

SUDBURY ZONING BOARD OF APPEALS
MINUTES
June 29, 2016

The Board consisted of:

Jonathan F.X. O'Brien, Chair; Jonathan G. Gossels; Jeffrey P. Klofft; Jonathan W. Patch; and Benjamin Stevenson

Also present at the meeting on behalf of the Town were: Jody Kablack, Planning & Community Development Director.

The meeting was opened at 7:30 p.m.

1. *CONTINUATION - Public Hearing Case 16-5 – Sudbury Avalon, Inc., David O. Gillespie, Senior Development Director, the applicant and AvalonBay Communities, Inc. the owner, for a Comprehensive Permit pursuant to Massachusetts General Laws, Chapter 40B, Sections 20-23, and 760 CMR 56.04, for the construction of a 250-unit rental apartment community, 25% of which will be affordable units, on a 17.4 ± acre parcel,, property shown on Town Map K07-0011 and K07-0013, 526 and 528 Boston Post Road, LID and Res A-1.*

Mr. O'Brien opened the meeting noting Ms. Kablack's retirement after 25 years. The Board thanked her for her many years of service to the Town. Ms. Kablack introduced Glenn Garber, who will be the Interim Planning Director.

Mr. O'Brien continued 40B hearing by noting that Ms. Kablack sent a memo around that afternoon with the draft Decision and Conditions of Approval. However, no one had time to fully review the entire document; therefore, the parties will have a preliminary discussion tonight. Avalon has some initial comments & suggestions, but would like time to read it over fully. Also submitted was a draft set of requested waivers.

Ms. Kablack also noted that the stormwater review came in. The subdivision plans came in & have been reviewed. They are pretty close to definitive at this point. Everything seems to have been resolved either on the plan, or as a Condition of Approval. Lots of information came in since the last meeting – new site plans, new architectural plans, etc.

Mr. Gossels didn't think the decision spoke enough to Local Needs. He wanted more information as to why the Board may approve one application over another. Ms. Kablack said she would point that out to Town Counsel, who would be going over some of those threshold issues. Mr. Stevenson concurred. He said the decision & vote should be mindful of what the local needs are.

Steven Schwartz, the applicant's attorney, had some initial comments on the regulatory conditions, having to do with affordability, limited dividend, monitoring, etc. Those areas are within the exclusive jurisdiction of the subsidizing agency, according the Amesbury Case ruling by the courts a few years ago. As we go through the conditions, there are some that exceed the Board's authority, such as mandating the levels of affordability, giving the Town review and approval rights over things having to do with the regulatory agreement, review & approval of anything submitted to the subsidizing agency.

Mr. O'Brien asked about local preference. Mr. Schwartz said that local preference was valid, but it is the Town's burden to justify local preference with the subsidizing agency and get them to approve that. We are happy to accommodate a local preference of up to 70% of the units if the Town makes that determination with the subsidizing agency.

Ms. Kablack said the Town would entertain whatever language was more appropriate & that the Town didn't want to overstep its bounds. She asked if Avalon was looking at this from a LIP perspective?

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Mr. Schwartz responded on the issue of the LIP – should the development become an LIP... The LIP process would be covered by the regulatory agreement which again harkens back to the Amesbury Case.

Ms. Kablack noted again that the Town isn't trying to overstep, but does like to see some items, for example section 7.6 governing how the lottery is held in the decision authorizing the development. Mr. Schwartz noted again that this would be in the regulatory agreement. He will submit written comments and work with Town Counsel. Ms. Kablack pointed out to the Board that the Selectmen agreed in the Development Agreement that the Town would cooperate should the project be converted to a LIP.

Mr. Gossels asked if the affordable units are affordable in perpetuity. Ms. Kablack confirmed this was so.

Ms. Kablack said that MassHousing as not a proactive monitoring agent & that these apartments would need to be monitored annually. One condition could be the developer pay for the Town have a role in monitoring the units.

Mr. Schwartz noted that there were many areas that, if the phrase “for the Town’s approval” were changed to “for the Town’s review prior to submitting to the regulatory agency” might solve any conflicts with Amesbury. Ms. Kablack said the Board will entertain comments & determine if it meets a threshold for approval or just review.

Ms. Kablack pointed out that also included in the Development Agreement was a provision for \$100,000 to mitigate any impacts.

Mr. Gossels would like to see additional screening along the Horse Pond Road field. If there is no room on the property, the Developer could negotiate an easement. Mr. Klofft reminded Mr. Gossels that there is an Agricultural Restriction on that field, and requiring specific plantings may need to be vetted by Town Counsel. Mr. Dale agreed to undertake a “good-faith-effort”.

Mr. Klofft asked about sidewalks and walkability throughout that area and inquired whether mitigation funds be used for pedestrian improvements along Route 20. He noted that there is a gap in the sidewalk around Nobscott and Sudbury Farms, especially when one can't walk on the grass due to snowbanks.

Ms. Kablack mentioned that the Housing Trust and the Housing Authority each submitted memos seeking funds to make housing more affordable. They work independently of one another, but have similar goals. Liz Rust from the Regional Housing Services Office was present at the meeting and said that new low to moderate income residents may increase demand on the Town's Hope Fund, often used for things like fuel assistance, medical emergencies, emergency repairs, etc. and that the Town Social Worker will need more resources. She noted that they could also begin a first month or security deposit program. She is seeking \$20,000/year for 5 years, which would encompass 10 applications to the Hope Fund & 5 down payment assists. Monies they were seeking for the Hope Fund alone was \$1,000/case x 10 cases/yr x 5 years.

Katie Kang from the Housing Authority was also present at the hearing and asked that the Board set aside some funds for housing for the really needy, the very-low income resident at 40%-60% of AMI, below the eligibility of the Avalon units. Mr. O'Brien proposed earmarking funds for the SHA to purchase something on the open market. Ms. Kang said the SHA could use funding to buy down a mortgage on an existing property to make it more affordable.

Mr. Gillespie noted that there were other fiscal contributions in the Development Agreement including traffic improvements, land for the Fire Station expansion, \$80,000 for Fire Station design, \$500,000 for recreational fields, \$850,000 for public safety, \$100,000 for the Senior Center, \$850,000 for technology upgrades at

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municipal & school buildings, \$15,000 for sidewalks from CVS to Nobscott & this \$100,000 commitment for ZBA conditions.

The Board settled on \$10,000 for additional sidewalks in the vicinity of Nobscott & Sudbury Farms, and \$90,000 toward SHA. Mr. Dale said they would pay for any plantings on the western edge of the property to shield visibility from Horse Pond Road, if an easement could be negotiated & if planting didn't conflict with the Agricultural District.

Mr. Schwartz asked about the performance bond, as this is not a typical subdivision in which it would ensure installation of the roadway or infrastructure. Mr. Gossels said it protects the Town against bankruptcy. Ms. Kablack said that Whole Foods has a performance bond requirement. This bond ensures not just the roadway, but the stormwater management, landscaping, lighting, sidewalks, etc.

The Board asked the Applicant if they had any comments or any fine tuning to point out. Mr. Schwartz said again that they just received this & haven't vetted it thoroughly, but initial items included:

- Applicant name on p.1
- Property should reflect the area subject to the permit, not entire Raytheon site, p.1. He will provide language.
- Item 7.7, "in perpetuity" should be defined as long as property is getting benefit of the comprehensive permit. This is not a covenant to maintain a rental project on site forever, if another use is more beneficial to the Town in, say, 50 years.
- 7.8 overreaches the Amesbury decision, especially the section on foreclosures.
- 7.9 includes a typo – "received" should read "issued"
- 7.15 – Mr. Schwartz asked the Board to please clarify the language in this section as there are no requirements under 40B statute that all affordable units be identical in interiors or fixtures to market rate units. They all must include the same items, cabinets, washer/dryer, etc. but that you can have distinctions such as granite countertops & subzero refrigerators in higher-end market rate units. This language needs to be tightened up.

Mr. Gillespie said that their plan was to have no differences in the units but that the concern is the nuances in the language – not every unit will be identical. Some may have 1 bedroom, some 2 bedrooms, 2 walk-in closets versus 1 walk-in & 1 regular closet, etc. Mr. Klofft thought the language was broad enough to work with the spirit of the development. Mr. Dale thought that "not distinguishing" meant exactly the same.

Mr. Gossels said that there shouldn't be a class-A unit & a class-B unit, such as same appliances, same counter tops, etc. The Board welcomes Mr. Dale to submit preferred language.

Mr. Schwartz suggested taking out the 2nd sentence. Ms. Kablack said that this was important to have as a condition, even if it is broader than the regulatory. She asked if the affordable units are permanently located, or do they move around, due to vacancies. Mr. Dale said that typically if a renter exceeds the income qualification, they have the opportunity to stay in the unit, and another similar unit will be designated as affordable.

- 7.16 over steps but one solution is to change the Town's "approval" to "review". Mr. Gillespie will also double check those numbers.

Ms. Kang asked if the residents of the affordable units pay their own utilities. Mr. Dale replied that they are provided with a utility credit, which is a utility allowance. The total cost is calculated by the subsidizing agency. The Developer works with the Housing Authority to project utility costs. The rent is then lowered by that much, then the resident pays his/her own utilities. The units are separately metered. If the resident exceeded the allowance, he/she will be responsible for the utility bill.

Ms. Kang said that sometimes people have trouble not only heating a larger unit, but also furnishing a larger unit. Ms. Dale said that there would be a mix of large & small units.

Ms. Kablack asked if there were any other fees for the tenants, such as clubhouse fees, pool charges, parking fees, etc. Mr. Gillespie replied that there were pet fees, and sometimes other charges, for example renting a private room in the clubhouse, otherwise, no – no amenity fees. Mr. Dale said there was no additional fee to use the pet park.

Mr. Schwartz continued with his comments:

- Item 7.24 doesn't allow minor changes- nothing could be moved a foot in either direction - or the right to seek any substantial changes to the comprehensive permit. Ms. Kablack said this was after construction. Mr. Gossels said that the Town didn't want to see haphazard additions to buildings etc. Mr. Gillespie clarified that if the Plans were approved by the Building Dept. they could construct to those plans.
- 7.30 – add “for review”. Ms. Kablack said they only needed to provide them.
- 7.32 should be struck. Limited dividends are outside the realm of the Board. Ms. Kablack said the Board should have the right to review the determination for accuracy. Mr. Schwartz said that may be true for an LIP, but not a 40B. Ms. Kablack said yes, it is outside the Town's restriction, but we have the right to review it. Mr. O'Brien & Mr. Klofft concurred. Mr. Schwartz said that there is nothing in the regulatory agreement that says this needs to be provided to the Town. Mr. Garber asked about the Wellesley case. Mr. Schwartz said he would have to familiarize himself with it, but the Amesbury case is clear on this point & Ardmore does not speak to this. If the Town has an issue with the monitoring report or annual report, it can bring it up to the regulatory agency. The Town does not have the right to independently monitor & enforce.
- 8.2 - there will be reciprocal easement agreements between all the property owners. There will be a property manager who will be in charge of maintenance. They will submit language.
- 9.6 – some buildings are under NFPA13 & some under NFPA13R. Ms. Kablack said that SFD hasn't gotten comments back to them yet, but SFD is not requiring item 9.7.
- 9.14 – is this the timing that was required by our MEPA filing. This will all be done prior to occupancy. They should be permitted to do the traffic mitigation in the time that was required by the State.
- Section 12 – Affordability Requirements – the conditions required fall again under Amesbury. Mr. Schwartz will work with Town Counsel. 12.5 is appropriate, but the Town itself will need to make that case & demonstrate local need. Ms. Kablack added that employees of Sudbury businesses will be added to the list as well. Mr. Schwartz cautioned that this definition of local Sudbury residents may not be acceptable, but they have no opinion either way. Ms. Kablack thought it would be fine. Ms. Rust concurred.

Mr. Stevenson asked about a possibility that had been raised a while ago, about the leeching sand beds being converted to underground beds. If so, this may provide some nice open space. Mr. Dale said they were pursuing underground beds, & confirming with test pits, perk rates & separation of ground water, but they would like to head in this direction. There will be no pipes sticking up, but will have access points similar to manhole covers.

Ms. Kablack also said the Planning Board reviewed the draft Decision on 6/22/16 & would normally have jurisdiction over the subdivision, the water resource protection bylaw & stormwater

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bylaw. They have thoroughly reviewed the plans through the MUOD & Master Development Plan process. The Planning Board feels very comfortable that these plans have undergone significant review. They are comfortable with the waivers, the peer review, the level of plan detail & they support approval of this application.

Mr. Gossels asked about review of the Design Review Board. Ms. Kablack said they reviewed at their meeting on May 11. They will do a final review & anticipate issues noted on 5/11 will have been addressed in the final plans. If not, it will be a condition of approval of something.

Mr. Schwartz thanked Ms. Kablack for all her hard work throughout the project. Mr. Gossels noted that the next meeting would be the last & they would go over everything, close the hearing & make a decision. Ms. Kablack said the Decision would be written by before the next meeting on 7/18. Mr. Schwartz noted a conflict for that evening but said everything should be ironed out before then.

Mr. O'Brien called a close to the hearing this evening, and a motion was made, seconded and voted to continue the Avalon Sudbury Comprehensive Permit public hearing to Monday, July 18, 2016 at 7:30 pm.

2. *Vote on Peer Review for Sudbury Station Pro-Forma.*

Mr. O'Brien said that there was a request at the last hearing for a Pro-Forma review for Sudbury Station. He asked Ms. Kablack if there was a person in mind. Mass Housing suggested Wendy Cohen. The contract process is ongoing & the applicant will pay for the review, \$3,450.00. Mr. O'Brien asked who should be voting on this. Ms. Kablack noted that it was only an administrative action. Mr. Gossels expressed concern, wondering if the review would be comprehensive enough for the small sum involved. Ms. Rust responded that Ms. Cohen ran the Underwriting Dept. for DHCD & the Low Income Housing Tax Credit Department. She is very capable.

A motion was made, seconded and unanimously voted to hire Wendy Cohen for the purposes of a Pro-Forma review in connection with Sudbury Station to be funded by the applicant.

The Board presented Ms. Kablack with a gift for her many years of service and thanked her again.

There being no further business, the meeting was adjourned at 9:00 p.m.
