



BOARD OF APPEALS
TOWN OF FOXBOROUGH
40 SOUTH STREET
MASSACHUSETTS
02035

**Foxborough Zoning Board of Appeals Minutes
August 25, 2022**

Members present: Members Barney Ovrut and David Brown (at 7:20 p.m.), Associate Member Kurt Yeghian were all present in person, Associate Member Lorraine Brue and Member Kim Mellen were 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.

Minutes

The Board reviewed the minutes of July 21, 2022.

A motion to approve the minutes of July 21, 2022 was made by Mr. Yeghian and seconded by Ms. Mellen. Roll call vote: Lorraine Brue – yes, Kurt Yeghian – yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

7:05 p.m. Request of Crown Castle, Inc. pursuant to the Code of the Town of Foxborough, Massachusetts, Chapter 275: Zoning, for (i) a special permit under Sections 7.2.2.1. and 10.4 to allow the installation of a wireless communication monopole and associated equipment and facilities, and (ii) variances under Section 10.2.2.3. from the dimensional requirements of Sections 7.2.4.1. and 7.2.4.8. The property is located on Washington Street in the S-1 (Special Use) District, and is referenced by the Foxborough Assessors Office as Map 004, Parcel 009. It is not in any restrictive overlay district. Mr. Ovrut appointed Mr. Yeghian as a voting member on this petition. Atty. Ed Pare appeared in person representing the applicant and stated that the applicant has decided not to proceed at this time and asks for a withdrawal without prejudice.

A motion to grant the requested withdrawal without prejudice for a wireless communication monopole on Washington Street was made by Mr. Yeghian and seconded by Ms. Mellen. Roll call vote: Kurt Yeghian – yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

7:10 p.m. Appeal by Attorney Francis Spillane pursuant to Section 10.2.2.1. of the Code of the Town of Foxborough, Massachusetts, Chapter 275: Zoning, of a zoning enforcement decision dated July 14, 2022 from the Town of Foxborough Building Commissioner/Zoning Enforcement Officer stating that a proposed child care center to be located on a vacant lot at 25 Chestnut Street in the R-15 Residential District and the Chestnut-Payson Overlay District requires Site Plan Review and Site Plan Approval by the Foxborough Planning Board. Mr. Ovrut appointed Ms. Brue as a voting member on this petition. Atty. Frank Spillane appeared in person to appeal a decision of Building Commissioner Scott Shippey that a proposed child care center to be located at 25 Chestnut Street would require Site Plan Approval by the Planning Board. There is no application or plans for the proposed daycare at this time before this Board.

Atty. Spillane explained that the property is owned by King Foxboro LLC in the Chestnut Payson Overlay District (CPOD). Atty. Spillane feels that this use is an exempt allowed use under the Dover Amendment. In early July Atty. Spillane met with Mr. Shippey and Director of Land Use and Economic Development Paige Duncan to discuss applying for the child care center and was told it needed to go through the Planning Board, a letter was received from both Mr. Shippey and from Town Counsel. Atty. Spillane feels that this use is an allowed use and cited cases from other child care centers in town such as the Kennedy Donovan Center on Central Street, the Sage School on Chestnut Street, the Bethany Church child care, the Foxborough Regional Charter School as well as additions on the town schools all did not have to go through Site Plan with the Planning Board.

Mr. Brown arrived at 7:20 p.m.

Additionally Atty. Spillane submitted legal cases of Cartwright v. Town of Braintree, 5 Land Ct. Rept. 238 (1997), Petrucci v. Board of Appeals, 45 Mass. App. Ct. 819 (1998), and Shapiro v. Town of Sudbury, Land Court Miscellaneous Case No. 250443 (2000), as well as cases involving Tufts College and Bible Speaks to support his position that the child care use should be allowed without going through Site Plan Approval.

Mr. Shippey's decision was based on Town Counsel's correspondence which stated that site plan review is to regulate a permitted use not to prohibit the use. This review would not violate the Dover Amendment and is a reasonable regulation of the use.

A motion to close the Public Hearing for an appeal that a proposed child care center to be located at 25 Chestnut Street requires Site Plan Review and Site Plan Approval by the Foxborough Planning Board was made by Ms. Mellen and seconded by Ms. Brue. Roll call vote: Lorraine Brue – yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

The Board immediately moved into deliberations. The Board noted that the 2001 case did have a precedent but the laws have changed since that decision and they will be basing this decision on subsequent case law. Ms. Mellen feels that having the elected representatives of the Planning Board review the petition is justified as they have experience to regulate such a use, Ms. Brue and Mr. Yeghian agree.

A motion to reverse the decision of the Building Commissioner as requested in the application was made by Mr. Ovrut and seconded by Ms. Brue. Roll call vote: Lorraine Brue – no, Kim Mellen - no, Barney Ovrut – no, motion failed, therefore the decision of the Building Commissioner stands and the application needs to be submitted to the Planning Board for site plan review.

7:30 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. Ms. Brue disclosed that she had filed a Disclosure of Conflict of Interest with the Town Clerk's office that Bay Colony worked on a special permit application for her that will be going before the Planning Board. The applicant was represented by Engineer Bill Buckley of Bay Colony Group, Consultant Bill Casbarra and Architect Jeremy Lake of Union Studios.

Mr. Ovrut reviewed that additional materials that have been submitted since the last meeting which include a memo from Dylan O'Donnell of Environmental Partners, and email from resident

Terry Howe, a proposed landscape plan from Guerrini Landscape Inc., an email from resident Drew Hoyt and a letter from Atty. Stephanie Kiefer.

A motion to waive the reading of the correspondence received since the July 21, 2022 meeting and to enter the correspondence into the record for the 119 Morse Street hearing was made by Mr. Brown and seconded by Ms. Mellen. Roll call vote: David Brown - yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

Mr. Lake then reviewed the architectural plans with the Board. The site will have duplexes in the front of the property facing the pond and four-plexes in the remaining buildings. They are proposing to have a common greenway in the center with internal walkways throughout the site. The original house will still be seen from Morse Street. They would also like to connect the walkways with the adjoining conservation land. The grove of trees in the front of the property would be preserved and a gazebo feature will be installed near the pond in front of the existing home.

The four-plexes will be two bedroom units and the duplexes will be three bedroom units, there will be ten three-bedroom units as regulations require. All will have attached garages.

Mr. Lake reviewed the landscape plan which will incorporate drought resistant native species and shade trees, they will limit turf to the common area only.

There will be a twelve foot separation between the buildings but may be as close as ten feet in some areas.

Board members asked what type of heating system would be used

Mr. Brown asked about fire apparatus negotiating the roadways, Mr. Buckley stated that an auto turn program is used to be sure fire apparatus is able to negotiate the roadways and the fire department sign off is necessary. The Board also wanted to be sure that the fire trucks could clear the overhead tree canopy.

Mr. Lake stated that all roadways will be two way roadways and the residents will have one car garages and one driveway parking space; there will be locations for visitor parking, street parking will be discouraged. The total number of visitor spaces will be approximately 10 spaces.

School buses will utilize a kiosk near Morse Street and will not enter the property.

Mr. Lake noted that the exterior of the buildings will be matching but will have some variation between them.

Ms. Mellen asked how the landscaping would be watered. There would be an irrigation plan for the first two growing seasons to establish the plantings which would use well water. Ms. Mellen asked that the ground wells to be used be tested for contamination.

Ms. Brue has concerns with the amount of visitor parking being provided.

Director of Land Use and Economic Development Paige Duncan appearing via zoom noted that conventional subdivisions have regulations regarding the length of a dead end roadway, the width of the roadway, the installation of sidewalks, street lighting and street trees as well as drainage and a central mail kiosk.

The roadways will have street lights at the intersections and the buildings will have individual lighting. A sidewalk will be added to the bridge if necessary but they are trying to minimize the activity in the riverfront area.

Building Commissioner Scott Shippey will confirm fire department access with the Fire Department.

Resident Drew Hoyt of 9 Ouimet Lane asked if the vehicle travel model uses real scenarios and visitors to the site.

Resident Ann Marie Anderson of 18 Spring Street has concerns with parking and kids on the site in the driveways.

Jessica Uth of 71 Morse Street asked about the pathways to conservation land, would this be for the general public. They are proposing the pathways on this property to be for the use of residents only, the public can access the conservation land through other properties.

Joan Gallivan stated that this project is overburdening the land, the area is contaminated and the density of this project is too intense. There will be earth removal and the rebuilding of the bridge required as well as installing basements in the buildings this will disturb a lot of the natural environment.

Mr. Buckley stated that the DPW has requested all utilities be installed under the bridge which will be reconstructed to make it wider.

Kathy Vandenboom of 109 Morse Street asked if the front units will have basements, Mr. Buckley explained that the basements will be walkouts at the existing grade currently there, some fill will be needed in the front but there will be no fill in the flood plain. Ms. Vandenboom also noted that there are school buses such as the late bus that drop the kids off in the middle of the street on Morse Street, the kids would be walking back to the development.

Mr. Ovrut stated that he would like answers from the Fire Department in regards to access by the September meeting as well as Bay Colony responses to the Environmental Partners engineering review letter.

An invoice in the amount of \$10,376.25 has been received from Environmental Partners for review work done from July 2, 2022 to July 29, 2022.

A motion to authorize payment of the Environmental Partners invoice from the 53G funds for 119 Morse Street was made by Mr. Brown and seconded by Ms. Mellen. Roll call vote: David Brown - yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

The escrow amount in the account has now fallen below \$5,000 and will need more funds from the applicant. The Board requests that the applicant submit \$10,000 to replenish the 53G account by the September meeting.

Regulations require that the public hearing for a 40B application be closed within 180 days of the opening of the public hearing which would be in mid-December. Mr. Ovrut asks that an extension be granted to close the hearing by January 19, 2023 which would be the ZBA regularly scheduled January meeting.

Ms. Mellen asks that lighting be used that will not be offensive to wildlife, she would like to know the difference between a Phase 1 Environmental Assessment (ESA) and a Massachusetts Contingency Plan (MCP), she asks that since the applicant is proposing groundwater wells to be used for irrigation that the groundwater be tested for contamination, as well as a determination

which way the groundwater flows. She also has concerns that if the basements flood would the water be contaminated and if the ESA is usually a visual inspection.

Motion to continue the hearing for a Comprehensive Permit at 119 Morse Street to September 29, 2022 was made by Mr. Brown and seconded by Ms. Mellen. Roll call vote: David Brown - yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

The meeting was adjourned at 9:55 p.m.

Respectfully Submitted,

Diana Gray

Signed on behalf of the Board

Kim Mellen, Clerk