

The Board consisted of:

Jonathan O'Brien, Chair; Nicholas Palmer, Clerk; Jonathan Gossels; Jeffrey Klofft; and Nancy Rubenstein.

Also present at the meeting on behalf of the Town were: Barbra J. Saint Andre.

The meeting opened at 7:39 PM, Mr. Palmer read the public notice. Mr. O'Brien read the preamble which included that as of July 18, 2016, the Town met the threshold for affordable units.

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.

The Board is reviewing this application because at the time the application was submitted to the town, less than 10% of the year round housing units planned or actually constructed in the town of Sudbury were "affordable" units according to Massachusetts regulation. As of July 18, the town has met the 10% threshold of permitted "affordable" units.

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.

In the event this 10% threshold has not been met, Chapter 40B provides that a rebuttable presumption exists 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.

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.

Because the first hearing on this application was held on February 22, 2016, the public hearings on this matter must be concluded within 180 days of the first hearing, or Saturday, August 20, 2016. We will close the hearing on this application tonight. Within forty days of termination of the public hearing the Board shall render a decision, based on a majority vote. The decision on this matter shall then be required by Monday, September 26th, 2016.

The Board expects that all persons present in this room will act respectfully towards one another, in the spirit of what may well be an animated discussion, but which at all times shall remain civil and respectful.

A few rules then to ensure some decorum:

- You must be recognized by the Chair to speak.
- All questions must be addressed to the Chair. The board 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 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.

1. CONTINUATION - Public Hearing Case 16-4 – Sudbury Station LLC, Chris Claussen, Applicant and JOL TRUST, JRH TRUST, Matthew and Molly Gilmartin, Owners, for a Comprehensive Permit pursuant to Massachusetts General Laws, Chapter 40B, Sections 20-23, and 760 CMR 56, for the construction of a 250-unit rental apartment community, 25% of which will be affordable units, on approximately 40 acres, (13.45 buildable acres), property shown on Town Assessor Map G09-0100, G09-0004, G09-0300 and H09-0068, Peters Way and Peters Way Extension, Zoned Residential A-1 and Residential C.

Mr. O'Brien stated that the Board has had the chance to review the material submitted prior to the last hearing and the material submitted just before the July 25<sup>th</sup> hearing.

Mr. O'Brien suggested moving to deliberation. Mr. Gossels and Mr. Klofft had nothing new to add. Ms. Rubenstein asked about the legitimacy of the Peters Way land swap. Mr. O'Brien's view is the validity of that transfer is not within the ZBA's jurisdiction. Ms. Rubenstein agreed and asked if there had been any additional information since the hearing has opened. Ms. Saint Andre stated that she has not received any additional information.

Mr. O'Brien asked that all comments be kept to new information or concerns that haven't been stated in previous hearings. Mr. Henchy described the developer's team's credentials and background. He stated that at the time of this application and the Avalon application Sudbury was well below the affordable threshold and requested an approval for the project as submitted by the applicant to the Board. He concluded by thanking the Board.

Mr. O'Brien opened the hearing for public comment.

Roger Nichols, 220 Old Lancaster Road, reviewed the traffic study and believes it omits the Unitarian Church in the Town center.

Dennis Blejer, 73 Beechwood Avenue, is concerned with the traffic safety and asked what the increase in queuing time in the Town center will be. Mr. O'Brien stated that it is extraordinary complex and the experts said the overall delay would be 4 seconds or less. He acknowledged that there will be an increase but quantifying the precise effect is hard.

Craig Gruber, 187 Goodmans Hill Road, has concerns about the extraordinary complex pedestrian crossings and the effects on health and safety. He stated that Sudbury is running out of water and the

reviews on stormwater and wastewater were questionable, especially the limits. He is also concerned about the effects the construction would have on the environment and habitat. Open space was an additional concern.

Catharine Blake, 546 Peakham Road, stated that in an April 19<sup>th</sup> memo from Mr. Henchy, he wrote that the Agricultural Restriction was not permanent and requests that the Board considers that in their deliberation.

Martha Stone 41 Chanticleer Road, asked about the impact on the businesses in the center of town. Mr. O'Brien stated that an analysis was not done. Mr. Klofft added that the impact could not be factored into the decision under the 40B law. Mr. O'Brien stated that the 40B statute gives the ZBA the authority in lieu of the other Boards in the community. The only pillars they can base their decision on are; the health or safety of occupants of development and residents of the community, protection of the natural environment, promotion of better site and design in relations to the surrounding and municipal/ regional planning, and the preservation of open space. They must decide if those local concerns outweigh the need for affordable housing. Mr. O'Brien added that 63 units will be affordable units, 25% of the entire development.

Lauri Eliason, 411 Concord Road, asked how the number of units is not related to traffic safety.

Jason Giles, 21 Tudor Road, has concerns about the future rail trail that the Town supports and asked if it was factored into the study.

Len Simon, 40 Meadowbrook Circle, thanked the Board and residents for all their work. He stated that the three principals have no experience doing work in MA and that in his experience in Sudbury he has never received as many public comments. He also had an issue with the Board being led to believe that Ti Sales agreed to allow access through his site. Mr. Henchy responded that two of the principals have extensive development experience in MA and that he never represented that Ti Sales was willing to allow access. He stated that the applicant was willing to pursue getting access.

Mr. Klofft made a motion to close the public hearing, Mr. Gossels seconded, all were in favor.

Mr. O'Brien explained that the file is now closed and they would deliberate in a session open to the public but without further opportunity for commentary. He explained that no formal vote will be made tonight.

Mr. Gossels stated the question before them is to approve the project for a lesser number or deny the project all together.

Mr. Klofft stated that his concerns are:

- 1) the location of the egress on Hudson Road. It only meets the bare minimum standards for safe distance and his safety concerns are exacerbated by the volume and the complex road network.
- 2) The size of the egress on Hudson Road. The size and scope is not consistent with the Historic District.
- 3) Peters Way doesn't have the necessary traffic controls necessary and they are not enforceable. It impacts the health and safety of the residents in the neighborhood.
- 4) As currently designed, all buildable space is being used and there is a discrepancy between peer reviews on which standard to use for stormwater. If any problems should occur there would be no way to remedy the problem on site.
- 5) The proximity to the Revolutionary War Cemetery.

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Mr. Klofft reiterated his concerns over the safety of Peters Way and the need to eliminate it to make the development safe. Mr. O'Brien referenced a memo from Glenn Garber that concluded that a development with one access could only have 30 units. Mr. Klofft added that if the safety concerns were addressed a development at the proposed location is possible.

Mr. O'Brien stated that his concern with 30 units is it is radically different than the proposed difference and concerned it will not hold up to judicial scrutiny. Mr. Gossels added that the Board tried to negotiate with the developer but failed.

Mr. Gossels prefers to deny and believes the project disregards the local standards and added that Sudbury meets the 10% affordable housing. Mr. Klofft stated that the reason the number of 30 units works is because it addresses the public safety, stormwater and wastewater concerns.

Mr. O'Brien stated that Sudbury has met the 10% threshold as of July 18 and when a case is at the appeals levels the courts have shown at least some willingness in a balancing approach. Mr. Gossels added that from a public planning view this area has been designated as an open space area and housing compromises those fundamental values.

Mr. Palmer asked where the number 30 comes from. Mr. Klofft stated that it is a number from the Institute of Transportation Engineers for what is allowed on a dead-end street. Mr. Palmer asked if the 30 dwelling units is allowed by right. Mr. Klofft said no.

Mr. Klofft suggest they ask counsel to draft a denial and a decision based on a conditional approval.

Mr. Rubenstein asked if letters from Town Departments would carry weight in a lawsuit. Mr. O'Brien stated that he would hope that council would use that information in a lawsuit and added that Sudbury is starting to hit the threshold for large developments in terms of water use. He doesn't believe the intent of the statute is to make them more reliant on the State. Ms. Rubenstein stated she is torn between a denial and an approval at 30.

Mr. Gossels asked Mr. O'Brien if another negotiating session with the applicant would be worthwhile. Mr. O'Brien stated that he asked the applicant at the last hearing to re-open negotiations and the applicant had said no. Ms. Saint Andre stated that once the hearing is closed the Board cannot receive any testimony but she can ask the applicant's counsel to see if further negotiation would be possible. Mr. Gossels suggested a two-minute recess for Ms. Saint Andre and Mr. Henchy to discuss having another negotiating session.

Mr. Klofft motioned to have Ms. Saint Andre discuss with Mr. Henchy the possibility of having another negotiating session. All were in favor.

The Board recessed until 9:15pm. Ms. Saint Andre stated that Mr. Henchy would be happy to discuss this project further but based on past discussions 198 units was not acceptable to the Board. The Board decided against asking Ms. Saint Andre to pursue further negotiation discussions with the applicant.

Mr. O'Brien stated that when the local concerns are combined with Sudbury reaching its 10%, from a legal perspective approving 30 units could become defensible. Mr. Klofft added that he has conditions based on the Institute of Traffic Engineers guidelines that could be added to an approval at 30 units

Mr. Palmer stated that he is not convinced that the traffic engineering is that dangerous. He is concerned with the stormwater management and doesn't know if the applicant addressed their concerns. The

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stormwater management is impacting the abutters and if it is not to the standards it could be disastrous. He believes that a reduction of impervious surface would have impact on stormwater management.

Mr. O'Brien submitted a motion to have Ms. Saint Andre draft an approval based on 30 units based on the ITE standard if Peter's Way is removed and to also draft a separate denial of the application entirely, which Board will choose between at their next hearing. Mr. Klofft seconded.

Mr. O'Brien stated that the 30 units is a standard promoted by ITE and has a basis in reason. Mr. Palmer stated he is not convinced 30 units is the maximum number. Mr. O'Brien stated that the 30 is not fixed in the sand and the Board can come up with another number that has justification.

Mr. Palmer stated that if the demand for water is too high they can go back and ask the DEP for more water before they must go to the MWRTA.

Mr. O'Brien motioned to have Ms. Saint Andre draft an approval based on X units and draft a denial. Mr. Klofft seconded and all were in favor.

Mr. O'Brien moved to reconvene on September 20, 2016 in the same room at 7:30. Mr. Klofft seconded and all were in favor.

Ms. Saint Andre asked for clarification on the decision and whether she should include comments from the Town departments. Mr. O'Brien said yes.

The meeting adjourned at 9:37 PM.