



BOARD OF APPEALS  
TOWN OF FOXBOROUGH  
40 SOUTH STREET  
MASSACHUSETTS  
02035

**Foxborough Zoning Board of Appeals Minutes  
December 15, 2022**

Members present: Members Barney Ovrut, and Kim Mellen and Associate Member Lorraine Brue and Kurt Yeghian were all present in person, Member David Brown was present via zoom video.

This meeting was held in person with the Zoom video platform also available; it was also being broadcast on Foxboro Cable Access.

Chairman Barney Ovrut opened the meeting at 7:00 p.m.

**7:00 p.m. Alexander Terenzio requests a Special Permit pursuant to the Code of the Town of Foxborough, Massachusetts, Chapter 275: Zoning, Section 3.1.6., Table 3-1 Table of Uses, Use L.5, to construct a detached 30-foot x 40-foot residential garage with a footprint of 1,200 square feet. The subject property is located at 83 Beach Street, Foxborough, Massachusetts, in the R-40 Residential and Agricultural District.** Mr. Terenzio was present representing himself. Mr. Ovrut read a Conflict of Interest Disclosure that he is a personal friend with an abutter to this address, that abutter has no position on this matter.

Mr. Terenzio stated that the two family home at 83-85 Beach Street has been reconfigured to more of a townhouse style units than a raised ranch, the former basement areas are now living space so there is a need for storage. Mr. Ovrut inquired as to the height of the proposed garage, Mr. Terenzio stated that it will not exceed 21 feet in height. When asked about the interior of the garage, Mr. Terenzio stated that it will have exposed ceilings, constructed on a slab with no basement area. He also stated that he will remove the proposed bathroom area as he has been told there can be no running water to the garage.

Mr. Terenzio stated that he will be living in one of the units, the other will have a tenant. He is not proposing to use the garage for any business or commercial purposes. Mr. Terenzio stated that he has been flipping houses so he has a stockpile of old lumber currently being stored under tarps that he would like to garage. He is keeping the lumber for future recycling projects, he does not have any woodworking equipment.

The home was built as a two family and the proposed garage will be constructed to match the house. When asked why all one oversized garage Mr. Terenzio stated that he would prefer the on-site vehicles under a roof with storage available instead of a smaller garage and a shed. Mr. Terenzio stated that the garage would have standard garage doors.

Mr. Ovrut read a letter into the record from Chris Corkery of 92 Beach Street against the proposed garage.

Joseph Beaulieu of 17 Hayden Drive, appearing via Zoom, also spoke against the garage; he has concerns it will be used for business purposes.

A motion to close the Public Hearing was made by Ms. Mellen and seconded by Mr. Brown. Roll call vote: Kim Mellen - yes, David Brown – yes, Barney Ovrut – yes, motion passed.

The Board immediately moved into deliberations. Mr. Ovrut reviewed the sizes of past oversized garage decisions. The existing dwelling on the property is currently 1,344 sq. ft. and a 1,200 sq. ft. garage is being proposed. The Board had concerns with the proposed size of the garage as well as the size in comparison to the lot and the existing dwelling and will be out of proportion with the residence.

The Board suggests separating the storage and garage into separate units to reduce the size of the garage. Mr. Terenzio asked for a continuance to work on reducing the size of the proposed garage.

A motion to continue the Public Hearing for 83-85 Beach Street to January 19, 2023 was made by Ms. Mellen and seconded by Mr. Brown. Roll call vote: Kim Mellen - yes, David Brown – yes, Barney Ovrut – yes, motion passed.

**Request for Modification of Comprehensive Permit Decision 14-07, Wyman Village at 4 Cary Lane** Joe DiNapoli the homeowner of 4 Cary Lane came before the Board with a request for a Modification. His residence is part of the Comprehensive Permit for Wyman Village which includes a condition that any exterior changes be approved by the ZBA. Mr. DiNapoli would like to enclose his deck with a three season white aluminum porch. A requirement that the proposal be brought first before the homeowners association and ten residents need to be in favor before coming to the ZBA has already taken place, Mr. DiNapoli received 13 votes in favor.

The Board needs to decide if the request is substantial or insubstantial. Mr. DiNapoli noted that the three residents nearest to him were all in favor of the request.

A motion that the requested modification of 4 Cary Lane to add a three season porch on the existing deck as insubstantial was made by Ms. Mellen and seconded by Mr. Ovrut. Roll call vote: Kim Mellen - yes, David Brown – yes, Barney Ovrut – yes, motion passed.

## **GENERAL BUSINESS**

### **Minutes**

The Board reviewed the minutes of November 17, 2022

A motion to approve the minutes of November 17, 2022 as submitted was made by Ms. Mellen and seconded by Mr. Yeghian. Roll call vote: Lorraine Brue – yes, Kurt Yeghian – yes, Kim Mellen - yes, David Brown – yes, Barney Ovrut – yes, motion passed.

**7:15 p.m. Continued Public Hearing - 119 Morse Street Realty Trust requests a Comprehensive Permit under the Local Initiative Program pursuant to Mass General Laws Chapter 40B, Sections 20-23, to construct 52 condominium residential units, 25% of which will be affordable to households earning not more than 80% of the Area Median Income. The property is situated at 119 Morse Street in the General Industrial District and is in a future aquifer area overlay district.** The applicant was represented by Engineer Bill Buckley of Bay Colony Group, Consultant Bill Casbarra as well as Jim Parker of Nangle Consulting in person and Attorney Stephanie Kiefer via zoom.

Mr. Ovrut reviewed the additional materials that have been submitted since the last meeting which including emails from residents, a letter from Environmental Partners containing a list of recommended conditions and mitigation measures associated with this matter, an Inspection

Log from Matthew Brennan, Town of Foxborough Director of Public Health, a Memo prepared by Paige Duncan with typical conditions and mitigation measures that the Planning Board uses for subdivision approvals, a revised List of Requested Waivers from Bill Casbarra and the environmental testing report from Nangle Consulting.

A motion to waive the reading of the correspondence received since the October 20, 2022 meeting and to enter the correspondence into the record for the 119 Morse Street hearing was made by Ms. Mellen and seconded by Mr. Brown. Roll call vote: David Brown - yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

Mr. Ovrut then stated that in regards to the traffic report, Gillon Associates did submit a traffic memo in late August that should have been entered into the record at the September meeting, Environmental Partners did respond to that memo in September 2022 which was placed into the record in September.

In regards to correspondence received from the Vandenbooms to the Board of Selectmen, Mr. Ovrut offered comments that were his own and did not speak for the Board of Selectmen; first – Your request that the applicant be required to “provide a complete application” refers to the application requesting a Project Eligibility Letter that was submitted to the Department of Housing and Community Development, that is not a town application. The ZBA requirements for a complete application were satisfied; it is why we have conducted a hearing for the past six months. If you have an issue with the application that was submitted to DHCD, you need to address that matter with them. Second – This Board has fully complied with the requirements of Chapter 40B, Section 21. We are required by regulation to inform other Town boards, committees, departments and officials of a Comprehensive Permit application within seven days of the date on which it has been filed and to request their participation in the matter. This Application was filed on June 10, 2022. We complied with this obligation by June 13, 2022 with Ms. Gray subsequently contacting those who did not initially respond. The various communications from Town boards, committees, departments and officials that have been entered into the record did not appear on their own; they were in response to our communication. Third – Each of us has read this letter. As we proceed to deliberate on the Application, we will accord your comments and questions the consideration that we believe to be warranted.

In regards to correspondence received from Environmental Partners setting forth recommended conditions and mitigation measures, this was done as suggested by Judi Barrett and subsequently requested by Mr. Ovrut; it was also requested that Paige Duncan submit a memo concerning conditions that the Planning Board typically imposes for subdivision matters. These requests and the conditions and mitigation measures that have been recommended in response, should not be taken to mean that this Board has decided to approve the Comprehensive Permit that is the subject of this hearing. No such determination has been made. No determination – whether to approve or deny the permit – will be made until we have the opportunity to discuss that issue. That will occur in an open meeting. The conditions and mitigation measures in these two documents provide context to the proposed development. It is information that will best allow each of us to decide whether the application can be approved or should be denied. We may individually and collectively determine that these and additional conditions and mitigation measures do not satisfy us that the requested Comprehensive Permit would result in a healthy, safe and desirable residential location. Conversely, such conditions – whether accepted by us in whole or in part, and whether modified after receiving public comments prior to the close of the hearing – may provide the assurances that we need in order to approve the permit.

In regards to the Revised List of Waivers into the record, that does not mean that those exemptions from local regulations have been accepted by this Board. We will consider the requested waivers as part of our deliberation concerning the Application.

Environmental Partners has submitted invoices for their work on this application from July 30, 2022 to October 28, 2022 that need to be approved for payment.

A motion to approve payment to Environmental Partners for invoices from July 30 – August 26 in the amount of \$2,403.75; August 27 – September 30 in the amount of \$6,290.25 and October 1 – October 28 in the amount of \$1,357.50 was made by Ms. Mellen and seconded by Mr. Brown. Roll call vote: David Brown - yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

The applicant had submitted an additional \$5,000 for the escrow account for payment of Environmental Partners' fees and expenses.

Mr. Parker then reviewed the results of the onsite environmental testing. Four borings and two wells were installed, there were difficult conditions observed during drilling, no fill was observed and screening was performed in the field and soil samples collected for testing. The Public Health agent was present during this time.

Soil testing found no volatile organic compounds (VOC) and only trace presence of metals, groundwater testing found trace metals and acetone. All testing results were below Mass DEP standards for contamination, which are the most conservative standards. As a result of the testing Mr. Parker feels that no further assessment is necessary.

The drilling went down approximately five feet when stone and cobble was discovered, trying to drill down further damaged two different kinds of equipment and could not go down further without bringing in heavy equipment. The locations were chosen based on areas of plume concern and proximity to debris on town property. Mr. Parker also noted that four additional test pits were sampled earlier around the area of the garage.

Molly Cote from Environmental Partners was unable to attend this evening but did submit an email response to Mr. Parker's report. Ms. Mellen read the report into the record, Ms. Cote's recommendation is that a LSP be on site during excavation to perform visual site inspections and to screen for VOC's.

A motion to enter Ms. Cote's response to Mr. Parker's environmental testing results report was made by Ms. Mellen and seconded by Mr. Brown. Roll call vote: David Brown - yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

Mr. Parker noted that the metals, solvents and petroleum that may be present at the former Summit Castings would typically not move off the property.

Mr. Ovrut noted that Public Health Director Matt Brennan witnessed the testing and also noted that Mr. Brennan does have a background in environmental testing as well as a geology degree.

Resident Drew Hoyt thanked the Board for pursuing the testing and is thankful for the reassuring results. He noted that there are physical hazards on town property near this proposed development and suggests that it be required to be fenced off.

Resident Joan Gallivan spoke in regards to health and safety for proposed projects and feels this application should be rejected.

Resident Kathy Vandenboom asked if she could talk about the new bridge that would be required. Mr. Ovrut did not feel that was a topic for this evening.

Mr. Ovrut advised the Board members that a consensus to approve or deny the project should be the goal of the January 19, 2023 hearing with a formal vote ready to be taken by the

February 2023 hearing. The Board's consultant, Judy Barrett is working on proposed findings and conditions for the January meeting.

A motion to continue the hearing for a Comprehensive Permit at 119 Morse Street to January 19, 2023 was made by Mr. Brown and seconded by Ms. Mellen. Roll call vote: David Brown - yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

A motion to adjourn the meeting was made by Mr. Yeghian and seconded by Ms. Mellen. Roll call vote: David Brown – yes, Lorraine Brue – yes, Kurt Yeghian – yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

The meeting was adjourned at 8:55 p.m.

Respectfully Submitted,

Diana Gray

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Signed on behalf of the Board

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Kim Mellen, Clerk