



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

**Foxborough Zoning Board of Appeals Minutes  
June 30, 2022**

Members present: Members Barney Ovrut, Kim Mellen and Associate Member Lorraine Brue and Kurt Yeghian were all present in person.

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.

Mr. Ovrut noted that the Board would delay the Board Reorganization until next month due to the absence of one of the regular members of the Board.

The Board reviewed the minutes of May 19, 2022.

A motion to approve the minutes of May 19, 2022 was made by Ms. Brue and seconded by Ms. Mellen. The motion carried 4-0-0.

**7:05 p.m. Continued Public Hearing - Anthony Alex Silva seeks a Variance under Section 4.1.1., Table 4-1, of the Code of the Town of Foxborough, Massachusetts, Chapter 275: Zoning, to allow the construction of an attached garage to a single-family home that would result in such home having a side yard setback of eight feet where fifteen feet is required. The property is located at 6 McNamara Way in the R-40 Residential and Agricultural District. It is not located in any restrictive overlay district.** Mr. Ovrut stated that this hearing was closed last month but no decision was rendered, Mr. Silva has submitted a revised plan showing the wetland lines as the Board requested. The hearing needs to be re-opened and Ms. Brue will be appointed as a voting member due to the absence of Mr. Brown.

A motion to re-open the Public Hearing for 6 McNamara Way and to appoint Ms. Brue to the hearing as a voting member was made by Ms. Mellen and seconded by Ms. Brue. The motion carried 3-0-0.

Mr. Silva reviewed his desire to have an addition added to his home and why the location of the addition was chosen which would encroach in the side yard setback. Mr. Silva stated that building the addition on the other side of the house would encroach into the wetland line.

At the previous meeting, the Board had suggested rotating the addition to move the addition out of the setback. Mr. Silva stated that this would not be acceptable as the area would be narrow and he would not like the aesthetics of the look from the front of the home. He also noted that the propane tank and septic system is located at the rear of that side of the house.

Board members noted that the bathroom addition adds an additional six feet to the addition. Mr. Silva stated that the bathroom addition would help to break up the mass of the addition with it not all being one straight line.

The Board members asked about the current driveway. Mr. Silva stated that currently you pull into the driveway and turn right to pull into the garage; with the addition, you would just drive straight into the garage.

A motion to close the Public Hearing was made by Ms. Brue and seconded by Ms. Mellen. The motion carried 3-0-0.

The Board moved immediately into deliberations. Mr. Ovrut explained the options that he sees to avoid the need for a variance. The applicant could ask for a Determination from the Conservation Commission as to whether the addition could be located in the wetland buffer or the addition could be rotated in the proposed location, as aesthetics are not criteria for a variance in the bylaws. The other Board members agreed and were hesitant to grant a variance due to the reasons stated by Mr. Ovrut.

A motion to deny the requested Variance for an attached garage at 6 McNamara Way was made by Ms. Mellen and seconded by Ms. Brue. The motion carried 3-0-0.

**7:10 p.m. Maria Eisenhauer seeks a Special Permit pursuant to the Code of the Town of Foxborough, Chapter 275: Zoning, Section 3.1.6., Table 3-1 Table of Uses, Use L.10. and Section 3.2.2 to allow a home occupation space for Reiki and other modalities at 28 Sand Street Ext. The property is located in the R-40 Residential Zoning District and is not located in any restrictive overlay districts.** Mr. Ovrut appointed Mr. Yeghian as a voting member in the absence of Mr. Brown. Ms. Eisenhauer was present in person and represented herself. She explained to the Board that she would like to use the third bay of the attached garage in her home for her home occupation. She performs crystal balancing, reiki and other relaxation and balancing methods to help clients relieve stress. Clients are fully clothed and there is no physical touching involved. She would be the only employee of the business.

Ms. Eisenhauer noted that there is a large parking area available on the property. Her hours of operation would be Monday to Friday from 9 a.m. to 5 p.m. Each session takes 1 to 1½ hours. This would not be her full time job. Clients would be seen individually and there would be a break between clients for cleaning and disinfecting. She currently sees clients at the Celtic Bar in Pawtucket RI for the past two years following one year of training.

The garage bay would be renovated inside; it is already separated from the rest of a garage and is being used as a storage room. They would be adding a half bath in the area, the whole garage has radiant heat already. Clients are seen by appointment only.

The property is owned by Justin Eisenhauer, Ms. Eisenhauer's son. It is the principal residency of Ms. Eisenhauer and her husband.

The bay of the garage is approximately 22 feet by 11 feet. The whole house has 1,944 sq. ft. of living area. This area would be less than 40% of the living area. She is not proposing any outdoor signage probably just a small sign on the door.

Abutter Mary Morrissey of 203 Oak Street and her son Ryan Morrissey of 201 Oak Street had concerns with unnecessary traffic going through the driveway easement that accesses the

property. Their homes are located on Oak Street and there is a driveway easement for two properties in the rear. Ms. Eisenhower stated that she would have at maximum approximately five clients per day; clients would come for services one time per month. The Morrissey's contend that there are already many vehicles going in and out of the property.

Debra Tankerley of 17 Sand Street is concerned with the amount of renovations and disturbances to the neighborhood. Ms. Eisenhower stated that the town water department repaired a leak in the roadway/driveway and the town flagged a damaged tree to be removed. After that work was complete, they had the roadway/driveway paved.

Mr. Ovrut noted that a home occupation is allowed in the R40 district, if the neighbors had concerns with other activities on the property, they could contact the Building Commissioner, as he is the enforcement officer.

A motion to close the Public Hearing was made by Ms. Mellen and seconded by Mr. Yeghian. The motion carried 3-0-0.

The Board immediately moved into deliberations. The members noted that home occupations similar to this use have been approved before, a limit to the number of clients allowed on the premises at a time and the interval between could be imposed by the Board.

A motion to approve the requested Home Occupation at 28 Sand Street Ext with conditions that the special permit that is granted to the applicant only and the applicant must reside within the Eisenhower residence at all times; the proposed home occupation shall comply with the intensive home occupation standards in the Zoning Bylaw; hours for the home occupation shall be Monday - Friday between 9:00 am and 5:00 pm; not more than one client at any single time with thirty minutes between clients; the proposed home occupation shall be in the portion of the residence's garage that is the rightmost bay with a separate entry door; a maximum of one motor vehicle for the business may be parked at the residence at any one time; one freestanding sign no larger than three square feet in area, does not exceed six feet in height and is set back ten feet from the property's lot line may be placed on the property, illumination of the sign is prohibited; a current Business Certificate must be obtained from the Town Clerk and maintained was made by Ms. Mellen and seconded by Mr. Yeghian. The motion carried 3-0-0.

**7:20 p.m. JAKE Development seeks a Special Permit pursuant to the Code of the Town of Foxborough, Chapter 275: Zoning, Section 5.4.2. to allow a pre-existing non-confirming single-family residential structure to be re-constructed such that the habitable floor area of the new single-family residential structure will exceed that of the existing structure by 25% or more and any other special permit(s), variance(s) or finding(s) as may be required with respect to the foregoing. The subject property is located at 9 Shaw Place in the R-15 Residential and Agricultural District and is not located in any restrictive overlay district.**

Mr. Ovrut appointed Ms. Brue as a voting member in the absence of Mr. Brown. Atty. Frank Spillane and applicant Don Treannie were present in person.

Atty. Spillane explained that 9 Shaw Place is in the R15 zoning district, which requires a special permit for the reconstruction of a single family home as long as the reconstruction is not substantially more detrimental to the neighborhood than the existing structure. The lot is pre-existing non-confirming dating to the early 1900's. Atty. Spillane reviewed the non-conformities of the lot. The lot size is 4,167 sq. ft. where 15,000 sq. ft. is required; the frontage is 63 feet where 100 feet is required; the lot width is 63.5 feet where 67 feet is required; the front yard

setback is 11 feet where 25 feet is required; the side yard on one side is one foot where 15 feet is required, the side yard on the other side is 37 feet where 15 feet is required, the rear yard is 22 feet where 30 feet is required. The habitable floor space is currently 1,021 sq. ft. and will be increasing to 1,717 sq. ft. an increase greater than 25%.

The applicant will be demolishing the existing structure and replacing it with a new single family home, the new setbacks were reviewed with the Board, the side yard on one side will increase from one foot to eight feet and the other side yard setback will decrease from 37 feet to 16 feet, the rear yard setback will change from 22 feet to 8 feet, there will be no changes to the front yard setback.

Atty. Spillane explained that the current home is not structurally sound and not habitable, it has not been occupied for at least nine years. This lot is the second smallest lot in the R15, they have spoken with the neighbors and they are all encouraged that the old structure will be torn down. The new structure will be located in a better place on the lot.

Luke and Gretchen Hauber of 11 Shaw Place, direct abutters stated that they are encouraged and happy that the old structure will be coming down, it is dangerous and inhabited by animals right now. The neighborhood contains quite a few mail order Sears homes that were delivered via train. They are also happy the one foot lot line will increase to eight feet.

A motion to close the Public Hearing was made by Ms. Brue and seconded by Ms. Mellen. The motion carried 3-0-0.

The Board immediately moved into deliberations, they noted that this new structure will be a vast improvement over what is there currently.

A motion to approve the requested Special Permit for the demolition and reconstruction of a single family home at 9 Shaw Place with conditions that the location of the proposed dwelling be as shown on the plan and comply with the setbacks as shown and the dwelling be a single family home containing 1,717 sq. ft. of floor space and designed and constructed as shown on the proposed plan was made by Ms. Brue and seconded by Ms. Mellen. The motion carried 3-0-0.

**7:30 p.m. 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.** Mr. Ovrut read a prepared memo into the record as follows:

119 Morse Street Comprehensive Permit Hearing  
Hearing Agenda – June 30

Introductory Remarks

- Tonight is the initial, introductory hearing session for what I anticipate will be a multi-month process to determine whether a Comprehensive Permit is to be issued to allow 52 condominium units, 13 of which would be affordable, to be developed at 119 Morse Street. Our objective is not to go beyond 10:00 pm for any single hearing session, including tonight.
- The responsibility for determining whether a Comprehensive Permit is to issue rests exclusively with the Board of Appeals.

- We are a five-member board. Dave Brown, Kim Mellen and I are the Board's Regular Members; Kurt Yeghian and Lorraine Brue are our Associate Members.
- All of us will participate in the hearing. However, only Dave, Kim and I as the Board's Regular Members are authorized to vote unless one of us is absent from a hearing session or must recuse himself or herself. In that case I will appoint either Kurt or Lorraine to vote in such person's stead. If I am absent or must recuse myself, Dave – or Kim if he also is absent – will chair the hearing session and appoint Kurt or Lorraine as the voting member.
- Because Dave unfortunately is not attending tonight's hearing session due to a medical situation, I am appointing Kurt to vote on all motions that we will consider this evening.
- When one of us misses one hearing session, subsequently watches the video of that session on Foxboro Cable and files certification of such effect with the Town Clerk, that individual is authorized to continue to participate in the hearing and vote on matters that arise. That authorization does not apply if such individual misses a second hearing session.
- A majority vote is required to approve any motion that we consider.
- We will be assisted in our consideration of the application by Paige Duncan, Foxborough's Director of Land Use and Economic Development; Diana Gray, our Administrative Assistant; Scott Shippey, Foxborough's Building Commissioner; Dylan O'Donnell and Scott Turner of Environmental Partners, our peer review consultant; and Judi Barrett of Barrett Planning, our 40B consultant. I also want to acknowledge and express appreciation for the work of Foxboro Cable in broadcasting our hearings.
- The entire application and the supporting materials received to date are posted on the Board's page of the Town website. All written correspondence that is submitted concerning this matter also will be posted. Future correspondence and other materials should be submitted to Diana Gray's attention.
- The Board's page of the Town website contains information concerning Comprehensive Permits in the form of responses to Frequently Asked Questions. We recommend that the public review that information to enhance understanding of the Comprehensive Permit concept and process.
- Members of the public will have an opportunity during each hearing session to comment and ask questions. You will be permitted to do so only when recognized by the chairman. When so recognized you will need to identify yourself by name and address. Comments and questions are directed to the Board – not the applicant or the applicant's representatives.
- We request that in commenting you be succinct and address issues and questions that are relevant to this matter. Please be civil and courteous. A little humor is appreciated.
- Disclosures of Appearance of Conflict of Interest were filed by members of the ZBA with the Town Clerk in regards to this project.

#### Explain 40B Hearing Requirements and Process

- What we are commencing tonight is consideration of a consolidated, comprehensive permitting request. The Board is authorized in this respect to grant a single permit to allow development of a project that includes low and moderate income housing units.
- This process allows the Applicant to forego the need to file separate applications with the other Town boards, committees, departments and officials that otherwise would have jurisdiction over the matter. It also allows the Board to waive local zoning and other Town requirements that otherwise would impede or prohibit development of a project.
- The Board is required to conclude this public hearing within 180 days. We are required to render our decision within 40 days of the date on which the public hearing closes. Those dates can be extended with the Applicant's written consent. It is our practice – regardless how complex or routine the matter we are considering – to not render a decision until all questions have been answered to our satisfaction, and all information necessary to reach an informed determination has been received.

- The central issue in our consideration and determination is Consistent With Local Needs. In this respect, the Board needs to balance the regional need for affordable housing that is recognized by Chapter 40B of the Massachusetts General Laws with valid local concerns of health, safety, open space, site and building design, and the natural environment.
- We can approve the Application outright as it has been presented, approve it with conditions, or deny it. Conditions that we impose must be reasonable in view of the regional need for affordable housing and necessary to protect valid health and safety concerns of the project's prospective residents and other Town residents, or to create a project that appropriately fits with its surroundings in terms of its site and building design, open spaces and the natural environment.
- It is well known that Foxborough has achieved and exceeded its statutory objective of having 10% of its full-time, year-round housing deemed affordable. The Subsidized Housing Inventory (SHI) maintained by the Massachusetts Department of Housing & Community Development (DHCD) indicates that approximately 12.8% of the Town's housing units are affordable.
- Attainment of the statutory minima provides the Town with what is known as a "safe harbor" defense to this Application. It can be denied on that basis as being Consistent With Local Needs.
- My recommendation to the Board is that we reserve the right to raise that defense, but proceed to consider the Application. (My reasons: Deference to the Board of Selectmen as this is a Local Initiative Program (LIP) application; our responsibility is to act in the best interests of the Town – that requires full consideration and vetting of the Application).

A motion to proceed in accordance with the applicable provisions of 760 CMR 56.03 with a full hearing of this application, reserving the Board's right to deny the requested Comprehensive Permit application on the basis of Foxborough having achieved prior to the filing of such application the 10% statutory minima that is set forth in G.L. c. 40B, Section 20, and 760 CMR 56.03(3)(a), and to authorize and direct the Board's Chairman to inform the Applicant of the foregoing in writing was made by Mr. Ovrut and seconded by Ms. Mellen. Motion carried 3-0-0.

A letter will be sent to the applicant via email and USPS within fifteen days as is required.

#### Peer Review Consultant/Escrow Payment

Environmental Partners has submitted a peer review proposal that has been reviewed by Planning Department staff, Environmental Partners has been retained as the reviewing engineer by the Planning Department and can also provide services to the Zoning Board of Appeals. The review will only be for the submitted materials and plans, no individual studies or analysis will be generated by the reviewing engineer. The cost of the review will be borne by the applicant through the establishment of an escrow account with the town Finance Department.

Motion to confirm Environmental Partners as the Board's Peer Review Consultant was made by Ms. Mellen and seconded by Mr. Yeghian. Motion carries 3-0-0.

The peer review proposal is for an amount not to exceed \$26,000. A portion of that amount needs to be voted upon for the escrow account, when the amount in the fund goes below that amount more funds will be required of the applicant to replenish the funds. The Peer Review Consultant will provide monthly itemized invoices (first invoice to be provided after July 31, 2022).

A motion to require the applicant to deposit the amount of \$15,000 and thereafter any additional amounts that the Board deems necessary and appropriate into an escrow account maintained by the Town of Foxborough Treasurer for purpose of paying the fees and expenses of the Board's Peer Review Consultant was made by Mr. Ovrut and seconded by Ms. Mellen. The motion carried 3-0-0.

#### Applicant Introduction and Presentation

Bill Casbarra representing the applicant, Mike Saegh, stated that he also filed a disclosure with the Town Clerk as a retired town employee, he has been retired for four years which is past the one year conflict of interest time as set by the state.

Mr. Casbarra introduced the project, they are seeking a Comprehensive Permit under the state 40B and Zoning Board Rules and Regulations at 119 Morse Street which is located on six acres in the General Industrial Zoning District as well as future aquifer protection district.

Mr. Casbarra then introduced the rest of the development team, Engineer Bill Buckley of Bay Colony, Architect Jeremy Lake of Union Studio Architects and 40B Consultant Bob Engler.

Mr. Lake then reviewed the architectural plans which is still a conceptual plan at this point. The access drive will be through the existing access on Morse Street which will lead to a primary looped drive. There are 52 units proposed, the existing house on the property will be split into two units, there will be five duplex attached cottage units and ten fourplex units containing two units on a lower level and two units on an upper level. All units will have single car garages except the existing house which will have a two car garage added. There will be 10 visitor parking spaces on site. There will be shared green space on site that they hope to be able to connect to existing conservation land which adjoins the property. This will be a pedestrian friendly community with a campus like feel. In the units, 10 of the fourplex units are proposed to be affordable, 3 of the duplex units will be affordable to meet the required 25% affordable of the 52 units proposed.

Mr. Buckley reviewed the civil site design. The development will be located on two acres on the west side of Morse Street at the Bleachery Pond accessed via a fifteen foot wide driveway which includes an existing bridge. There are wetlands as well as the Rumford River on or near the site, they have gone before the Conservation Commission and received an ORAD for the wetland lines, this decision has been appealed to Mass DEP by an abutter.

Mr. Buckley reviewed the elevations of the property, it is relatively flat with an elevation of 180 feet at the water up to 185 and 185 feet at the highest point. Mr. Buckley noted that the plans that have been filed are general not fully engineered plans as required.

Soil testing has been done and found to be sandy gravel with a moderate water table. The proposed driveway will be 1,650 linear feet and will be 20 feet wide. The sidewalks will be bituminous pavement. The site will be served by municipal water service, the water lines will need to be upgraded from 6" line to 8" lines as required by the water department; the system will also be looped which will improve the water quality in the area. There are sewer lines available on Morse Street that tie into the Mansfield system.

Stormwater will be handled as a low impact development with underground drainage, preliminary sizing has been done based on the soils in the area. A roof gutter system will be tied into the drain system to infiltration basins as roof runoff is considered clean by the state and

needs no further treatment. The driveway and parking area will be served by catch basin drain manholes and tree box filters to cleanse the water before it is directed to the drainage basins.

A filing would be needed with the Conservation Commission under the State regulations after all town permits are obtained. The site also falls under the Endangered Species Act from the proposed development in 2008, that will need to be modified.

Mass DEP has visited the site as part of the abutter's appeal, the question is where does the river end and the pond begin. Currently the ORAD stated the river ended near the bridge, if that changes there is a more stringent riverfront buffer zone that would require changes to the design to keep the buildings out of the buffer area.

Written correspondence has been received from Town Departments as they were required to be notified of this application.

A motion to enter the comments from Town Departments into the record and to waive the reading of the comments was made by Ms. Mellen and seconded by Mr. Yeghian. The motion carried 3-0-0.

Mr. Ovrut summarized that the Board of Selectmen voted to support this project with conditions last fall. The Zoning Board needs to determine how many units are appropriate. Comments were also received from the Planning Director, Town Engineer, Conservation Commission, Police Department, Board of Health, School Department and Water Department.

Residents of Town also submitted comments in regards to the project before an application was received by the Board, Mr. Ovrut feels these comments should be included in the record.

A motion to enter into the record correspondence received prior to the application filing and waive the reading of the correspondence was made by Ms. Mellen and seconded by Mr. Yeghian. The motion carried 3-0-0.

Mr. Lake wanted it noted that all the units will be beneficial to the community as they are not the typical size or scale, they are smaller than the units typically built in Foxboro.

Abutter Kathy and Karl Vandenboom of 109 Morse Street stated their concerns with project. They questioned the regional need for the project and listed projects that have been proposed or are approved by the town and in development. They provided information on other 40b projects in the state that had been turned down as an example why the ZBA should exercise the Safe Harbor defense in regards to this project.

Ann Marie Anderson of 18 Spring Street feels that there are too many units being proposed, this will bring more vehicles on Spring Street where her children ride their bicycles, she is concerned for their safety.

Paula Feeney of 36 Alden Street stated that she has lived in this area her whole life and feels many items need to be resolved such as sidewalks, traffic, the small bridge for a lot of housing as well as environmental issues.

Joan Gallivan of 9 Cannon Forge Drive stated that she submitted a letter but also wanted to comment that she was on the Housing Committee to try to get more housing in town which included a study showing there is a need for more housing in Foxboro. She is in favor of more housing but feels this is not the appropriate site.



The Board members would like to go on a site walk of the area. A site walk will be posted for July 13, 2022 at 2:00 p.m.

After discussion it was decided that future meeting would cover the following, subject to change

- July 21 – Requested Waivers, traffic and stormwater
- August 25 – Building Design, Building Layout, Affordable/Market, Landscape Plan
- September 29 – Environmental Issues
- Subsequent Hearing Sessions the Third Thursday of Each Month

It was noted that all hearing sessions will commence after other Board matters have concluded. If the Board has no other hearings scheduled for any particular night, the continued hearing sessions for this matter will commence at 7:05 pm. Our objective is to end each hearing session not later than 10:00 pm.

Ms. Duncan noted in response to statements made by Ms. Vandenberg that the CHAPA effort has not been embraced by the town, the accessory apartment provision was voted down at Town Meeting. She also noted that the Walnut Street project is proposed for 200 units but has not been applied for yet, that project will also be required to go before the ZBA, that project requires \$6 million in infrastructure improvements at the intersection of Walnut Street and Route 140 to proceed.

Motion to continue hearing the hearing for a Comprehensive Permit at 119 Morse Street to July 21, 2022 was made by Ms. Mellen and seconded by Mr. Yeghian. The motion carried 3-0-0.

The meeting was adjourned at 10:09 p.m.

Respectfully Submitted,

Diana Gray

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Signed on behalf of the Board

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Kim Mellen, Clerk