email dated September 2, 2009;
- Conservation Commission, memos dated September 3, 2009 and October 16, 2009;
- Town Counsel, memos dated September 14, 2009 and October 16, 2009;
- Town Counsel, emails dated September 14, 2009 and January 25, 2010;
- Board of Selectmen, dated October 13, 2009;
- Planning Department, memos dated September 2, 2009 and revised October 15, 2009, November 12, 2009, December 15, 2009, January 19, 2010 and February 19, 2010;
- Engineering Department, dated August 7, 2009, and revised October 14, 2009, November 13, 2009, December 14, 2009, January 14, 2010;
- Municipal Properties Director, memos dated August 10, 2009 and November 17, 2009;
- Health Department, memos dated August 25, 2009, October 15, 2009 and January 21, 2010;
- Health Department, emails dated November 13, 2009, November 13, 2009, December 11, 2009;
- Fire Chief, emails dated September 4, 2009, November 16, 2009, December 15, 2009, January 22, 2010 and February 18, 2010;
- Water Supply District of Acton, memo dated August 21, 2009;
- Water Supply District of Acton, email dated November 13, 2009;
- Building Department, dated August 25, 2009.

### 1.3 Other Correspondence included:

- Email from Town Counsel to the Board and municipal staff regarding legal issues and timeframes;
- Letter from Gould Law Offices dated November 9, 2009 regarding “Clarification of Validity and Enforceability of Right Of Way”;
- Letter from Blatman, Bobrowski & Mead, LLC. Attorneys at Law dated December 15, 2009 who represent the property owner of 89 Central Street stating opposition to the Project;
- Letter and proposed renderings and isometric drawings of Project from opposed neighbors of Project dated January 25, 2010;
- Letters and emails from citizens and abutters of the proposed Project;
- General response letters from Acton Survey & Engineering, Inc. dated September 29, 2009, November 2, 2009, December 10, 2009 and January 6, 2010;
- Response letter from Acton Survey & Engineering, Inc. dated December 10, 2009 to the Acton Fire Department;
- Response letter from Acton Survey & Engineering, Inc. dated December 10, 2009 to the Acton Board of Health;
- Letter dated January 28, 2010 to Board of Selectmen from opposed abutter requesting formal Design Review Board review of proposed Project
- Email dated February 12, 2010 from direct abutter requesting possible language to be included in a potential decision.

### 1.4 Extension Agreements

- Letter dated July 30, 2009 from applicant agreeing to extend the opening of public hearing beyond the 30 days from the application date;
- Consent and Agreement to Extension of Hearing to October 20, 2009;
- Consent and Agreement to Extension of Hearing to November 16, 2009;
- Consent and Agreement to Extension of Hearing to December 15, 2009;
- Consent and Agreement to Extension of Hearing to January 25, 2010;
- Consent and Agreement to Extension of Hearing to February 24, 2010;
- Email from Applicant dated March 18, 2010 agreeing to Decision filing deadline.

Documents scanned in the August 12, 2010 Meeting Information in Docushare  
Items received from Acton Survey & Engineering, Inc – Mark Donohoe  
(Items A – O)

- A - Cover Letter for Site Plans - 93 Central Street
- B - Cover Sheet Marsh View
- C - Erosion & Sedimentation Control Plan - Marsh View
- D - Existing Condition Plan Marsh View
- E - Landscape Plan Marsh View
- F - Master Plan Marsh View
- G - Proposed Subsurface Sewage 93 Central Street
- H - Site Development Plan Marsh View
- I - FIRST FLOOR 93 Central Street
- J - CROSS SECTION 93 Central Street

K - FRONT ELEVATION 93 Central

L - LEFT SIDE 93 Central Street

M - LOWER LEVEL 93 Central Street

N - RIGHT SIDE 93 Central Street

O - Record Plan Marsh View

Acton Survey & Engineering, Inc. letter - 8.11.2010 - Data Comparing aspects  
(Comparison of Projects)

Staff Comments – on Revised Drawings

DRAFT