



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

**Foxborough Zoning Board of Appeals Minutes  
October 20, 2022**

Members present: Members Barney Ovrut, and Kim Mellen, 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.

**Minutes and General Business**

The Board reviewed the minutes of September 29, 2022.

A motion to approve the minutes of September 29, 2022 was made by Ms. Mellen and seconded by Mr. Yeghian. Roll call vote: David Brown – yes, Lorraine Brue – yes, Kurt Yeghian – yes, Kim Mellen - yes, Barney Ovrut – yes, motion passed.

Mr. Ovrut mentioned that the Citizens Planners webinar courses are coming up soon and there are courses on Special Permits and Variances as well as Non-Conforming Uses that members may find helpful.

Town Planner Paige Duncan informed Mr. Ovrut that the Fall Town Meeting has been moved to January 2023 the only Zoning item on that agenda will be to change all references of Board of Selectmen to Select Board. Mr. Ovrut will be meeting with Ms. Duncan, Ms. Jordan and Mr. Shippey to discuss zoning changes for the Annual Town Meeting in May 2023.

**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 Architect Jeremy Lake of Union Studios (on Zoom).

Mr. Ovrut reviewed the additional materials that have been submitted since the last meeting which include photos and emails from residents, a report from Nangle Consulting, revised plans from Bay Colony, and a letter from Atty. Stephanie Kiefer.

A motion to waive the reading of the correspondence received since the September 29, 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. Lake then reviewed the revised plans. The riverfront setback area has been extended based on the decision by Mass DEP, this results in a loss of two duplexes and one four-plex. The plans have been revised to change the four-plex to a stacked duplex which was rotated so that only a small portion is in the riverfront area. The total number of units has been reduced from fifty two to forty six with twelve affordable units, down from thirteen. There are no further changes to the layout of the remaining units.

Resident Kathy Vandeenboom asked if that is the minimum density they are willing to move to (46 units). Mr. Casbarra confirmed the amount of units.

Resident Drew Hoyt questioned the parking areas on the site. Mr. Lake stated that the plan being shown is an illustrative plan not engineered plans showing all details.

Resident Kathy Vandeenboom also had questions on the parking and the proposed garage for the existing home.

Mr. Ovrut asked about Conservation issues. Mr. Buckley explained that an application will be necessary for the Conservation Commission for the bridge work as a Limited Project in the Riverfront Area, meaning that there is only one way to access the property and ZBA has the authority under the Wetlands Protection Act to determine the adequate access. The access way bridge will be a twenty foot wide road with a four foot sidewalk; the current bridge will need to be reconstructed and an application will be filed with the Conservation Commission as a Limited Project in the Riverfront Area. There are criteria to be met with that application. There was a previous commercial permit from the Conservation Commission on this property which was reviewed as a Limited Project.

The driveway will need to be expanded and a portion of Building I will also be in the Riverfront, the Wetlands Protection Act (WPA) allows for alterations up to 10% in the Riverfront Area. This is also considered a previously developed site and redevelopment of a previously altered area is allowed under the WPA. Mr. Buckley has spoken with the Conservation Agent who stated that alteration of more than 10% in the riverfront would require mitigation at a 2:1 ratio, as an example, if 70,000 sq. ft. is in the riverfront area, up to 7,000 sq. ft. is allowed to be altered, but if that amount goes over 7,000 sq. ft. then mitigation at a 2:1 ratio is required. Mitigation could include the removal of invasive plants, planting of native plants or cleaning up the riverfront area. The mitigation would be decided by the Conservation Commission during their hearing process.

In regards to Floodplain, alterations in the Floodplain which on this property is near Buildings 1 and 2 results in the need for compensatory storage elsewhere on the property, if you fill 1,000 sq. ft. in the Floodplain that would require 1,000 sq. ft. of soil be scooped out elsewhere on the property for flood storage. There will also be work within the 100 foot wetland boundary of the Bordering Vegetated Wetlands (BVW) and Bank that requires a filing with the Conservation Commission.

The Zoning Board is charged with the activity that is in the twenty five foot No Disturb Zone (NDZ) for Building J, the twenty five foot NDZ is part of the Conservation Commissions Local Bylaw which is waived during the 40B process.

Ms. Mellen asked about the fill needed for Building 1, that would be under the WPA and in the jurisdiction of the Conservation Commission.

The 25 foot NDZ is the only item of Conservation that is on the waiver list, the other Conservation boundaries would be 100 feet from a vernal pool (none on the site) and 150 feet from wetlands to a septic system (no septic systems are proposed).

Ms. Vandeenboom stated that wetlands are important and not just something to be dealt with.

Mr. Casbarra stated that the applicant has voluntarily agreed to soil testing on the site, a memo from Atty. Keifer with the scope of work from Mr. Parker of Nangle Associates was sent to the Board.

Mr. Parker explained that four to six monitoring wells will be installed around the property and soil testing of samples will be sent to a lab for analysis for VoC's and various compounds and metals. The work is currently scheduled to be done on November 18, 2022 with results by early December. Samples will be sent to an independent lab and Mr. Parker will write a report of the results. They will test 6-8 borings and 4-6 monitoring wells on the northern and western property lines as well as the middle of the site. The analysis tests against DEP thresholds and if any are exceeded a report to DEP is required, the property owner would then determine his risk, and work with the DEP on mitigation needed and implementation of the mitigation work. The work onsite would find the groundwater levels and then go 6-7 feet down from that level .

Molly Cote from Environmental Partners (EP) stated that she has reviewed the proposed work to be done by Mr. Parker. She commented that there are details not in the scope like where the samples will be collected from, but the locations are usually based on field observations; she would like to see shallow samples collected also. She agrees that if anything is found it needs to be reported to DEP. She asks if the wells will be temporary and samples collected at the same time. She worries that labs may be delayed with the upcoming Thanksgiving Holiday. Mr. Parker stated that 2 inch monitoring well will be installed and sampled a week later. Mr. Parker acknowledges that there are delays, that is why he proposes working with two labs hoping that one will be able to get the work done, he still thinks it will be done the first or second week of December. Ms. Cote thinks this is a reasonable approach, more soil samples would be preferable, but this is a good effort to start evaluating the soil and groundwater. Mr. Parker says that screening will also be done in the field, he expects up to 40 samples in the field. The scope could also be expanded if anything is seen or found on the site, shallow soils will be tested in the field.

Ms. Vandeenboom, asked if Ms. Cote could witness the borings being done by Mr. Parker.

Ms. Duncan stated that Licensed Site Professionals have a professional obligation of conduct in the field.

Resident Tom Hunt of 206 East Street asked about an independent contractor working for the town. Mr. Ovrut stated that the town cannot retain a firm for testing, the ZBA can request the applicant to performing testing and have it peer reviewed under 40B regulations.

Joan Gallivan 9 Cannon Forge, commented that this area of the Rumford River goes through all the properties in the past used for the town dump and other contaminated areas.

Ms. Mellen asked for an explanation of a Licensed Site Professional (LSP). The LSP designation was created in 1993 to oversee assessment and clean-up of hazardous sites; up until that point the DEP had to do all the work. A LSP has sufficient education, training and experience; they figure out sources of contaminants on properties, the impacts to property, the delineation of the contaminants on the property, the evaluation of the risk and help construct remediation programs and then help oversee those programs. Property owners are legally bound to report to the DEP if contaminants are found above the allowed amounts, usually through the LSP. If all tests are under the limits, no reporting is required to DEP.

Mr. Parker stated that he has no allegiance to a client, his reputation and professional liability is on the line, he has liability insurance also. He has 32 years' experience in the business, he has professional ethics to abide by, his license is his livelihood.

Ms., Vandenkoorn stated that she was not questioning the LSP ethics, she is just asking that the testing be thorough.

Mr. Ovrut stated that in regards to timing, a working session is needed to discuss the waivers, and given the timeline for the soil testing, he suggests continuing the hearing to December 15, 2022 and requesting the applicant to grant an extension to close the public hearing to February 16, 2023.

A motion to request an extension from the applicant of the date to close the Public Hearing from January 19, 2023 to February 16, 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 continue the hearing for a Comprehensive Permit at 119 Morse Street to December 15, 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 8:07 p.m.

Respectfully Submitted,

Diana Gray

\*\*\*\*\*

Signed on behalf of the Board

\_\_\_\_\_  
Kim Mellen, Clerk