



BOARD OF APPEALS
TOWN OF FOXBOROUGH
40 SOUTH STREET
MASSACHUSETTS
02035

**Foxborough Zoning Board of Appeals Minutes
June 30, 2015**

Members present: Chairman Neil Forster, Vice Chairman Barney Ovrut, Alternate David Brown, 40B Consultant Ralph Wilmer, Building Commissioner Bill Casbarra and Jennifer Raitt, MAPC

Chairman Forster opened the meeting at 7:00 p.m. in the Media Center of the Foxboro High School, 120 South Street.

7:10 p.m. Hanover R. S. Limited Partnership requests a Comprehensive Permit entitled "Domain Foxborough" pursuant to Chapter 40B of the Massachusetts General Law to approve 248 rental apartments, 25% of which will be affordable to households earning no more than 80% of the median income. The property, known on Assessors Map 156, Parcels 6531, 4003, 8068, 8069, 8070, 8071, 8072, 8073, 8074 & 8075 is located at Fisher Street & South High Street.

A motion to open the Continued Public Hearing was made by Mr. Ovrut and seconded by Mr. Brown. The motion carried 3-0-0.

Atty. Frank Spillane was present as well as Atty. Steve Swartz of Goulston and Storrs and David Hall of the Hanover Company.

Atty. Spillane has provided additional information including a letter from PARE Corporation stating that the applicant does not need to apply with the Army Corp of Engineers as no filling of wetlands is proposed; a site plan showing the location of two marketing signs; details on the entry signage; additions to the requested waiver list in regards to signage and trip generation information from Vanasse and Associates and Ron Muller regarding trips generated by office buildings and residential subdivisions, which are allowed uses on the site.

Bill Buckley of Bay Colony submitted information including revised plans, plans showing the view from South High Street towards Building 5; fire apparatus turning template for the emergency access way and further details on plantings.

Matt Cote of Beals and Thomas submitted a letter today; he stated that Dave LaPointe, BTI's Landscape Architect, reviewed the landscape plan. Mr. LaPointe suggests that the evergreen trees proposed could be planted in a double row to allow for better screening and also suggests that plantings near the wood fence be used for additional screening.

Jennifer Raitt of MAPC who is providing assistance in the absence of a Town Planner read a comment letter from the Planning Board who have concerns with adequate parking, inflow and infiltration mitigation, sidewalks, density and scale of the buildings and traffic.

Atty. Spillane stated that they are comfortable with the parking currently being proposed; Ms. Wason had commented on the need for more green space and MEPA wanted the paving area reduced.

In regards to the I/I request, the applicant met with the Board of Water and Sewer Commissioners in January and they requested an analysis and report on the piping from the site to the Mansfield line and the applicant is agreeable to doing this.

They have proposed extending the sidewalk to the 99 Restaurant and to a bus shelter; it would be difficult to extend the sidewalk to South High Street.

They will not be changing the density or scale of the buildings.

Mr. Forster asked about reducing the height of the buildings by adding additional buildings. Atty. Spillane stated that MEPA liked the four story design with the additional green space, if they add more buildings to reduce all buildings to three stories there will be less green space and less buffering as the applicant will not be able to grant land to the South High Street abutters.

Mr. Forster would like Beals and Thomas to look into a three story design. Mr. Hall stated that this would not improve the project as there will be less green space and more density as they would need at least two more buildings. They did look at this early on internally; one building would need to be near South High Street and one would be near the Comfort Inn.

Mr. Brown asked about an additional left turn at Fisher Street and Route 140. This was not required under the trip generation report; the whole intersection would need to be reconfigured.

Jeff Dirk of Vanasse and Associates stated that the left turn "pocket" has sufficient storage for waiting vehicles. He anticipates no queuing at the entrance or exit to the development itself. They have mitigated the impacts to the traffic with the signalization of the lights, anything beyond that is betterment.

Bill Grieder of the Planning Board noted that the Planning Board had concerns with the Fisher St/Route 140 intersection; they would like to see additional green light time to get the traffic off of Fisher Street to Route 140.

He also noted that Walnut Street and Route 140 is a troubled intersection already, even though it is not being considered for this project, the traffic there will increase as a result of this project. The Planning Board would prefer that this project, if it moves forward, become part of the neighborhood and not next to the neighborhood by adding sidewalks up to South High Street. Mitigation is needed to help resolve these issues.

Mr. Hall stated that the neighborhood is not looking for a sidewalk up to South High Street.

Abutter Phil Henderson asked about the by right uses of office buildings or a conventional subdivision. Mr. Dirk stated that the peak hour traffic would be considerably higher with an office building, almost double what this proposal would create.

Mr. Forster asked about obtaining financial information showing the project is cost prohibitive with fewer units. Atty. Spillane stated that they included a Pro Forma in their original application to the state and further financial information cannot be asked for under the 40B statute.

Atty. Steven Swartz of Goulston and Storrs stated that the 40B issues of health, safety and the environment as what are being looked at by the Board.

Mr. Henderson stated that the traffic coming off of Route 95 to 140 South and merging into the Route 140 traffic will be intensified by this project which will make a current problem more intense. He also stated that the Board should be looking at the balance to the surrounding neighborhood.

Letters from abutter James Haskell and State Senator James Timilty were read into the record. Mass DOT was called and it was learned that a Safety Audit cannot be requested by the town, it is triggered only by a high accident rate in a particular area.

Atty. Spillane noted that Mass Housing considers this to be a low density project and Mass DOT reviewed the project as part of the MEPA process and feels the proposed mitigation in regards to the traffic light timing is enough and will not require anything further.

Mr. Wilmer noted that this is now the third hearing; the Board has 180 days from the opening of the Public Hearing to close the hearing unless an extension is granted and then has 40 days to render a decision and 14 days to file that decision. The hearing has been opened for 60 days at this point. The decision requires a majority vote of the Board but not a unanimous vote. Once the hearing is closed, testimony is closed but clarifications can be asked for by the Board.

The Board has three choices, deny the project due to reasons of health, safety or the environment that outweighing the need for housing, approve as submitted or approve with conditions. The Board can also have a mitigation discussion.

Mitigation can be appealed by the applicant to the housing appeals committee if they feel it renders the project uneconomic.

The decision can be appealed by others to Superior Court or Land Court.

If the decision is for less than the number of units being asked for and the applicant appeals to the Housing Appeals Committee and they find in the applicants favor, there is no guarantee that the town will receive any mitigation measures and any ZBA conditions may not be upheld.

Once the decision has been rendered there will still be a requirement for final engineering and architectural plans as well as requirements for inspections, housing lotteries, cost certification, etc.

In regards to deliberations, the mitigation being offered can be voted on as a package or considered one by one.

Dan Sean Miller of 3 Roberts Street asked about three story buildings. The application would need to prove that three story building is not feasible to the state and if the state decides in the applicants favor the town could lose any mitigation being offered.

Building Commissioner Bill Casbarra noted that since the town is not currently at the 10% for affordable housing, this decision could be appealed. If the town was at the 10% and denied an applicant is cannot be appealed.

Atty. Swartz noted that the 10% is triggered as of the date of the approval of the project; the units will then be counted. The subsidized housing inventory count will be increased once the Town Clerk stamps the decision and the appeal period passes with no appeals taken.

Mr. Ovrut noted that 248 units will put the town over the 10% threshold.

Atty. Swartz asked what further information the Board would like provided.

The mitigation list is needed as well as the Beals and Thomas analysis of the three story buildings.

Ms. Raitt noted the 180 days would be approximately October 21st.

Atty. Spillane stated that they will distribute the mitigation package before the next meeting.

The hearing will be continued to July 30, 2015.

A motion to continue the Public Hearing to July 30, 2015 at 7:00 p.m. was made by Mr. Ovrut and seconded by Mr. Brown. The motion carried 3-0-0.

The meeting was adjourned at 8:45 p.m.

Respectfully Submitted,

Diana Gray

Signed on behalf of the Board

Kristofor Behn, Clerk