

**ZONING BOARD OF APPEALS OF THE CITY OF WOBURN
DECISION ON THE APPLICATION OF
WOBURN 38 DEVELOPMENT, LLC
FOR A MODIFICATION OF A COMPREHENSIVE PERMIT
FOR PROPERTY LOCATED AT 1042 MAIN STREET**

I. BACKGROUND

1. By decision dated October 4, the Woburn Zoning Board of Appeals (the “Board”) voted to deny a comprehensive permit application submitted by Cirsan Realty Trust to construct a 168 unit apartment development on property located at 1042 Main Street (the “Property”).
2. The Board’s decision was overturned on appeal by the Housing Appeals Committee (the “Committee”) in a decision dated June 11, 2003.
3. The Board appealed the Committee’s decision to the Superior Court, which upheld the decision of the Committee granting a comprehensive permit.
4. The Board filed a request for Further Appellate Review with the Supreme Judicial Court, which was denied on September 14, 2006.
5. On December 22, 2011, a new owner of the Property, Woburn 38 Development, LLC (the “Applicant”) filed a request to modify the comprehensive permit issued by the Committee.
6. Due to concerns regarding the increased amount of blasting and earth removal associated with the proposed modification, on October 18, 2012 the Board voted to deny the Applicant’s modification.
7. The Applicant appealed the Board’s decision to the Committee, which issued a decision on April 23, 2015 overturning the Board’s decision and issuing a modified comprehensive permit to the Applicant.
8. The Board appealed the decision of the Committee to the Superior Court, and the Applicant had the appeal transferred to the Permit Session of the Land Court. On June 16, 2016, the Land Court issued a decision upholding the decision of the Committee.
9. The Board appealed the Land Court decision to the Appeals Court, which issued a decision on November 21, 2017 upholding the decision of the Land Court.
10. The Board once again sought Further Appellate Review from the Supreme Judicial Court, but this request was denied on February 6, 2018.

11. On May 9, 2019 Building Commissioner Thomas C. Quinn, Jr., issued a cease and desist order to the Applicant, stating that the sale of material excavated and processed at the Property violates the Woburn Zoning Ordinance, specifically Section 5.1 Table of Use Regulations line 22B, Section 5.1 Table of Use Regulations line 27, Section 5.1 Table of Use Regulations line, 31, Section 5.1 Table of Use Regulations line 43 and Section 1.2(1), use of land not specified in the Zoning Ordinance.
12. On June 7, 2019, the Applicant filed a request for modification of the comprehensive permit issued by the Committee, pursuant to 760 CMR 56.05(11), requesting specific waivers of the provisions of the Zoning Ordinance cited by the Building Commissioner in the cease and desist order.
13. Additionally, the Applicant filed an appeal of the cease and desist order, arguing that the decision of the Committee implicitly allowed for end-users to pick up material at the Property. The Applicant agreed to stay proceedings on this appeal pending the Board's determination on the modification request.
14. The Board commenced an administrative review of the Applicant's modification request on June 19, 2019, in order to determine whether such request constituted a substantial change pursuant to 760 CMR 56.05(11). With the Applicant's consent, the Board held additional administrative review sessions on July 17, 2019, September 18, 2019 and October 16, 2019.
15. During the course of the administrative review process, the Board retained the services of Robert Nagi, P.E., of Vanasse Hangen Brustlin, LLC to review the traffic impacts associated with the proposed modification.
16. The Board also received a list of proposed conditions submitted by the Applicant, dated July 16, 2019, as well as an Operations Narrative from the Applicant's earth removal contractor Onyx Corporation, dated October 9, 2019.
17. Based upon the peer review and proposed conditions, the Board voted 4-1 at its October 16, 2019 meeting that the proposed modification does not constitute a substantial change.

II. CONDITIONS

18. The minimum truck size for earth removal vehicles (operated either by Onyx employees or contractors or by end users) shall be eighteen (18) cubic yards, and the maximum truck size shall be thirty-five (35) cubic yards. Smaller trucks may be used for other aspects of the site development, this condition applies solely to earth removal vehicles.
19. All transactions relating to the sale of processed materials must take place off-site, at Onyx's business office. A sign will be provided at the project entrance expressly stating on-site sales are prohibited. Neither the Applicant nor Onyx (nor any other entity associated with the Applicant) shall advertise the availability of processed materials on-site, in order to minimize the chance that smaller end-users will come to the site seeking to conduct an on-site purchase.

20. The scale house that has been installed at the Property at the project entrance (consistent with the “Temporary Weight Station and Trailer Plan” prepared by Allen & Major Associates, Inc., dated April 10, 2019) shall remain in place until the earth removal process has been completed. All trucks (whether owned or rented by Onyx or an end-user) must be weighed prior to leaving the Property.
21. Onyx will keep a detailed record of all vehicles weighed at the scale-house. Onyx will provide monthly reports to the Building Commissioner regarding the scale-house information.
22. Pursuant to state law, Onyx will have a constant video feed of the scale-house area, records for which are kept for a minimum of sixty (60) days. Onyx shall provide such video to the Building Commissioner upon request.
23. No queuing of trucks is allowed along Main Street. All trucks waiting to use the weigh station must be queued on-site, consistent with the plan from Allen & Major dated August 15, 2019, with revisions through October 5, 2019, as submitted with the Operations Narrative dated October 9, 2019.
24. The front gates to the Property may not be opened prior to 7:00 am. Communications with trucks traveling on Main Street shall be controlled by the scale house operator, site foreman, and loader operator to ensure safe and proper operations.
25. Hours of operation must be posted at the entrance to the Property.
26. The use of engine brakes shall be limited, except if used as a safety measure. Signage will be provided discouraging the use of engine brakes.
27. Trucks on the Property shall not be allowed to idle for more than five (5) minutes.
28. In situations where there are too many trucks waiting to use the scale, excess trucks shall be instructed to proceed past the scale house to the rear of the Property to wait until the queue has been sufficiently reduced.
29. All vehicles leaving the Property shall comply with the requirements of G. L. c. 85, § 36, which prohibits operation of a vehicle “unless such vehicle is constructed or loaded so as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, and, if it is loaded with sand, gravel loam, dirt, stone, rubbish or debris that could fall on other vehicles or on the highway and create litter or potential hazards to other vehicles, unless its load is fully and adequately covered.”
30. All earth removal vehicles shall take the most direct route to their destination, and shall comply with Schedule 4 Heavy Commercial Vehicle Exclusions of the Woburn Traffic Code, a copy of which is attached hereto.

III. DECISION

In consideration of all of the foregoing, including the plans, documents and other evidence given during the administrative review, the Board has voted 4-1 that the proposed modification does not constitute a substantial change from the comprehensive permit as issued by the Committee.

RECORD OF VOTE

The Board of Appeals voted 4-1, at its public meeting on October 16, 2019, to determine that, pursuant to 760 CMR 56.05(11), the modification requested by the Applicant was insubstantial.

Members in favor:

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_____	_____

Dated: October __, 2019

Filed with the City Clerk on October __, 2019.

City Clerk