

To: The Zoning Board of Appeals

From: Jaine Mehring

Re: Supplemental Comments to the Public Hearing Record re: *175 Atlantic Ave LLC: 175 Atlantic Avenue, Amagansett (SCTM#300-178- 02-03)*

December 19, 2022

As the written record in the matter of 175 Atlantic Ave has been left open for two weeks post the public hearing on December 6<sup>th</sup>, 2022, I would like to offer the following additional comments related to two crucial issues that emerged during the hearing and after I submitted my letter to the record on the morning of December 6.

1. During the public hearing, the applicant's attorney stated three times that there had been "settlement negotiations" and "settlement agreements," and that the current pending application, the subject of the December 6, 2022 public hearing, had already been pre-emptively agreed to by this board. In particular, applicant's counsel said:

- First statement:

*"The current revised application before you tonight was submitted pursuant to settlement discussions had with this board. So, we're here tonight in good faith pursuant to feedback from this board that the amended proposed plan which represents a significant reduction from first plan would be acceptable and approved."*

- Second statement:

*"I'm also here in good faith pursuant to a settlement that I understood was agreed to by this board....so I thought that would have been weighed/waived (n.b. I couldn't accurately tell which word she said) by you with counsel prior to my appearance here."*

- Third statement:

*"I would just remind the board I am here in good faith pursuant to what we believed was a settlement... We came here believing the board was favorable to and wanted to see...we were encouraged to submit these plans and move forward."*

Going into the hearing, I was aware that in response to the ZBA's well-reasoned, code-based denial of the 2018 application, applicant brought an Article 78 action against the Town. As I understand it, the Court upheld the ZBA's opinion of denial, but the plaintiff proceeded to appeal the ruling, and that appeal I believe remains pending, and the applicant has requested of the Court more time to finalize their appeal documents.

But, as I sat in the room at Town Hall and listened to these statements, I was confused and rather concerned by these repeated assertions. I understand that discussions can and do from time to time take place between the ZBA members and Town attorney/Board counsel in "Executive Session," away from direct public sightline. However, I found the repeated proclamation by the developer's agent that this version of the plans has already been agreed to and accepted/approved by this Board in advance of the public hearing to be unusual and I think incompatible with the purpose of a transparent public hearing.

I hope the public will have an opportunity to understand with more clarity if the applicant's attorney's statements are concretely factual or simply their preferred interpretation, and if and how and why any "agreement" had been negotiated and reached directly between the applicant and Board members and/or their counsel.

Any and each time I address this Board on any matter, I value my right to do so, and I also recognize my responsibility to proceed with decorum and be well informed and --to the extent possible as a citizen layperson and not an attorney—that my feelings and opinions be grounded in fact and code as well as my true relevant knowledge of the particular site under review. And, importantly, I hold the EH Town Zoning Board of Appeals, in total and as individual members, in very high esteem. So, I do not want to sound disrespectful or impertinent here.

But I would offer that it would be very disappointing and rather detrimental to public trust in the public hearing process if it turned out behind-the-scenes deals or assurances were being made in advance— especially for an application this consequential and one that is driven by an incredibly, if not the most, powerful builder/speculative developer in the Hamptons – reducing the public hearing process to no more than a perfunctory going-through-the-motions or a fait accomplis.

All in, I would ask respectfully that when you discuss your post-hearing decision publicly, there can be transparency and explanation about the status of, if any, negotiation and any "agreement" made and "assurances" given between the ZBA members or any EH Town Attorney and the applicant's agent with respect to the current pending application for the redevelopment of 175 Atlantic prior to the public hearing. And, in view of the extensive and robust participation of the public in the public hearing process, that any pre-hearing "understanding" or "agreement" be set aside, such that the Board can proceed to regular-way, in-public deliberations and decision making about this application without any pre-set outcome factoring in.

2. My second concern relates to this part of the Applicant's agent's statement during her presentation:

*"The property is abutted on two sides by a 68,000 sq foot asphalt parking lot. Proposing development next to the parking lot actually reduces any potential impacts the proposed house will have on the neighborhood. Potential impacts to the neighboring residence is limited to the north side only. The board should not give greater weight to those people parking at a very large beach parking lot whose intent is to go to the ocean and may or may not notice this house for the period of time they are packing up for the beach.*

*"This argument also goes to standing: the reason that courts require people who bring actions to have standing to bring a claim is they must allege direct harm or injury different from the public at large...here, you could go to the parking lot and park there all day, but if you don't live next to this property you are not impacted in the specific way that is required for this board to consider."*

This strikes me as an inaccurate interpretation and rather grievous assertion about the essential and legitimate purpose of the public hearing process.

At a public hearing, why would the “standing” of the public be impugned or dismissed? I do not believe it is correct to say that the legitimacy of public comment is restricted to only direct, adjacent, contiguous-residing neighbors to the North (who by the way did speak and write in objection to this application), while any or all others should be disqualified and barred from consideration. It is clear why the code requires both the verification of certified mailings to the owners of nearby adjacent parcels, as well as affidavit and proof of proper on-site public posting, as well as advance notice of public being placed in the newspaper of record.

Whatever standing “bar” there is for bringing a formal lawsuit or court action related to “direct harm or injury,” I do not believe is the same “bar” or standard that defines/limits who is allowed to be heard and considered at a public hearing as having legitimate concerns. Each member of the public who comes out to speak under oath or sends properly written/submitted comments to the record in relation to a public hearing has the right to have his or her comments considered by this Board and weighed appropriately within the totality of the facts and circumstances and, of course, in relation to relevant, objective Town Code standards.

The applicant’s attorney also asserted that proposing this level of development next to this Town Trustee-owned and Town citizen-used space actually “reduces” potential impacts on the neighborhood. Nothing could be further from the truth. In particular, the developer’s attorney made it sound like the 68,000 square foot of land that abuts 175 Atlantic on two sides is some sort of nebulous ,anonymous borderlands, out of any legitimate jurisdiction and frequented only by transient and oblivious seasonal ocean bathers.

But that distorts the facts: that surrounding contiguous property indeed has an owner: the Trustees of the Freeholders of the Commonality of East Hampton. Indeed, the Town of East Hampton was listed twice on the application as a contiguous neighbor that needed to receive direct certified mail notice of the hearing. The Trustees certainly have “standing,” and as I understand it, they are stewards of their land and the public interest. So, in the matter of this application, why would the public not be regarded as the “neighbor” with standing?

For the applicant to assert that “those people” who come to and access this area are only going to the ocean in a transient, uncaring or unobservant way, and to suggest that if someone does not “live” next door to this property they will not “impacted” by this development reveals an incredible disregard and disrespect for the centrality and importance of this portion of Atlantic Avenue to the character and heritage of Amagansett and East Hampton overall and total misunderstanding of how this area is visited, used and appreciated deeply by both residents and visitors alike.

The applicant’s attorney in concluding wrap-up said: *“I did...read and review letters, and I just want to remind the Board a special permit cannot be denied **solely** because of general community objections, community pressures, speculation, generalized objections or anecdotal complaints*

*and that a decision to deny an application **solely** because the residents of an area oppose the application is certain to be annulled.” [Emphasis mine]*

The word “solely” appears to me to be valid. But I see no basis to disqualify public comment— either individually and in totality-- as a crucial element to be considered and factored into this Board’s thoughtful deliberations and decision making as is always the case. By my count, at least 28 members of the public spoke and/or wrote to the ZBA as part of the record with respect to this hearing, all with concerns and objections about the scope and scale of this proposed application and its impact related to multiple standards articulated in the purposes and standards of our zoning code and special permits. From my recollection of following ZBA public hearings over the last several years closely, this seems to be something of a record level of public participation in a ZBA hearing related to a proposed residence. To set these comments aside...to diminish or dismiss or delegitimize them...would I believe be highly irregular and run counter to the very purpose of public hearings and the standards of the Town of East Hampton.

Sincerely,

Jaine Mehring, Ocean Lane, Amagansett