

MINUTES OF THE PUBLIC MEETING
SUDBURY BOARD OF APPEALS
Tuesday, July 31, 2012

The Board consisted of:

Elizabeth T. Quirk, Chair; Benjamin D. Stevenson, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft; and Jonathan F.X. O'Brien.

Also:

Paul Haverty, Attorney, Regnante, Sterio & Osborne LLP

Ed Marchant, Consultant

Jody Kablack, Director of Planning and Community Development

For the Applicant:

Robert Moss, Madison Place Sudbury LLC

Steven Schwartz, Goulston & Storrs

Ms. Quirk, ZBA Chair, called the meeting to order. The Board was in previous receipt of a revised draft of a decision for Comprehensive Permit 11-40 as prepared by Attorney Haverty. Comments from the ZBA's consultants Fred King, Joe Peznola, and Ed Marchant, along with comments from the Director of Planning and Community Development, Jody Kablack, had also been received and incorporated into the master draft. The applicant's attorney had also reviewed the decision and submitted revisions to the Board.

Planning Director Jody Kablack then led the Board page-by-page through the decision. Board members noted where they had questions, needed clarification, or wanted to make changes to wording and eliminate redundancies. They discussed areas where it was appropriate to include the applicant's language.

Ms. Kablack noted a change to the handling of mitigation efforts that Mr. Moss had agreed upon. As the Conservation Commission eventually declined to include various conservation projects in its final decision on the applicant's Wetlands Protection Act Notice of Intent application the ZBA would instead include the projects as part of its decision. The conservation projects include the eradication of invasive species in King Philips Woods and on Nobscot Mountain and the building of a tool shed at the Town's community garden on Concord Road. The sum of money Mr. Moss would contribute toward traffic mitigation would be \$75,000 which is larger than his required share which would have been in the \$50,000 range.

There was additional discussion about the handling of the leaching area in the meadow. The Board articulated its desire that the area remain as natural as possible so that the view from Landham Road is not compromised. Mowing would occur twice per year.

Lighting plans were discussed and it was noted that the ZBA would be reviewing and approving any landscape and lighting plans in the future.

A discussion ensued about construction phasing which would happen in two parts with the Board reviewing each phase. Performance Bonds in the amount of \$50,000 would be required per phase.

In regard to the Tennessee Gas line the Board requested written proof that Mr. Moss has given Tennessee Gas notification of the project.

The Board then discussed the recent submittal of comments from Jonathan Witten, the neighbors' attorney, that he sent via e-mail after his review of the draft decision. Attorney Witten had requested that the ZBA include two conditions in the decision. The first condition stated: "The applicant and its successors or assigns shall install and maintain a ten foot high wooden fence on the southern border of the development and abutting properties. The fence shall be at least 550 feet in length starting near wetlands marker BB-48 heading east along the cart path to near marker AB-1 and then northeast to marker AB-6. Said fencing shall also be extended along the guardrail near marker AB-6 heading northeast to near marker AB-23."

The second condition stated: "No tree clearing, land disturbance or site alterations of any kind shall occur within forty (40) feet of any property boundary or land not owned by the Applicant or its successors or assigns, as of the date of this Decision."

In their discussions the Board estimated that the fence could actually be 920 feet long and would be situated on top of the landscaped berm which is already four to five feet high. The height was compared to a highway noise reduction wall which would greatly impact the residential character of the area. Most homeowners in Sudbury build six-foot fences, not ten. Mr. O'Brien questioned how wildlife would get through a solid ten foot wooden privacy fence.

Mr. Moss explained that he had experience building a fence for one of his Avalon projects at the request of neighbors and in the end the neighbors were unhappy with the look of the fence and with having to maintain it. He said that his landscape plan would contain vegetative screening which is far superior of a screening mechanism.

Ms. Quirk noted that Mr. Witten had suggested that the fence would mitigate noise either from traffic, the residents or development operations. Mr. Moss said that the parking and roads would be on the other side of the units, away from the abutters. The berm itself would be ten to fifteen feet wide itself creating distance so with vegetative screening and the height of the trees on top of the berm the neighbors should not see much of the buildings at all. He added that seeing the bare fence in winter would be extremely unsightly.

The Board agreed that the fence was not needed given that an approved landscape plan would be filed and adhered to. The fence would run into wetlands, blocking wildlife passage. They did not feel that the noise argument was valid. Mr. Gossels questioned whether air conditioning compressors could be heard and Mr. Moss noted that the closest abutter's house at the rear of the site was approximately 800 feet away. The berm would also rise higher than the air conditioning compressors and would serve as a shield from noise.

Attorney Haverty noted that there was a state law against building "spite fences," which he read to the Board. He said that if the applicant were proposing the fence that the neighbor did not want then the neighbor would have recourse. Neighbors, however, have a right to build their own fences.

All of the Board members were against adding the condition that would require the fence as described by Attorney Witten.

The Board then discussed the fact that the forty-foot setback request would essentially be the equivalent of issuing a denial since many fundamental aspects of the project could not be engineered if the developer had to adhere to those setbacks. The Board therefore declined to include that condition as well.

Upon completion of the review of the draft decision, a motion was made, seconded, and with a vote of three to two the Board approved the decision as drafted, with the amendments as discussed. Ms. Quirk, Mr. Gossels, and Mr. Klofft voted in favor of approval and Mr. Stevenson and Mr. O'Brien voted against approval. The Board then signed the decision to approve the application of Madison Place Sudbury, LLC for a comprehensive permit under the provisions of General Laws chapter 40B, sections 20-23, inclusive, to permit the construction of one hundred and twenty (120) apartment units of affordable housing in ten (10) structures, subject to the modifications and conditions included herein, including the reduction of the Project to fifty-six (56) townhouse apartment rental units in ten (10) principal structures, on land owned by the Johnson Living Trust, Peter Johnson, Trustee, consisting of approximately thirty-five (35) acres of land located at 189 Landham Road, Town Assessor's Map L10, Parcels 0500 .

The meeting was then adjourned.

Elizabeth T. Quirk, Chair

Jeffrey P. Klofft

Benjamin D. Stevenson, Clerk

Jonathan F.X. O'Brien

Jonathan G. Gossels