

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
Wednesday, March 28, 2012

The Board consisted of:

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

Also:

Jody Kablack, Director of Planning and Community Development
Paul Haverty, Attorney, Regnante, Sterio & Osborne LLP
Ed Marchant, Consultant
Joe Peznola, Hancock Associates

For the Applicant:

Robert Moss, Madison Place Sudbury LLC
Peter Tamm, Goulston & Storrs
Paul McManus, EcoTech, Inc.
Glenn Dougherty, Tetra Tech

Ms. Elizabeth Quirk, Chair of the Zoning Board of Appeals, re-opened the hearing.

She read the list of documents received Documents Received for the March 5 and March 28, 2012 Meetings which included:

- 2/15/2012 – Letter from Michael and Meridith Palmer, 62 Cutler Farm Road, to the ZBA
- 2/16/2012 – e-mail from Frank Huntowski, 42 Cutler Farm Road, to the ZBA
- 2/17/2012 – e-mail from Sharif and Colleen Labib, 9 Stagecoach Drive, to the ZBA
- 2/17/2012 – Civil Engineer Peer Review from Joe Peznola, Hancock Associates
- 2/24/2012 – Letter from Bill Miles, Sudbury Fire Chief, to the ZBA
- 2/27/2012 – Memo from Fred King, Schofield Brothers, to the ZBA
- 2/29/2012 – E-mail from Adele Coyne, 46 Eddy Street, to the ZBA
- 2/29/2012 – Extension of Time Form from Bob Moss to the ZBA
- 3/1/2012 – Memo from the Sudbury Valley Trustees to the ZBA
- 3/5/12 – Alternative Layout Plan dated 3/12/2012
- 3/8/2012 – e-mail from ZBA Member Jon Gossels to Jody Kablack
- 3/9/2012 – E-mail from Debbie Dineen, Conservation Coordinator, to the ZBA
- 3/13/2012 – Letter from John Whalen, Assistant Fire Chief, Sudbury Fire Department, to the Jody Kablack/ZBA
- 3/12/2012 – Alternative Layout Plan, including elevation and floor plan dated 3/19/2012
- 3/15/2012 – Memo from Paul McManus, EcoTec, Inc., to the ZBA
- 3/16/2012 – Memo from Maurice Pilette, Mechanical Designs Ltd., to the ZBA
- 3/19/2012 – Memo from Peter Tamm, Goulston & Storrs, Response to the Fire Department Letter dated February 24, 2012, to the ZBA
- 3/21/2012 – Memo from Glenn Dougherty, Tetra Tech, to the ZBA
- 3/21/2012 – Revised Site Plans (original plan)

- 3/21/2012 – Revised HydroCAD Drainage Calculations and Watershed Maps
- 3/22/2012 – Memo from Fred King, Schofield Brothers, to Jody Kablack/the ZBA
- 3/22/2012 – Memo from Joe Peznola, Hancock Associates, to Jody Kablack/the ZBA
- 3/26/2012 – Memo and Notice of Decision from Jonathan Witten, Huggins and Witten, to the ZBA
- 3/26/2012 – E-mail from Frank Huntowski and Kim Odgen, 42 Cutler Farm Road, to the ZBA
- 3/27/2012 – Memo from Jody Kablack, Director of Planning, to the ZBA
- 3/27/2012 – Memo from Paul Haverty, Regnante, Sterio & Osborne, LLP, to the ZBA
- 3/27/2012 – Memo from Dan Martni, 86 Brookdale Road, to the ZBA
- 3/28/2012 – Letter from Bob Moss to the ZBA
- 3/28/2012 – Extension of Time Form from Bob Moss to the ZBA

Mr. Gossels gave a report on the work session he attended on March 8, 2012. He said that the meeting was both professional and productive and noted that Mr. Moss had presented an alternative New England style town house plan with 64 units, which he felt constituted a big change from the 120-unit plan. He added that after the working session Mr. Moss further provided a revised alternative plan which incorporated suggestions from that meeting including a few units with first floor master bedrooms that could accommodate elderly residents or persons with disabilities.

Mr. Moss said that he prepared the alternative plan in order to meet the ZBA's concerns with the proposed 120-unit plan. His intent was not to simply reduce the 120-unit garden style plan by half, which would make that project uneconomic. Instead he came up with the townhouse plan. The sixty-four townhouses would have a standard floor plan with two-bedrooms, a dining room, family room, kitchen, and a one-car attached garage plus one additional parking space per unit. The format is the same as can be found in several ownership units in Sudbury. The townhouses reach a height of thirty-three feet, which is also similar to many of Sudbury's single-family homes. The original 120-unit plan is taller than forty feet. He said that the overall number of units is reduced, therefore reducing the number of people and traffic at the site.

Glenn Dougherty gave a brief synopsis of the plan. He noted that to address the Sudbury Fire Department's concerns with the single access for a development with over 100 units, he therefore changed the plan putting six units out in front of the site and the remainder in the rear beyond the riverfront area to break up the units. With only two-story buildings the Fire Department's need for elevators is resolved and there is better access to the rear of the buildings. Windows have also been lowered to meet egress codes. Mr. Moss said that in a recent letter the Sudbury Fire Department requested fire flow tests. Mr. Moss said that he has completed those and would submit them.

Mr. Dougherty also noted a reduction in pervious pavement. A comparison of the old and new proposals showed that the overall layout is similar with the same access drive and configuration. However, standard pavement would be used for the access drive extending into the T to the north cluster of townhouses. Permeable pavers would be used in the driveways to give a sort of cobblestone effect. The south cluster would be made of the same materials and the front six town houses also have permeable pavers. He said that the Fire Department suggested permeable pavers instead of gravel for the truck turn-around areas at the back of the site. Parking is reduced with town houses where there are enclosed garages. Utilities are similar if not identical to the other plan. Stormwater management should be identical.

He referenced the chart shown on the alternative plan that lists the comparisons between the 120 unit and 64 unit plans.

Ms. Quirk asked whether there was a figure showing the building footprints of both plans. While he did not have this calculation available Mr. Moss said that he would provide it to the Board. His opinion was that the alternative plan had less coverage than the 120 unit plan.

Mr. Moss then described the first floor master bedroom units, explaining that they were located at the front of the site in a six-unit cluster. He said that there was a two-story unit in the middle with a one and a half-story unit on each side.

Ms. Kablack said that the Fire Department might request that the additional front access driveway be changed to remove the proposed gates.

Mr. Marchant said that he attended the work sessions. He felt that the project is heading in the right direction. He noted that there has been a 47% reduction in the project's size and a height reduction from forty-five feet to thirty-three feet. He said that the new building type is significant as is the increase in setbacks from the property lines. He agreed with Mr. Moss that if he had simply taken out a few of the twelve-unit buildings, the project would not result in an economic development. He said that there is at present no high-end market rate rental housing in Sudbury and he felt that this sort of townhouse type of development would be attractive and would enjoy a competitive advantage resulting in high rents for Sudbury. He noted that the back yards are all private. Sixteen of the units would be affordable. Forty-eight would be market-rate and four or more of those could accommodate empty nesters. While he has not seen a floor plan he said that the units appear large and the lofts would be an attractive accommodation. The buildings are all energy-efficient. He then described the process of reasonable return on a 40B project which he felt could be accommodated through this plan. He said that the land cost is low when it comes to measuring a return. In this case the 40B land value is \$700,000. He said, however, that the HAC does not care what a developer actually pays for the land and noted that the soft costs for this project would be very high. In conclusion he said that if this is the plan that the ZBA thinks merits further attention there could be room for further negotiation. From the HAC perspective the ZBA could be in a favorable position when considering economic versus uneconomic.

Ms. Quirk then asked the Board for any thoughts.

Mr. Stevenson said that he was encouraged by this plan because it was going in the right direction. He said he was interested in hearing more about the number of bedrooms since in the original 120-unit plan there were a total of 180 bedrooms due to the mix of one- and two-bedroom units. Now there are 128 bedrooms, although fewer units, because all units are two-bedroom.

Mr. Klofft said that his initial concerns about traffic, safety, and fire safety had been reduced. He was still unclear about how the environment would be impacted and needed an engineering perspective. He had concerns about the front units' encroachment into the riverfront area. One advantage of the previous plan was that it was not visible from the road. He noted that the encroachment on the nearest abutter to the south was better but he would be in favor of reducing the overall massing. He suggested that the Design Review Board be consulted.

Mr. Klofft asked how the rents compare between the 120 unit three-story proposal and the townhouse alternative. Mr. Moss said that total rents would be about equal. The market-rate town house unit rents could average about \$2,700 to \$2,750 and the sixteen affordable-unit rents would be around \$1,300. He said that residents in this sort of development tend to be long-term. He said that the affordable units would most likely be rented to Sudbury workers or Sudbury residents.

Mr. O'Brien said that the total footprint still seemed high but he was encouraged by the changes made to the development. He asked for clarification on what the loft would look like. Mr. Moss said that in the 120-unit plan the offices had doors, but the lofts in the alternative plan would be up a flight of stairs and essentially an open landing measuring ten feet by ten feet. There are no walls on two sides of the loft so there essentially would be no privacy.

Mr. Garanin thanked everyone who attended the work session for reducing the size and potential impact. He said that the south townhouses still seemed cramped. He noted that the overall density has not changed and the large footprint is still in an environmentally sensitive area. He wanted to see more information on run-off from the standard pavement and an environmental impacts comparison to see if it is truly less.

Mr. Stevenson asked whether the total rental income would be the same as with the old plan. He wondered whether the new alternative would be more economic.

Ms. Quirk said that the new plan was encouraging. She also thanked those who attended the work session because many of her major concerns were addressed, in particular that fire access and building height had been revised. She also wanted to see stormwater engineering. Additionally porous pavement issues were lessened. She suggested that if Mr. Moss could get the number of bedrooms down to 90 in order to use a conventional septic system, perhaps by offering a mix of one- and two-bedroom units, the development could be a useful product for Town.

Ms. Quirk said that she did not see many changes to the wetlands impacts. This led to a discussion of what was in the purview of the ZBA versus the Conservation Commission and lack of examples of Housing Appeals cases that were upheld when the ZBA denied based solely on local wetlands bylaw.

Ms. Quirk then opened the floor for public comment.

Peter Anderson, 113 Landham Road, asked about the area represented in dark green on the site plan. Mr. Dougherty said that it was the wetlands replication area.

Frank Huntowski, 42 Cutler Farm Lane, thanked the members of the working sessions for their efforts. He said that the applicant has changed his reference point by going from an absurd proposal to one that was half absurd, although he agreed that it was a step in the right direction. Mr. Huntowski felt that there was still a density problem. He said that if the developer had proposed a plan that had fewer than ninety bedrooms then he would not need the wastewater facility. Mr. Huntowski wants a standard septic system at the site. He had concerns about the south side of the property, which his property abuts. He requested a setback of 100 feet rather than the twenty-five or thirty feet that the applicant has proposed. He said that his daughter's bedroom window would look out onto the development and he was concerned about the proximity. He said that it was the ZBA's decision whether or not to waive the wetlands bylaw and he did not feel that the ZBA should do this. Mr. Huntowski said that the litigation track was the next step and added that he felt the neighbors have all been reasonable throughout the hearing process.

Stan Kaplan, 98 Victoria Road, asked if there was a daily car trip figure and if a new traffic study would be done. Mr. Moss said that the data in the current traffic report could be used by adjusting the calculations to number of bedrooms. Mr. Kaplan confirmed that there would be spaces for two cars at each unit. Ms. Quirk asked for an update on the traffic analysis.

Bob Armour, 21 Brookside Farm Lane, said that the scope of the impact of this development is still large. He said that he supported Mr. Marchant's comments about number of units. He felt that the project could be both economic and reduced in scope and requested that the ZBA push for this.

Mike Palmer, 62 Cutler Farm Road, said that Mr. Huntowski made good points. He said that he likes the idea of further negotiations with the developer. If negotiations are exhausted then he would request that the ZBA approve the alternative concept plan with conditions so that the neighbors can then continue to shape the project through litigation. He suggested conditions such as 100 foot setbacks, limiting wetlands building, reducing the scope of the overall project, and no wastewater treatment plant.

Virginia Buckley, 14 Patricia Road, had concerns about the Tennessee Gas pipeline, the project's proximity to the Town's wells, and its overall density.

Jon Danielson, 37 Landham Road, said he echoed what Mr. Huntowski had said. He referenced Mass Housing's initial site approval letter which noted the original plan's setback from Landham Road and the remaining open meadow at the front of the property. He said that Sudbury's aesthetic is that of a meadow community. If there is room to get the units off of Landham Road then they should be moved.

Colleen Labib, 9 Stagecoach, said she still felt the project was too large in scope for such an environmentally sensitive area. She noted encroachment into the riverfront area with buildings, as well as the proximity of the wastewater treatment facility to her property. She also noted that this is the third large project that will be built in South Sudbury.

Mr. Moss said that the re-charge area has not changed. He said that the wastewater leaching area has been reduced by one third of its size.

Mr. Dougherty said that the barn building would contain the wastewater treatment facility. The leaching area would continue to be on the south side of the project. He said any water returned to the ground would be cleaner since it would be treated effluent.

Tom Gilbertson, 46 Blackmer Road, asked whether the loft spaces could be used as additional bedrooms. He questioned whether if used as additional bedrooms could there be impacts from septic discharge. He also expressed concerns over traffic from this development along with the other two new developments.

Ms. Quirk posed a question about a denial based on location and the number of 40B proposals in one given geographical area of town.

Attorney Schwartz said that with a Housing Production Plan if there is a certain percentage of housing approved for a particular area of town then a town can get a freeze on additional housing. But a denial cannot be based on this as Sudbury has not reached that threshold. Attorney Haverly said that if there is a high concentration of 40B developments the issue can be raised with Mass Housing at the project eligibility stage. Ms. Kablack said that Sudbury does not meet any of the Safe Harbor provisions. Ms. Quirk said that she asked the question because it had been brought up by the neighbors.

Brian Cain, 33 Victoria Road, said that while there are fewer units in the alternate concept plan the number of bedrooms has remained nearly the same. As has been discussed in the past he felt that the lofts could very well be used as bedrooms. He also felt that there would still be a high volume of traffic and potentially more children in the classrooms. He said that no proposal has been entirely stopped due to wetlands issues, but he felt that this project at this site is unique.

Ms. Quirk reminded Mr. Cain that the ZBA could not base a denial on wetlands alone due to jurisdiction because a denial like that has never held up before the HAC. The Conservation Commission would be the governing body to render a decision on that. Attorney Haverty clarified that the ZBA has jurisdiction but no provision is applicable in this case on its own that could not be waived by the HAC.

Mr. Cain asked how many developments such as this one have been built on this type of site. He said that the developer would still be building on a wetland, which seems ludicrous to him, particularly due to the amount of traffic, and large population of people living in the area.

Mario Mummulo, 71 Stock Farm Lane, said that his concerns continue to be the same as he has voiced at each meeting. He referenced concerns about the wetlands, water quality, salt in the water, and sewerage with the wells only 1.2 miles away.

Ms. Kablack clarified for the record that at this point in time there is no option for the Town to purchase the land. The Johnson family has worked on a purchase and sale proposal with Mr. Moss for the property. She said that should this purchase and sale become invalid then perhaps the Johnson family would consider working with the Town once again. But she said that it is not an option now.

Ms. Quirk asked whether Mr. Witten had wanted to discuss a memo that he had submitted to the Board that proposed a significantly smaller plan and several conditions that he requested that the ZBA consider.

Attorney Schwartz said that he has never been at a hearing where another attorney has proposed another plan.

Ms. Quirk said that she wanted to be sure that all of the issues raised to date were heard and so that a discussion about what the abutters felt was acceptable could happen. Attorney Haverty said that the ZBA was aware that the applicant would probably not find the terms acceptable.

Attorney Witten said that he actually had no plan, per se. He said that he had, however, submitted a cover letter along with nineteen pages of conditions that he wanted the ZBA to use in their decision.

Mr. Witten said that it was up to the applicant to prove that a plan that is reduced in scale is uneconomic. He said that the applicant should not get a waiver from the wetlands bylaw just because he has asked for one. He felt that the wetlands bylaw is very much on the table.

Paul McManus said that there were a number of alternatives described in the MEPA submission but they were by no means all economically viable options. Attorney Schwartz concurred that MEPA requires developers to show certain alternatives but that does not mean that they are economically viable.

Attorney Witten asked whether Mr. Moss was just picking numbers of units or was he really considering what is a rational number.

Attorney Schwartz said that 100 units are economically viable. He said that the ZBA asked Mr. Moss to consider a second alternative in order to address concerns. He said that his client, Mr. Moss, has therefore prepared a revised plan.

The Board then provided their initial thoughts on the 64-unit concept plan.

Mr. Klofft said that the 64-unit plan was an improvement but might not be the ultimate plan with which to proceed.

Mr. Stevenson said that he would like to see the momentum of the new plan continue. He wanted to see the developer get a good financial return but he also wanted a project that was good for the Town. He felt that there were several issues still to be addressed and suggested that another working session might be useful.

Mr. Gossels felt that the 64-unit plan was better than the original 120-unit plan and suggested further work with the applicant to continue to improve it.

Mr. O'Brien, Mr. Garanin, and Ms. Quirk all agreed with the others' comments.

Ms. Kablack asked the Board whether they could further articulate suggested improvements.

Attorney Schwartz said that the original 120-unit plan is fully engineered. He then wanted a sense of the Board in regard to the 64-unit plan before he urges his client to do any more work on it.

Mr. Klofft asked whether Mr. Moss had looked into the financials of the wastewater treatment plant. Mr. Moss said that the treatment plant was necessary for a development greater than ninety bedrooms. He said that when there is ownership of a rental property there are additional expenses to consider such as maintenance managers on site and other overhead fees.

Mr. Moss said that he would consider removing the front buildings in order to preserve the meadow. He mentioned the abutting resident's setback concerns to the south of the property and said that if he could work on the plan to provide some relief on southern border he would.

Mr. Moss then agreed to give a one month extension of time to the ZBA until May 5, 2012. He said that Attorney Schwartz has made overtures to work with the neighbors but to date the neighbors have not met with him.

Mr. Gossels made a statement to the neighbors suggesting that they take advantage of the opportunity to meet.

Mr. Huntowski said that the neighbors would support negotiations. He said that he would begin by asking for a reduced septic plan and 100 foot setbacks from the property lines. He said that a fifty-eight unit plan is not acceptable to him. He said a twenty-four unit plan was better, but he did not want the units situated along Landham Road.

Ms. Quirk said that by opening with the stringent conditions that Mr. Witten proposed that could be the equivalent of a denial and then the Town could face the 120-unit plan prevailing.

Attorney Schwartz said that the purpose of negotiations is to come up with a plan that the ZBA approves of. He said that if the plan is not suitable to the abutters then the abutters can litigate.

Ms. Quirk asked whether anyone else wished to speak.

Brian Cain, 33 Victoria Road, said that he appreciated Attorney Witten's comments because the applicant is proposing building a development on wetlands. He felt that this would generate sludge near four aquifers.

Peter Anderson, 113 Landham Road, said that no building at all on this property would be his preference. He cautioned that if the wetland crossing were removed from the plan then all of the building would be along Landham Road and he is highly opposed to this. He said that the open field is what is important to the neighborhood and the buildings should be situated at the back of the site.

It was agreed that a working session would be scheduled by Ms. Kablack. The Board then discussed having one ZBA member and one direct abutter present.

There being no additional comments from the Board or the public, a motion was made and seconded to continue the hearing to Monday, April 30, 2012 at 7:30 p.m. in the Town Hall.

Elizabeth T. Quirk, Chair

Jeffrey P. Klofft

Benjamin D. Stevenson, Clerk

Jonathan F.X. O'Brien

Jonathan G. Gossels

Stephen A. Garanin, Associate