



BOARD OF APPEALS
TOWN OF FOXBOROUGH
40 SOUTH STREET
MASSACHUSETTS
02035

**Foxborough Zoning Board of Appeals Minutes
September 29, 2022**

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

Minutes

The Board reviewed the minutes of August 25, 2022.

A motion to approve the minutes of August 25, 2022 as amended was made by Mr. Brown 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 Annual Conflict of Interest Form has been received from the Town Clerk's office, they ask that all members sign that they are in receipt of this form.

Request of Philadelphia Sign Company for Special Sign Permits pursuant to the Code of the Town of Foxborough, Massachusetts, Chapter 213: Signs, to allow (i) wall signs on a building that will exceed the number permitted, and (ii) a monument sign that will exceed pertinent dimensional requirements and will replace an existing monument sign. The building on which such signs are to be installed is situated at 4 Cocasset Street, Foxborough, in Sign District 3. Pierre Gielinas of the Philadelphia Sign Company was present in person. Mr. Gielinas explained that this petition is for signage for the Citizen's Bank which will be relocating to 4 Cocasset Street from their location in the Stop and Shop Supermarket. Most of the signage being requested is allowed by right, but there are three signs which require a permit from the Board under the Sign Bylaw. The first is for a monument sign for the bank which will be located approximately three feet from the property line next to the entrance of the building on Cocasset Street. Mr. Gielinas noted that the existing signage for the previous business located on the driveway to the building on Cocasset Street will be replaced with a directional sign. The other two signs requiring special permits are on the rear of the building, one is a 2' x 2' bank logo along with the word Citizens and the other is a logo sign on the chimney of the building. The monument sign will internally illuminate the letters on the sign during business hours. Mr. Shippey appearing via zoom noted that this location is not asking for an ATM at this time. He also noted that they are not required to go before the Planning Board for Site Plan Review or to the Design Review Board.

There were no abutters present.

A motion to close the Public Hearing for a Special Sign Permit at 4 Cocasset Street 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 Board immediately moved into deliberations. The Board discussed that fact that there are other banks located around the Common and the signage allowed should be similar for all. The Board feels that there are too many signs being asked for compared to the other banks around the common. The Board is in agreement with the proposed monument sign but feels that there will be too many signs on the rear of the building. Mr. Gielinas offered to remove the request for the logo sign on the chimney but asked that the other signage be allowed as identification of the building for vehicles traveling towards the center on Mechanic Street .

A motion to approve the requested monument sign shown as E1 on the submitted plans for 4 Cocasset 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.

A motion to approve the requested bank logo and Citizens wording sign shown as N4 on the submitted plans for 4 Cocasset Street was made by Ms. Mellen and seconded by Mr. Brown. Roll call vote: David Brown – yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

Request of Jozef Karman seeking a Special Permit under Section 5.4.2. of the Code of the Town of Foxborough, Massachusetts, Chapter 275: Zoning, to allow an increase in the nonconforming nature of the existing single family home with the construction of an attached two car garage with a proposed rear setback that is greater than the existing single-family home rear setback but does not meet the required rear line setback. The property is located at 40 Pleasant Street, Foxborough in the R-15 Residential and Agricultural District. It is not located in any restrictive overlay district.

Jennifer Karman, wife of Jozef Karman and General Contractor Joseph Norte appeared in person. This petition is to add a two car garage addition with a room above via a breezeway to the existing home. The existing house is a pre-existing non-conforming structure with a rear yard setback of 17.2 feet, the proposed addition will be 17.5 feet.

Ms. Karman stated that the room above the garage will be a bonus room and bathroom for her two children, the existing interior stairs will be used for access. The addition will add 625 sq. ft. of living space to the existing home of 1,584 sq. ft. which will be an approximate 39% increase in the habitable floor area.

There were no abutters present.

A motion to close the Public Hearing for a Special Permit at 40 Pleasant Street 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 Board immediately moved into deliberations. Mr. Ovrut noted that they are not intensifying the non-conformity of the setback but since they will be increasing the habitable floor area by more than 25% this triggers the need for a special permit.

A motion to approve Special Permit for an addition at 40 Pleasant Street with conditions that the proposed addition of a 25' x 25' two-car garage with a habitable floor area of 625 square feet above the garage addition and a 12' x 12' breezeway attached to the existing structure shall be constructed as shown on the submitted architectural plans; the location of the proposed addition shall be as shown on the submitted land plans and the proposed addition will match the external features of the existing home was made by Ms. Mellen and seconded by Mr.

Brown. Roll call vote: David Brown – yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

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 and Architect Jeremy Lake of Union Studios all appearing in person.

Mr. Ovrut reviewed that additional materials that have been submitted since the last meeting which include a truck turning plan from Bay Colony, a memo from Deputy Fire Chief Dave Laracy, memos from Environmental Partners, a superseding ORAD from Mass DEP and numerous emails from town residents.

A motion to waive the reading of the correspondence received since the August 25, 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. Ovrut also noted that the applicant has signed a document allowing an additional hearing in January 2023 if necessary as requested at the last meeting.

Deputy Chief Dave Laracy and DPW Director Chris Gallagher then addressed the Board.

Mr. Laracy stated that he is agreeable to the bridge being widened to 20 feet as shown in the plan prepared by Mr. Buckley, Morse Street is currently 20 feet wide. A walkway of 4 feet has also been added to the latest plan.

Mr. Brown asked about the ladder trucks and if they carry water on the trucks. The bridge was designed using Mansfield's largest truck, which is about 80,000 pounds GPW.

In regards to parking of cars on the internal roadway, Mr. Laracy stated that there are issues in the Summerfield development with cars parking on one side of the roadways there, there is signage there stating temporary parking only, but currently there is no definition of temporary parking, is it hours versus days, parking restrictions are not able to be enforced without a definition. Mr. Laracy also noted that parking on roadway turns should not be allowed as it is hard to turn firetrucks around the corners.

The roadway in this development will be a private road not owned by the town, generally Town Counsel reviews the HOA documents for compliance for 40b projects. Mr. Laracy does not think one way traffic is necessary in the development, as long as parking is only allowed on one side of the roadways.

Mr. Ovrut asked about the space between buildings currently proposed as 10 – 12 feet, Mr. Laracy has no issues with that distance as there are enough hydrants proposed for the development. The main issues the fire department had were with the bridge being able to handle the weight of fire apparatus, the width of the bridge roadway, and potential for vehicles parking on the roadways.

Mr. Brown asked about the canopy of trees, trimming and maintenance up to 14.5 feet is recommended.

Mr. Laracy noted that the submitted turning plan is acceptable for current and future fire vehicles. He also asked that snow removal off the road be required at all times.

Mr. Gallagher then addressed the request from current residents for sidewalks on Morse Street, sidewalks are expensive to install per linear feet, it is a funding issue so most likely will not ever be done to that extent. If a way was ever found to fund a sidewalk, eminent domain would come into play and the utility poles would also impede installation of sidewalks. There are currently no plans to widen Morse Street.

Mr. Laracy stated that sidewalks on the bridge is a huge extra, there are no requirements under fire standards to include a sidewalk. Mr. Laracy feels that all fire safety issues have been addressed.

Mr. Gallagher explained that hydrants and water lines in the area, Environmental Partners looked at the system for the DPW in August 2021, there is currently a 6 inch line running through conservation property for Morse Street and fire hydrants currently require 8 inch lines. There are also water quality issue with dead ends in the lines; there are over 200 dead ends in the water lines in Foxboro, any dead ends that are removed are a benefit to surrounding areas. They would like the 6 inch line replaced with an 8 inch line and a secondary line run to Morse Street to loop the system which will benefit water quality in the area. The latest plan design removes the water line work from the wetland areas but it was noted that there are easements in the conservation area that should have been maintained over the years and now some trees will need to come down to maintain the easement.

When asked about where the sewer line for the project would be located, a final decision on whether it will be below the river or under the bridge has not yet been decided. The sewer system on site will be a private and the HOA will be responsible for maintenance. The town will own the hydrants and the water line.

Joan Gallivan asked if Morse Street residents are allowed to tie into the sewer system. Mr. Gallagher stated that in the past they were not as Mansfield has reached their system capacity, but in recent years, the plant has been upgraded and more capacity is now available, residents can request to be added to the district by the Board of Water and Sewer Commissioners as there is more than enough capacity available.

Bill Cook of 112 Spring Street asked if there is enough water available in town. Mr. Gallagher stated that the water restrictions in town are required by Mass DEP as part of the water management act permit set for the Witch Pond Treatment Plant. These restrictions have been in place since 2008 and will remain even though the town has added more new wells since then, currently there are 12 wells online and all are being filtered.

Mr. Gallagher noted that a major leak was recently found on Payson which was leaking approximately 500,000 gallons per day, since that leak was repaired it was found that the town is drawing 100 million gallons less than we did a year ago. Any new developments in town will use substantially less water than 500,000 gallons per day.

Mr. Cook commented that Spring Street has no sidewalks and County Street has bad sidewalks; he feels that the town should be taking care of existing roads before any new developments.

It was asked how visitor parking spaces were determined. Mr. Lake stated what was required in the zoning regulations was provided but they have increased the visitor spaces to fifteen spaces, more than what is required.

Resident Karl Vandenoorn had questions about the sewer capacity, he noted there was talk of a large project in Sharon that would max out the capacity. Mr. Gallagher stated that a proposed project in Sharon required them to run a hydraulic model in the area and that model showed segments that would be at maximum design capacity, which is 50% flow. The system would need to be upgraded in those sections, whichever project is approved first will be required to upgrade approximately 250 feet of sewer lines.

Mr. Vandenoorn stated that the turning model seems to show fire trucks driving on lawns to turn. Mr. Buckley stated that equipment will not be driving on lawns, Environmental Partners has reviewed the plan and had no issues to that effect. Mr. Vandenoorn also mentioned potential issues with snowbanks.

Mr. Vandenoorn then mentioned the fact that the water lines to Morse Street and Spring Street end in conservation areas and cut 25 feet through the woods and wetlands, he also noted that the water main has broken three times since they lived there.

Mr. Buckley then reviewed the revisions to the plans since the last meeting. The additional sidewalks will need to come through conservation land, the ZBA decides on the bridge width which has been widened to 20 feet and with an additional 4 feet of sidewalk, under the Wetlands Protection Act the ZBA decides appropriate access under a limited project and the Conservation Commission has to abide by that decision. The entrance to the site on Morse Street will also have a school bus shelter as per the school department comment. A mail kiosk is also required from the Post Office. Three additional visitor parking spaces have been added between buildings F and G and two additional spaces in another area for a total of fifteen visitor spaces. The zoning table for parking has been added to the plan showing 102 parking spaces required and 117 parking spaces proposed.

Street lights have been added to the plan they will be residential lamp posts approximately 12 feet high, approximate locations of transformers and propane tanks have also been added; National Grid decides the final placement of transformers and propane was added as there is no natural gas line on Morse Street currently. Further details on drainage, water and sewer have also been added for Environmental Partners review.

Mr. Buckley then noted that as a result of the DEP's Superseding ORAD two duplexes have been removed as they are now in the riverfront which reduces the overall count from 52 units to 48 units, a portion of one of the fourplexes is also in the riverfront area but they are still working on options for that building. The affordable units will be reduced from 13 to 12.

The area where the duplexes were removed could be used for recreation or a playground but no buildings or pavement are allowed.

Mr. O'Donnell of Environmental Partners has no issues with the truck turning plan and is in agreement with Mr. Buckley's summary of the plan changes.

Kathy Vandenoorn stated that they would like to see all buildings in the riverfront area be removed as a result of the superseding order.

Mr. Buckley stated that they will file under the WPA to the Conservation Commission for any variances to the fourplex as portions of the building would be in the buffer zone or riverfront area to determine what activity would be allowed.

Mr. Casbarra then introduced Jim Parker of Nangle Consulting who conducted the Phase 1 Site Assessment for the applicant. He summarized the assessment which included a review of records, a site inspection and assessment; offsite conditions were not reviewed. Two areas on site were assessed where underground storage on the property was thought to be at one time,

ground penetrating radar showed no evidence of tanks on the site presently but evidence that there was at one time. Test pits in that area had no triggers for further action. Mr. Parker noted no environmental conditions on this property. As far as the nearby bleachery property, Mr. Parker did work there in the early 2000's and is familiar with the site. As part of assessment of groundwater Mr. Parker looked at databases to search for the direction of the groundwater. He concluded that all other flows from surrounding sites are down gradient and do not affect this site. DEP has been involved with the beachery site since the 1970's. All levels of contaminants found are below drinking water standards for the surrounding sites.

Mr. Brown asked about Summit Castings, another nearby site. That site has casting sand used for molds with lead, copper and other metals. Samples for metals, monitoring wells and test pits were studied on that property in the past.

Mr. Parker assessed the test pits around the areas of the old garage looking for underground storage and there was a drain in the garage floor.

Mr. Brown asked if anything was found in the future what would be remediation; Mr. Parker stated that it would depend on what is found if it could be removed, would have to be contained or other measures taken.

Mr. Parker stated that they look for potential environmental hazards in the air, water and soil; they look for evidence that there is a problem driven by risk, lab samples were taken in the areas he mentions and nothing was identified that required further action.

Ms. Mellen asked about water from wells proposed to be used for irrigation, she has concerns with what could be in that water.

Mr. Buckley read from the Foxboro Board of Health Private Well Regulations which require water quality testing by a certified lab for items such as arsenic, iron, lead and manganese; further the BOH requires of wells drilled downgradient of a hazardous materials area additional testing for inorganic compounds, synthetic organic compounds, and volatile organic compounds as well as even further testing when deemed appropriate.

Molly Cote from Environmental Partners who reviewed the site assessment report as well as additional information available from Mass DEP. She referred to a screening audit report from DEP in 2019 which called for additional assessment for specific lots including lot 3702 which is the lot in question here. As this site is a former industrial use being change to a residential use there are different criteria to what you look for, what concentrations are allowed for a residential use versus an industrial use. She knows of other projects in the state where individual property owners become the responsible parties because necessary assessment wasn't done ahead of time. She recommends that before construction additional assessment of soil and groundwater testing be conducted so as to not expose future residents to risk. Regardless of the bleachery and summit casting testing, further testing assessments should be prudent and necessary.

Mr. Parker stated that his review showed that this property has no indication of industrial or commercial activity, this was always residential. Summit Castings was located SE of this site, 119 Morse is not parcel 3702, he feels that parcel 3702 referred to the Bleachery which is located on 22 acres. At one time 119 Morse was under contiguous ownership with that parcel but there was never any industrial activity on this parcel; if there were the issue would have been raised. Ms. Cote still thinks more testing should be done for residential uses, soil and groundwater assessment.

Karl Vandeenboom, stated that he has aerial photos from 1961 showing roads from industrial property to the residential as well as striation pits near the vernal pool area. The DEP found the worst contamination is in the NE corner of the Bleachery site. A town report from 1983 also

noted that a property owned by Mr. Ricard buried hazardous waste on his site which is higher ground and flows towards the conservation land in his opinion. He also has aerial photos from 1974 that show this site. The Porter site also in the vicinity which sent contaminants to the Rumford River. 119 Morse Street is surrounded by pollution in his opinion. Mr. Vandeenboom will submit the photos to the Board he is referring to.

Resident Drew Hoyt on Zoom asked to be heard. Mr. Ovrut spoke to Mr. Hoyt in regards to comments in his letters referring to Board favoritism; Mr. Ovrut has been on the ZBA for 27 years, in that time 17 individuals have worked with the Board, including 6 Building Commissioners, 4 Town Planners and numerous secretaries. Mr. Ovrut feels that all of those individuals could attest that the ZBA has never shown favoritism towards anyone. Mr. Ovrut feels to make these written comments is baseless, insulting and defamatory. The Board wants to hear if there is any factual evidence to demonstrate a problem with the property that is not an opinion or supposition, just facts. Mr. Brown agrees with Mr. Ovrut and stated that if anyone feels there is a problem with the ZBA they should talk to the town manager.

Drew Hoyt stated that he worked at DEP in the past, Mr. Parker's presentation and report discussed regional groundwater flow, Mr. Hoyt stated that groundwater flow direction for local groundwater is needed, that flow is variable. The closest data he has found shows it going south. He thinks the Board should look at the data collected at the Porter site which showed the groundwater going south, southwest and southeast. Mr. Hoyt reiterated that local groundwater flow needs to be determined, he feels that the flow as generally southerly would be a fair characterization. When you look at contamination documented at the northeast corner of the Bleachery parcel, the environmental report shows it extending further easterly from that location, south from that area is this site and that is a reason for concern. Mr. Hoyt feels that you cannot just say that there is no proof, data needs to be collected. The town's peer review indicated the same thing, if the applicant and his consultant are confident there are no issues, there should be no objection to additional soil and groundwater sampling rather than leaving a question if there are environmental contaminants.

Mr. Ovrut stated that the Board has been concerned with this issue from the start, Mr. Ovrut will look at the Board of Health regulations but he feels that from a legal standpoint, the Board has no authority or jurisdiction over state regulations and he is therefore hesitant and reluctant and opposed to testing at this time. Perhaps it can be performed under BOH regulations but the Board cannot impose testing under state regulations. The Board can impose appropriate conditions and Mr. Ovrut would recommend that position to the Board

Mr. Cook stated that he once had a dog that fell in a pit on the property and six months later died of cancer, he feels it was because of the contamination on the property.

Mr. Ovrut suggests a working session to discuss waivers with the applicant, Ms. Duncan, Ms. Barrett and one ZBA member, Mr. Casbarra will coordinate that meeting through Ms. Duncan.

The next hearing will be on October 20, 2022, we will continue the discussion on the environmental issues and Mr. Ovrut asks the other Board members to submit any other issues they have that need to look at as a Board.

Motion to continue the hearing for a Comprehensive Permit at 119 Morse Street to October 20, 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.

A motion to adjourn the meeting was made by Mr. Brown 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 9:57 p.m.

Respectfully Submitted,

Diana Gray

Signed on behalf of the Board

Kim Mellen, Clerk