

## **REPORT AND RECOMMENDATION**

**FROM: THE PLANNING BOARD  
VILLAGE OF WESTHAMPTON BEACH**

**TO: THE BOARD OF TRUSTEES  
VILLAGE OF WESTHAMPTON BEACH**

***RE: SPECIAL EXCEPTION APPLICATION OF:  
Rogers Associates, LLC.***

**DATED: February 10, 2022**

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For purposes of aiding the Village Board of Trustees in its review of the Special Exception Permit application of Rogers Associates, LLC, the Planning Board has resolved to provide the following report and recommendation. The report summarizes the proceedings to date before the Planning Board and is intended to provide the Board of Trustees with the Planning Board's recommendation in accordance with Section 197-77 of the Village Code.

### **I. Summary of Proceedings before the Planning Board**

Rogers Associates, LLC., is the reputed owner of real property located at 1, 2, 4, 5 and 7 Twin Fork Lane, Westhampton Beach, New York 11978, which is designated on the Suffolk County Tax Map as Nos.: 905-3-.1-7.1 through 7.7 Rogers Associates, LLC., (hereinafter, the "applicant").

Applicant submitted applications to (1) the Planning Board for site plan approval and (2) the Board of Trustees for a special exception permit, to allow Applicant to construct 52 dwelling units in 13 buildings (11 townhouse groupings, two, Two-Family dwellings) with a private community center, pool and tennis court, with an on-site sewage treatment plant in two development phases, collectively to serve as a multifamily development community.

The application has undergone over two years of review by the Planning Board, including a coordinated SEQRA review that involved the preparation of a full Environmental Impact Statement (EIS) and the holding of many public hearing sessions, both in person (when permitted) and via the Village's Zoom platform.

During the public review process, the Planning Board heard from many residents of the neighborhood, including dozens of neighbors who reside in the Rogers Avenue/Hazelwood Avenue neighborhood.

The neighbors expressed various concerns about the project, almost uniformly opposing the project due to its potential impacts on them. Residents described the conditions on Rogers Avenue, and expressed concerns about safety and traffic, both as it presently exists and as it

might exist with the addition of 52 residential units that would only take access off of Rogers Avenue. Residents described, anecdotally, how Rogers Avenue has become a “cut through” for traffic between Old Riverhead Road and Montauk Highway, because the route is a bypass to avoid the light at the intersection of those two roads, and how speeding is commonplace. In a neighborhood with many children, the residents are understandably concerned how the addition of another 52 units might only exacerbate the situation.

During the course of the Planning Board’s SEQRA review, the subject of traffic impacts resulting from the addition of 52 units was reviewed. Based on the advice received from the Village’s engineering and planning consultants, the Planning Board initially issued a “positive declaration” of environmental significance, but the Planning Board was advised that the data obtained during the EIS review process was insufficient to justify a finding, at least under SEQRA standards, that the traffic generated by the project could not be accommodated by the existing road system. Therefore, the Planning Board felt constrained to adopt a “Findings Statement” that acknowledged, among other things, that the traffic generated by the proposed development can be accommodated without significant negative impacts to the adjacent roadway network with the proposed access plan, and that the traffic is not expected to result in any undue change in the rate or severity of accidents in the area.

Nonetheless, the Planning Board remained (and remains) concerned about the density of the proposed development and the quality-of-life impacts that such density may have on the neighborhood. The Planning Board acknowledges that density is a decision that has to be made by the Board of Trustees, as part of the special exception review, and not by the Planning Board as part of site plan review.

Accordingly, the Planning Board reviewed the site plan to the extent it could do so before obtaining a final determination from the Trustees. Many of the site plan details cannot be determined until after the Village Board of Trustees has made a determination on two key questions: (1) whether to allow the requested density and (2) whether to rescind the easements that were previously recorded against the property, in favor of the Village.

The applicant therefore requested that a site plan approval be adopted preliminarily, in order to enable the special permit review by the Village Board of Trustees, and the Planning Board found, in a determination adopted simultaneously with this report, that “for purposes of providing a preliminary approval of the Proposed Site Plan – which assumes a maximum yield of 52 units – the Proposed Site Plan is sufficiently detailed and appears to satisfy the basic site plan requirements in terms of layout, design, parking, circulation, lighting, and landscaping, subject to the final review that is anticipated to follow the special permit review process.” If the applicant obtains a special permit from the Board of Trustees, it will return to the Planning Board to complete the site plan review process.

In the preliminary site plan determination, the Planning Board included the following comments intended to make clear that the preliminary approval of the site plan should not be construed as an approval of the proposed density:

This preliminary approval should not be construed as the Planning Board's endorsement of the applicant's proposed yield of 52 units. The Planning Board acknowledges that the determination of yield is entrusted to the Village Board of Trustees and is to be made as part of the special exception permit review process, and that the final yield for this development is not a determination that is left to the discretion of the Planning Board during site plan review. The Planning Board has nonetheless received sufficient public comment and evidence that causes the Planning Board to have serious reservation about the neighborhood impacts that may result from a maximum-yield development of 52 units.

Therefore, the Planning Board intends to provide separate recommendations to the Village Board of Trustees relating to the special permit and the yield determination that the Trustees shall be making during that review process.

In short, while this determination preliminarily approves the site plan for purposes of acknowledging general compliance with the basic site plan elements, assuming a 52-unit scenario, this preliminary approval should in no way be misconstrued as an endorsement of the applicant's requested yield of 52 units, nor as a finding that the proposed density is appropriate for this property.

## **II. Recommendation to Board of Trustees**

While the Planning Board does not believe that the application, as proposed, violates any of the site plan requirements over which the Planning Board exercises jurisdiction, the Planning Board remains concerned over the maximum density proposed by the applicant in a neighborhood where residents experience issues of overcrowding. Density is not a site plan issue but it is a special exception issue, as Section 197-80.3.G requires the Board of Trustees to determine density based on all considerations applicable to the application ("The permitted yield of multi-family units shall be determined after all applicable requirements, as set forth herein, have been applied to the subject development, and not simply based on the maximum density as determined in Subsection F of this section.")

The Planning Board notes also that several of the special permit criteria may be impacted by the density of the project, including the following:

§197-79. A. "That the special exception use will not prevent the orderly and reasonable use of the adjacent properties or of properties in the surrounding area or impair the value thereof."

§197-79. C. "That the safety, health, welfare, comfort, convenience or the order of the Village will not be adversely affected by the proposed special exception use and its location."

§197-79. D. “That the special exception use will ... promote the general purposes and intent of this chapter.”

§ 197-80.A (2) “The conservation of property values and the encouragement of the most appropriate uses of land.”

§ 197-80.A (6) “Whether the special exception use or the structures thereon will cause an overcrowding of land or undue concentration of population.”

The Planning Board therefore recommends that the Board of Trustees consider these criteria carefully in order to ensure that the maximum density allowed is appropriate for the subject neighborhood. The Planning Board does not believe that it is in a position to recommend any specific reduction of density but nevertheless recommends that the Board of Trustees weigh the potential impacts on the neighborhood carefully before arriving at an appropriate yield determination under Section 197-80.3.G of the Code.

Dated: February 10, 2022

Village of Westhampton Beach Planning Board