



BOARD OF APPEALS  
**TOWN OF FOXBOROUGH**  
40 SOUTH STREET  
MASSACHUSETTS  
02035

**Foxborough Zoning Board of Appeals Minutes  
September 16, 2015**

Members present: Chairman Neil Forster, Members Barney Ovrut and Kris Behn, Alternates Kim Mellen and David Brown, Building Commissioner Bill Casbarra

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

**7:00 p.m. Review of Draft Decision - 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.** Mr. Forster thanked Mr. Ovrut, Mr. Willmer, Mr. Casbarra and Atty. Deborah Horowitz for their work on preparation of the draft decision. Mr. Ovrut summarized the decision, indicating that a principal concern was addressing the construction and mitigation conditions that are applicable to the Comprehensive permit that the Board approved at its August meeting and that have been incorporated into the draft decision. Mr. Ovrut noted in this respect that the draft decision addresses the matter of the condition concerning a right-turn lane by having the Board of Selectmen decide whether to require the Hanover Company to apply to Mass DOT for permission to construct this turning lane or to make a mitigation payment of \$150,000 to the Town to be used for such roadway and safety improvements as the Board of Selectmen determine. This payment would be in addition to a mitigation payment of \$150,000 that will be made to the Town to be used as determined by the Board of Selectmen.

Mr. Casbarra noted that the conditions set forth in the decision have been written clearly and concisely for enforcement purposes and he is comfortable with what has been written.

Mr. Willmer noted that there were lengthy discussions on the mitigation agreements and also on the construction and site development related conditions (lighting, layout, etc.).

The Board then discussed the draft decision, and made a correction to Exception # 23.

Mr. Forster inquired about the land being granted to the abutters. David Hall of the Hanover Company stated that Hanover has signed agreements with each of the abutters and the land will be transferred after they close on the property that is the subject of this matter.

Mr. Willmer noted that there will be a twenty day appeal period from the date the decision is signed.

A motion to approve and sign the decision as amended for the Comprehensive Permit granted for the Domain Foxborough project was made by Mr. Brown and seconded by Mr. Ovrut. The motion carried 3-0-0.

Mr. Forster left for the evening; Mr. Ovrut took over as Acting Chairman.

**7:05 p.m. Louis Soldani requests a Special Permit as a repetitive petition from Section 5.4.2 of the Code of the Town of Foxborough Chapter 275 - Zoning Bylaws to allow the reconstruction of a nonconforming single family dwelling which exceeds the habitable floor area by 25% or more at 14 Maple Avenue. The property is located in the R15 Residential Zoning District.** Ms. Mellen recused herself from this hearing as her daughter works for a direct abutter to the property that is the subject of this matter. Mr. Soldani was present at the hearing and represented himself. He explained that he has reduced the footprint of the structure that he is proposing to reconstruct from the petition he presented last winter. The present structure is 26' x 26' and he is allowed to increase it by 25% without a special permit. The special permit that he requested in his previous application was for the construction of a new structure of 40' x 30' (1200 square feet); this proposal is for 38' x 28' (1064 square feet).

Mr. Casbarra explained that Mr. Soldani's petition for the reconstruction of a non-conforming use was denied by this Board last winter; Mr. Soldani would not be allowed to come back to the Zoning Board for two years unless he went to the Planning Board asking for reconsideration if the plans were substantially changed. Mr. Soldani appeared before the Planning Board and received a decision that the Planning Board believed that the plans were changed substantially enough to go back to the Zoning Board. Mr. Casbarra explained that he why he is back before this Board this evening.

Mr. Soldani explained that he will be constructing a 6 pitch roof that will be less than 35 feet high, it will be 29 feet to the ridge of the roof; the current dwelling is a one story building.

The proposed structure will be a garage on the 1<sup>st</sup> floor and living space on the second floor. There will be a two door garage down from the original three requested.

Mr. Ovrut noted that the requirements for a Special Permit with respect to the reconstruction of a nonconforming residential structure are that it not be substantially more detrimental to the neighborhood than the existing structure.

Abutter Steve Anberg of 12 Maple Street submitted a letter with his concerns that he read to the Board. He feels that the new structure is not consistent with what is presently there and will be a detriment to the neighborhood since there will be two large structures on the lot. It will also be more visible to the back yard of his property. Mr. Anberg and Mr. Soldani have the two largest homes on the street; others in the neighborhood are in the Victorian style but not as large.

Mr. Soldani stated that the trees on the property will remain and they will help to block the view of the new structure.

A motion to close the Public Hearing was made by Mr. Behn and seconded by Mr. Brown. The motion carried 3-0-0.

Mr. Ovrut commented that he feels that the new structure will not be substantially more detrimental to the neighborhood and that Mr. Soldani has complied with the bylaw requirements. He feels that the petition can be approved with conditions. Mr. Brown agreed.

Mr. Behn is concerned with there being two large dwellings on the lot and is afraid it will end up being another apartment building in the future. He would be more agreeable if it is conditioned that the new structure be owner-occupied and any present or future owners be required to return to the Board for any other uses.

A motion to approve the Special Permit to allow the reconstruction of a non-conforming single family dwelling which exceeds the habitable floor area by 25% or more at 14 Maple Avenue with conditions that the dwelling be no less than 26 feet from the 12 Maple Avenue property line, no less than 15 feet from the Park Avenue property line, no less than 50 feet from the rear yard of Mechanic Street, that the reconstructed structures roof pitch not exceed 6:12 and the height not exceed 2.5 stories or 35 feet, the residential structure be owner occupied with any future requested changes being approved by the Town of Foxborough; the structure be used for residential uses only; no trees be removed from the property and revised plans be filed with the Building Commissioner prior to the issuance of a Building Permit, was made by Mr. Behn and seconded by Mr. Brown. The motion carried 3-0-0.

**7:15 p.m. 144 Main Street LLC requests a Comprehensive Permit entitled “Highland Ridge” pursuant to Chapter 40B of the Massachusetts General Law to approve 8 detached single family homes, 25% of which will be affordable to households earning no more than 80% of the median income. The property is located at 144 Main Street.**

Mr. Ovrut explained Mr. Forster’s intention to step down as a Member and Chairman of the Board. Mr. Ovrut on behalf of the Board has requested that Mr. Brown be appointed by the Board of Selectmen as a Member and that Mr. Forster appointed as an Associate Member. Mr. Ovrut will be Acting Chairman until this is approved by the Board of Selectmen after which time the Board will re-organize.

Mr. Willmer will be representing the MAPC in lieu of a Planner for this project and Judi Barrett will be working as the 40B consultant.

The applicant was represented at the hearing by its principal, Joseph Lynch. Mr. Lynch was accompanied by Atty. Jeffrey Lovely, Engineering Consultant William Buckley, 40B Consultant Mike Jacobs, and Architect Ken Hyszczak.

Mr. Ovrut noted that he had received a voicemail message from Mr. Lynch yesterday to which which he did not respond as he presumed it was to talk about a letter that the Board received today from Atty. Peter Freeman. That letter contends that the hearing for this application did not commence within the required thirty days of submittal, and is therefore constructively granted. Mr. Ovrut stated that the application that was submitted on August 11, 2015 was in error in that it referenced the wrong property, the error subsequently was corrected by Mr. Lynch on August 17, 2015. Mr. Ovrut’s position is that August 17<sup>th</sup> is the date when the application was received, and, accordingly, commencing the hearing tonight is within the thirty day period that is required by the regulations pertinent to Comprehensive Permit applications. It was further noted in this respect that there were a number of emails between the applicant and the Board’s staff with respect to scheduling the public hearing, and they reflect the position that August 17<sup>th</sup> is the date that the application was submitted to the Board. It was noted that if the applicant

disagreed with this determination, it could and should have been brought to the Board's attention before this date. .

Atty. Lovely began by stating the applicant is reserving its right to assert that the application has been constructively granted but will participate in the public hearing process and work with the Board. He stated that the applicant is not waiving its right to claim constructive approval but is willing to listen to the Board and neighbors and remains optimistic about the project. This project is for smaller, 1,400 to 1,600 square foot homes on small lots, two of the homes will be affordable with one being for a Foxboro resident. The Housing Production Plan states the need for this type of housing and the applicant believes that it will be a popular product.

Mr. Behn questioned whether a complete application was even received, as he stated that there didn't seem to be a lot of information submitted by the applicant. Mr. Ovrut shared his concerns. Ms. Barrett noted that it is up to the Board to determine if the application is complete, indicating that the Comprehensive Permit regulations are ambiguous with respect to what constitutes a complete application. She further noted in this respect that the regulations provide that though an application may not be complete when received, the regulations state that this does not invalidate the application.

Mr. Brown expressed his belief that the applicant is holding the constructive approval matter over the Board. He feels that the application is not complete due to the lack of detail concerning the exemptions being requested; he feels that more detail should be required as part of the application and also noted that the Fire Department and the Highway Department already have concerns with respect to the proposed project.

Mr. Lynch stated that he spoke with Atty. Freeman as a recommended legal resource, and stated that he is not intending to go right to an appeal. He wants the letter from Atty. Freeman as part of the record and wants to proceed with the hearing.

Mr. Behn stated that he feels that the requested waivers are not complete and wants it on the record that it is his position that a complete application was not submitted.

Mr. Ovrut also stated that he had a hard time determining what waivers are being requested due to the fact that the list of requested waivers refers to the proposed project's plans, which themselves do not indicate what is requested.

Ms. Barrett stated that requested waivers that refer to a plan is not appropriate, and the application is lacking on that issue alone.

Ms. Mellen expressed her agreement with the concerns and issues stated by the other Board members, and further stated that she is uncomfortable with Attorney Freeman's letter. Ms. Mellen stated that the letter is not a good way to begin the process.

Mr. Ovrut asked the applicant to withdraw the letter and have waiver details provided by the next meeting. He indicated that they should proceed tonight with an overview of the project and then have a discussion on how to move forward. Though the Board agreed to proceed with that overview, Board's consensus is that it has not received a complete application concerning the proposed project in that the project plans lack detail as to dimensional provisions and the list of waivers refers to those incomplete plans.

Atty. Lovely stated that the information provided evolves over the course of the hearings.

Mr. Jacobs stated that the waivers will be added or subtracted as part of the process; it is just an analysis at this point of what they think they will need.

Ms. Barrett stated that if the applicant had an issue with the date of the application, he had the choice of addressing it with the Board and requesting an extension or going the constructive approval route.

Atty. Lovely stated that the request to withdraw the letter remains on the table, and they will consider the request and address it at the next meeting.

Mr. Behn noted that the Board members changed plans to have a meeting tonight on the 29<sup>th</sup> day following submission of the application on August 17. This meeting is on a Wednesday and the Board usually meets on Thursdays, which would have been 30 days.

Mr. Lynch then proceeded to provide an overview of the proposed project. He stated that he bought this lot in 2011 with a dwelling on it. The house was demolished and he then began looking at development options. There is a mix of uses in the area with a Stop and Shop grocery store and other retail and restaurant uses at the nearby former state hospital site. The Town of Foxborough Public Safety building is also nearby. The lot is located between two intersections and he feels it is in a transitional zone. The smaller lots being proposed with fewer infrastructures will be a new product in Foxborough. Mr. Lynch noted that the Town's Housing Production Plan called for smaller homes designed for the 55+ population.

Mr. Buckley reviewed the site elements. The property is opposite the Stop and Shop between two signalized intersections, and currently drains to the right and towards the street. They are proposing a private road to access the site, which is more like a "glorified" driveway; permission for the access will need to be sought from MassDOT as Route 140 is a state highway.

The entrance to the site is proposed to be 20 feet which will widen to 30 feet in the middle; they are proposing a scored concrete center island with all the driveways to the residential units off of this hub. There will be one garage per home as well as a two car driveway.

The homes on the site will use municipal water including hydrants, and there will be gas and electrical lines underground. The applicant has dug seven test pits for the stormwater and found sandy material as well as a 13 foot water table. They are proposing an underground infiltration system with catch basins near the entrance. The roadway will be approximately 150 feet long. There is a low area towards the front that will contain underground galleys to capture and recharge the runoff.

There is no town sewer available to the site, so they will use a common shared septic system. A sewer line will go to an 8,000 gallon septic tank under the road to a pump station which will pump it to the field in the back of the site. The applicant will be going before the Board of Health in October with the design of this system. Mr. Buckley also noted that they did find ledge 12-14 feet down.

Any overflow parking will need to be on the private road as no parking is allowed on Route 140. The parking requirement is two spaces; they are providing three including the garage. Snow will be plowed to the end of the road.

There will be a homeowners association for snow removal, and for the maintenance of the road and septic system as well as the stormwater system.

Mr. Behn asked if they had considered duplexes as another option. He also noted that the Foxborough Fire Department has concerns with getting their equipment on the property.

Mr. Buckley noted that the lot sizes will average 3,700 sq. ft. with the smallest being 2,800 sq. ft. and the largest being 5,679 sq. ft. The distance between the homes will be 12 feet.

Donna Howlett of 148 Main Street asked about lot lines, is it one big lot or separate lots. Mr. Buckley stated that each home will be on its own lot which is different than a condominium which is one large property.

Joe Howlett of 148 Main Street stated that his daughter had recently purchased the property at 148 Main Street which has mostly three bedroom homes in the vicinity. He noted that the applicant is proposing to construct eight homes that will have a total of twenty four bedrooms on one lot, and wants to know how this is allowed.

Mr. Ovrut explained that the state 40B process allows this type of project if 25% of it is set aside as affordable housing., An applicant under that process is required to come before the Board and request waivers to what otherwise would be required under the Town's Zoning Bylaws.

Terry Reilly of 152 Main Street asked about sidewalks on the property. Mr. Buckley stated that there will be no internal sidewalks. Mr. Reilly also asked how far back the homes are from the property line. Mr. Buckley stated that they are approximately 14 – 15 feet from the lot lines, which compares to the Zoning Bylaw's requirement of thirty feet.

Jenn Duffy of 3 Weston Ave asked if there would be a buffer or fencing behind her property as she is a direct abutter. Mr. Buckley stated it will be part of the discussion; they currently do not have a landscaping plan in place.

Bill Busch of 6 Weston Ave and the Association President of the Governor's Meadow HOA asked what these units would be selling for. Mr. Lynch stated that he expects to sell them for \$390,000 - \$425,000; the affordable units would be \$192,000 - \$195,000.

Shane Palmer of 5 Vandoorn Ave asked if emergency vehicles would be able to access the property during winter snowstorms. Mr. Buckley stated that the traffic consultant would be able to address that.

Mr. Reilly asked if they don't sell would they become rental units. Mr. Lynch responded that project as proposed is for the construction and sale of single family homes; if he has difficulty selling them and wants to rent them out he would need to come back to the Board and the subsidizing agency for a project change.

Mr. Lynch stated he plans to build two or three homes at a time.

Donna Howlett asked if there would be odors coming from the pump station and leeching field and how can you drive over it. Mr. Buckley explained that the tanks are heavy duty rated tanks that can be driven over. He also explained the system itself and stated that if it is operated properly there should be no odors. The Board of Health will probably require a surety and it is an expensive system to replace so they should take care of it properly.

Architect Ken Hyszczak then explained the design of the homes themselves, and expressed his belief that increased density does have benefits. This "pocket development" will be for those

wishing to downsize and those who don't want a large lot to maintain. There will be a central shared courtyard; it will be a close knit community. They are proposing two floor plans; both are three-bedroom, two-bathroom units. One style has the master bedroom on the first floor; the other has all the bedrooms on the second floor. The exteriors will be clapboard board and batten siding; they will be lower in height and a smaller scale than a typical home. There will also be a common area in the rear of the property for the homeowners to use. There will be subtle differences between the units but they will be consistent in character with composite siding and they will also be energy efficient.

A Home Owner's Association will be responsible for property maintenance.

Ms. Duffy asked where guests would park. They would have to park on the internal road.

They will be proposing a sidewalk across the front of the property on Route 140. The consulting engineer will need to look at pedestrian flow between the units.

The Board members expressed their position that there is not adequate information on the plans as presented in regard to lot sizes and lot lines, the width of the roadway, and dimensions of the units – further reflection of the Board's position that it has not received a complete application.

At approximately 9:45 p.m. the fire alarm system went off at the meeting place and we were required to leave the building. The Fire Department responded and informed the Board that the alarm system could not be reset at the time and the alarm would continue to go off. Therefore, the hearing will need to be continued.

A motion to continue the Public Hearing to October 20, 2015 at 7:00 p.m. at the McGinty Room in the Public Safety Building was made by Mr. Brown and seconded by Mr. Behn. The motion carried 3-0-0.

## **GENERAL BUSINESS**

### **Minutes**

The Board reviewed the minutes of August 20, 2015.

A motion to approve the minutes of August 20, 2015 was made by Mr. Behn and seconded by Mr. Brown. The motion carried 4-0-0.

The meeting was adjourned at 10:05 p.m.

Respectfully Submitted,

Diana Gray

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Signed on behalf of the Board

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Kristofor Behn, Clerk