

SUDBURY ZONING BOARD OF APPEALS
MINUTES
JUNE 20, 2016

The Board consisted of:

Jonathan F.X. O'Brien, Chair; Jonathan G. Gossels; Nicholas B. Palmer, Clerk; Nancy Rubenstein; Jeffrey P. Klofft; John Riordan (Alternate) and William Ray (Alternate).

Also present at the meeting on behalf of the Town were: Barbara Saint Andre, Jonathan Silverstein, William Miles, and Jeffrey Dirk on behalf of Vanasse and Associates.

The meeting was opened at 7:34 p.m.

Mr. Palmer read the Hearing Notice published in the Sudbury Town Crier. Mr. O'Brien read the preamble:

This Board is acting under the authority granted in the Massachusetts General Laws, Chapter 40B, sections 20-23, and under the DHCD regulations codified in 760 CMR 56.

Under section 21 of Chapter 40B, the zoning board of appeals is to hear a single application to build low or moderate income housing rather than requiring the applicant to make separate applications to the applicable local boards such as the Town's Conservation Commission, the Board of Health, the Historic District Commission, etcetera.

Under section 21, the board may request representatives of the local boards to appear as may be necessary or helpful in reaching its decision upon the application and shall have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to the said permit conditions or requirements with respect to height, site plan, size or shape, or building materials consistent with the terms of Chapter 40B.

The Board is reviewing this application because less than 10% of the year round housing units in Sudbury are qualified "affordable" units pursuant to 760 CMR 56.03 (3) (a).

The Board may act upon the application in the following manner:

- Approve a comprehensive permit on the terms and conditions set forth in the application;
- Deny a comprehensive permit as not consistent with local needs, or
- Approve a comprehensive permit with conditions that do not render the construction or operation of such housing uneconomic.

Because the number of qualified year-round "affordable" units in the town of Sudbury remains below the threshold of 10% of the total housing stock, Massachusetts regulation creates a rebuttable presumption that there is a substantial housing need which outweighs local concerns. Further, Massachusetts regulation limits those "local concerns" that may be taken into consideration when reviewing a comprehensive permit to (i) the need to protect the health or safety of the occupants of a proposed project or of the residents of the municipality, (ii) to protect the natural environment, (iii) to promote better site and building design in relation to the surroundings and municipal and regional planning, or (iv) to preserve open spaces.

If the Board approves the comprehensive permit, any person aggrieved may appeal to the court in accordance with the requirements set forth in M.G.L. c. 40A, Section 17.

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If the Board denies the comprehensive permit or approves the permit with conditions or requirements the applicant considers unacceptable, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L c. 40B, Section 22.

We expect the public hearings to last approximately 6 months. The hearing schedule for tonight's meeting is

- Hearing 3, April 25 - Physical constraints of the site – stormwater, wastewater, clearing & grading

The agenda for the upcoming hearings are as follows:

Hearing 4, May 23 – Recap of the 5/17 working session; Fiscal Impacts, Wastewater, 3D visual presentation.

Hearing 5, June 20 – Other site impacts, visual, historic. Physical constraints of the site, stormwater, clearing & grading. Mitigation & community needs.

Hearing 6, July 25 - Additional information.

Each hearing will proceed as follows:

- The Applicant will make a presentation.
- The Town's experts will give comments.
- The Board will ask questions.
- Once the Board is finished, the chair will ask for any public comments on the materials under discussion. You must be recognized by the Chair to speak.
- All questions must be addressed to the Chair, and he will direct the questions to the appropriate responder.
- When you speak, please state your name and address so that our records may be complete.

You may call our administrator, Lillian Vert at 978-639-3389 for information about this application. We will attempt to provide application materials on the Town's website so that the public may examine the same evidence that the Board is reviewing.

We will now start the hearing.

Items received since Public Hearing May 23, 2016

1. Email from Michael O'Malley, 177 Plympton Road, June 2, 2016.
2. Emails from David Hornstein, June 3, 2016 and June 17, 2016.
3. Email from Jacqui Steele-Gratzer, June 8, 2016.
4. Letter from Historic Districts Commission to ZBA, June 7, 2016.
5. Email from Craig Gruber, June 9, 2016
6. MDM Memorandum, Supplemental Transportation Responses, dated May 31, 2016
7. Construction Management Plan and Logistics Plan, dated June 10, 2016
8. Letter from Attorney William Henchy, RE: Village at Sudbury Station Stormwater Management Plan, June 13, 2016.
9. Hydrologic & Hydraulic Analysis prepared by Sullivan Connors & Associates, dated June 10, 2016
10. Preliminary Site Plan for The Village at Sudbury Station, and Off-Site Drainage Areas, Revised: June 10, 2016.
11. Vanasse and Associates Supplemental Traffic Engineering Peer Review, June 14, 2016.
12. Letter from the Sudbury Conservation Commission dated June 15, 2016.

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13. Letter from Attorney William Henchy, RE: Village at Sudbury Station; Workshop Meetings and Alternate Plans, June, 16, 2016.
14. Public Archaeology Laboratory, Historic Property Effects Assessment, June 16, 2016.
15. MDM Transportation Consultants, Second Response to Peer Review Comments, June 16, 2016.
16. Letter from Kopelman and Paige, Jonathan Silverstein, June 17, 2016.
17. Letter from Attorney William Henchy, RE: Village at Sudbury Station; MassDOT, June 17, 2016.
18. Letter from Attorney Jason Talerma dated June 20, 2016.
19. Letter from Taryn Trexler on behalf of The Oppose Sudbury Station Steering Committee, June 20, 2016.
20. Architectural Peer Review, Davis Square Associates, report dated June 18, 2016.
21. Vanasse and Associates Supplemental Traffic Engineering Peer Review, June 20, 2016
22. Memo from Jody Kablack, Planning and Community Development Director, dated June 20, 2016

The Chairman acknowledged receipt of the emails from residents regarding their desire to speak at the beginning of the hearing whereas the board normally heard from the applicant first, to cover the items on the agenda and then hearing public commentary to the presentations at the end of the hearing. The Chairman noted that the order of the public hearings is not intended to try to limit comments from residents. The Board welcomes comments from neighbors and appreciated their support, but that the board needed to work through the application materials and the agenda that had been established from the beginning of the application.

Mr. O'Brien began the hearing by outlining the topics to be discussed tonight; including discussion on the working sessions, traffic, and the Fire Chief's comments. Review of the architecture and stormwater submissions were moved to the next hearing. The board also wanted to discuss the concept of moving the main access road on Hudson Road to the Ti Sales entrance, and permission from the BOS to engage MassDOT.

Mr. O'Brien stated at the initial working session the applicant was responsive to reducing the unit count by 10%. During the second working session there was discussion about creating more of a community feel in the development and incorporating the APR land into the concept. There was also discussion about the impact on the peacefulness on the cemetery. At the third working session the developer presented 4 plans. Mr. Klofft and Mr. O'Brien agreed that the 4th plan should be shown to the other Board members. The 4th plan had a sense of community and village feel. A number of units were taken away from the edge of the cemetery. The leaching fields remained at the original location because of the APR restriction.

Mr. O'Brien stated that he and Mr. Klofft had asked for more of a reduction and the applicant told them it was uneconomical. Mr. O'Brien asked if they can show a pro forma with 150 units. Mr. O'Brien stated in his mind the Board has a justification for requesting the pro forma because of the local concerns previously mentioned. Mr. Klofft stated that he has brought a plan to the Board with 150 units that has been discussed at previous meetings and working sessions. Mr. O'Brien stated there is a time constraint.

Mr. Claussen and Mr. Gossels discussed traffic issues. Mr. Claussen stated that he met with Bill Place two years ago and asked if he could build a road that would completely bypass the town center and was told no. He added that the restrictions on Peters Way were suggestions from the Board and the Fire Chief requires two access points to the development. Mr. Klofft stated that there is a design problem that are exacerbated by the density.

Mr. O'Brien asked the Board if they want to request the 150 unit pro forma. Mr. Klofft responded yes as long as they based the discussion on a peer review on stormwater and not traffic. He raised the question as to if the Board needed a stormwater peer reviewer. Mr. Claussen stated that a stormwater peer reviewer has been commissioned. It was decided to wait until next time to discuss stormwater.

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Mr. O'Brien summarized the outstanding traffic concerns; fire truck access, reduction of cut through traffic, and impact on Candy Hill Road. Mr. Michaud from MDM and Mr. Dirk from Vanasse and Associates were introduced. Mr. O'Brien asked Mr. Dirk about reducing traffic on Candy Hill Road. Mr. Dirk stated the applicant has restricted Peter's Way by providing a right-turn-only exit from the development. Mr. O'Brien asked about making Peters Way one-way. Mr. Dirk stated that fire trucks would have to go against traffic to get in and cause residents of the project to drive through the center of Town to access the development.

Mr. Michaud has concerns about making a public way on private property, specifically what the layout would need to look like. Mr. Claussen stated that Bill Place did not want the road in the development to become public. Mr. Klofft asked about Peters Way being one-way entering the development. Mr. Dirk stated that any one-way would reduce traffic. He added that he had a safety concern about a left turn coming out of the development onto Concord Road when there is queuing that goes back to the intersection. He added that as a safety issue the applicant has addressed it. The applicant has partially addressed the concern about cut through traffic on Candy Hill Road and did take care of the safety issues regarding sight lanes. He added that turn restrictions might create a safety issue. Mr. Dirk stated that narrowing the driveway at Concord Road would cause increased queuing in the development. The board discussed having a one-way at Peters Way and a more simply designed driveway at Hudson Road. Mr. Michaud deferred to the peer reviews letter that concurs with his findings. He added that the applicant is willing to do everything that the peer review suggested. Mr. Michaud added that the signal in the center of Town is still not working correctly. Mr. O'Brien stated that his concern is still the impact on Candy Hill Road because it affects the school traffic and children.

David Hornstein, 22 Candy Hill Road, had concerns about a failure in the process because the two traffic experts agreed on facts that have been shown to be incorrect. He also objected to the applicant finding that it was faster to take Rt. 27 instead of Water Row during the evening commute to get to the center of Town. He commented on the solar glare on Plympton Road going west during the evening trip. He had concerns on the 650 ft. sight line at the Hudson Road drive. He requested that when the applicant makes a change in the design it should be reflected in the sections. Mr. Henchy stated that the site distance of 650 feet was after the improvements.

Chief Miles stated that there needs to be two means of egress. His concern is that the fire truck responding from the north side of town needs the Peters Way ingress so it can avoid the center of Town. He is concerned about the right turn only out of Peters Way and one-way only options because the ambulance will frequently choose to go to Emerson hospital. He is also concerned that the restrictions could limit the exit of the fire truck if it had to go to another call. He stated that the applicant has accommodated requests for access around three sides of the building. He added he doesn't have access to every point in this development but that is the case in other areas in Town. Mr. Claussen added they have elevators for medical transport.

Amrita Nichols, 220 Old Lancaster Road, thanked the Board and asked about realigning entrance with Peakham Road. Mr. O'Brien stated that this was addressed at the workshops. If the Board and the applicant wish to go forward with this new option, the board needs to ask the BOS to go along with them, then the applicant has to negotiate with Ti Sales. After these discussions, then the applicant would have to go through a new process with MassDOT to get their approval to cross the railroad/future bike path. The Board prefers aligning the roads but can't make it happen. Mr. Klofft stated that Ti Sales submitted a letter asserting their rights. Mr. Henchy spoke with the attorney representing TI Sales and has a judgment from the land court for exclusive rights over the land.

Ed Shashoua, 328 Goodmans Hill Road, has concerns with the density of this project and its effects on the traffic. Additionally, he spoke about the water issues and asked where the water would come from.

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Rebecca Chizzo, 21 Whitetail Lane, objects to the accusation that the town is racist and is concerned about the impact on the cemetery.

Sherry Weiland, 4 Homestead Street, is concerned with traffic safety in the center of Town.

Kristen Salerno, 564 Peakham Road, is concerned about the traffic safety in the center of Town and is also concerned with air quality from the emissions of the increased traffic.

Martha Stone, 41 Chanticleer Road, is concerned the historic district will be overrun by the development.

Dick Williamson, 21 Pendleton Road, is concerned with the lack of mention of the BFRT in the traffic studies. He stated that it is estimated that 350 bikes will use the trail and believes there will need to be a traffic light for the trail.

Janie Dretler, 286 Goodmans Hill Road, is concerned with the pedestrian crossing especially for children. She concerned that Peter Noyes will become a turnaround in the event there is a one-way restriction on Peter's Way. Mr. Dirk stated that the report was published before the 2014 crash data was available and the 2013 data was used for the crash analysis.

Leonard Simon, 40 Meadowbrook Circle, has concerns about safety due to the increase in traffic. Mr. O'Brien asked if he is willing to write to Ti Sales to request an egress over their property. Mr. Simon stated that the new entrance would have to go over the rail trail. Mr. O'Brien asked if the rail trail could use a tunnel. Mr. Simon stated that he believes the DOT will create the rail trail to their safety standards and putting it under the road is not their standard.

Mr. Gossels inquired about the attorney hired by the BOS to look into the land sale. Mr. Simon stated that Town Meeting approved funding to hire an attorney to look into all issues surrounding Sudbury Station. Mr. Simon stated that he has concerns over the retaining wall near the Hudson Road egress. Mr. Henchy stated that a Mr Simon should not be addressing the board as a Selectman. Mr. O'Brien stated that Mr. Simon is a resident and allowed to speak. Mr. Henchy added that a Board Member applauded Mr. Simon's comment about the hiring of an attorney. Mr. Gossels stated he inquired not applauded. Mr. Henchy stated that there is no 20-foot wall proposed and estimated the retaining wall at 11 feet.

Katheryn Lee, 38 Candy Hill Road, has concerns about traffic safety and echoes the previous comments about respect.

Craig Gruber, 187 Goodmans Hill Road, stated that density is an issue and decreasing scale would increase safety.

Frank Riepe, 54 New Bridge Road, clarified for the record that the design criteria developed by the Sudbury Center Improvement Advisory Committee did not include increasing the traffic volume that could go through the center. The criteria were established to improve safety by improving the lane widths, alignments, and proper signalization. Handling a greater volume of cars was objected to because it would have required more lanes and would have been unappealing in a historic district. Mr. Riepe commented on Bill Place's comment about through-traffic in the development, as he believes it was his opinion and not a committee decision or reviewed by the engineering staff. His personal opinion is that if there is a development it would be an excellent opportunity to relieve traffic in the center of Town and an appropriate response by the applicant to adding traffic in the area. Mr. Henchy added that the constraints on the site are the soil and elevations to ground water and added that he could continue the discussion with Mr. Riepe.

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Ms. Nichols asked what happens after the hearing is closed on July 25. Mr. O'Brien stated that the applicant would have to grant to the Board more time or they would have to close the hearing and then issue a decision within 40 days. She is concerned that the numbers in the fiscal analysis did not add up and is concerned that the tax payers are going to have to take on an added burden.

Jonathan Silverstein, Town Council, agreed with Mr. Henchy that if the project is denied based on the view from the field, this will not outweigh the need for affordable housing in HAC's eyes. But if a condition is imposed based on the view from the field then the Board could request that the applicant show the Board that the project would be uneconomical. He encouraged the Board to ask the applicant for a pro forma with a density reduction.

Mike O'Malley, 177 Plympton Road encouraged the Board to take Mr. Hornstein's comments seriously and that he represents many in the community. Mr. O'Brien stated that the owner of the project is limited dividend entity. Mr. Engler stated that any change in ownership has to be approved by the regulatory authorities. Mr. O'Malley added that it is concerning that at this point in the process they are discussing significant traffic changes.

Chris Morely, 321 Old Lancaster Road, understands counsel's approach at requesting a pro forma but stated that it has to be requested after looking at the development comprehensively.

Mr. O'Brien requested the applicant submit a pro forma based on the recommendation from Town Counsel, removing 1 story off of building 1,2, and 3 because of the views from the field and 1 story off of 4 and 5 as those impact the peace and quiet on the cemetery. Mr. Henchy stated that under the regulation, if they propose a reduction in units, the applicant has the right to see all other conditions which will be attached to the decision. Mr. Klofft stated that they could put a number in that is not to be exceeded in a place for other conditions. Mr. Henchy stated that they have to assume they will complete all the conditions they proposed and asked if there are any other conditions they need to account for. Mr. O'Brien stated that they will engage a peer reviewer to provide a counter-analysis of the pro forma.

Laurie Eliason, 411 Concord Road, stated she doesn't believe the opposition is not just a neighborhood issue. She asked where the students from the development will be going to school. Mr. Claussen stated the elementary kids would go to Nixon.

Charlie Russo, 30 Juniper Road, member of the Conservation Commission, is concerned about the effect the development will have on the stormwater. He stated that one of the reasons he believes the Conservation Commission was deadlocked was due to the effect of water on the surrounding sites and that the applicant didn't receive all the information they requested. Mr. O'Brien asked about a water impact study. Mr. Henchy is looking into that now and will have to complete it.

Mr. Gossels asked that if the additional hydrology study was completed including digging the deep holes. Mr. Henchy stated there was never an official request from the BOS. Mr. Silverstein stated that in his letter to the Board last week he suggested the Board ask the applicant to coordinate with the Town Manager and engineering to authorize. Mr. O'Brien asked the applicant why he doesn't go to the Town Manager. Mr. Henchy stated he needs express permission to dig to determine the depth to ground water. Mr. O'Brien stated that he will email the Town Manager tomorrow.

Scot Smigler, 125 Plympton Road, advocated for the hiring a hydrologist to advise where to dig holes.

Mr. Gossels stated they need to know the effect of the as-built. Mr. Henchy stated that there will be a mounding analysis performed in connection with the application for a wastewater discharge permit to DEP.

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Ms. Saint Andre stated that they have a civil engineer that is providing a peer review but the report was just received about a week ago.

Mr. Hornstein added that the direction of the flow of water is important. It is incumbent on the assumption that the flow rate is equal throughout the site. He stated that a civil engineer is looking at soil absorption and not ground water mapping. He requests that a hydrologist look into the flow.

Ms. Dretler objected to findings in the last traffic study. The study stated that 50 cars turning right at Candy Hill were from parents dropping off kids at Peter Noyes but Candy Hill is not districted to Peter Noyes. She also asked if a fire truck should be shown exiting the development as well as entering. Ms. Dretler asked that if the applicant develops a pro forma for 150 units and it is found to be uneconomical, are they stuck with 250 units. Mr. O'Brien stated that they would have to issue a decision based on 250 units.

Robert Stolper, 30 Meadow Drive, stressed the importance of getting the pro forma request right.

Mr. Henchy request that the Board restate what they are asking the applicant to look into regarding the pro forma. Mr. Klofft and Mr. O'Brien discussed the legality of the request. Mr. O'Brien stated the reasons for the request are the visual, graveyard, historic, and open space impacts.

Ms. Saint Andre stated that the request needs to be done tonight and is confused why Plan 4 can't be used as the basis for the pro-forma analysis.

A discussion about which plan can be used to base the pro forma on ensued. It was decided that the plan on record would be used.

At 11:23 PM Mr. O'Brien recessed for five minutes. The Board reconvened at 11:34.

The final math on the pro forma is:

Building 1: 27 units

Building 2: 35 units

Building 3: 35 units

Building 4: 16 units

Building 5: 16 units

Building 9: remain at 7 units

Building 10 remain at 7 units

Building 11 remain at 7 units

Building 12: eliminated

Building 13: eliminated

There will be no change in the location of the buildings.

Mr. O'Brien will hand the revised unit count to Mr. Henchy at the end of the meeting. Mr. O'Brien requested a Water Impact Study and stated that they will deal with the hydrology expert at the next meeting. Mr. O'Brien will reach out to the Town Manager and Engineer for permission to dig. Mr. Silverstein will talk to the Selectmen on the 29th about advancing the request to MassDOT about access over Ti Sales property and the grading to avoid the retaining wall near the railroad bed.

A motion was made, seconded and voted to continue to July 25, 2016.

1. Approval of Meeting Minutes from April 25, 2016 meeting.

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Motion was made, seconded and voted to approve Minutes from the April 25, 2016 meeting.

The Board noted their appreciation for the tremendous work Jody Kablack has done for the last 25 years of service to the Town and all the work she had done for the Board.

There being no further business, the meeting was adjourned at 11:50 pm.