

The Board consisted of:

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

Also present at the meeting on behalf of the Town were: Barbara Saint Andre, Meagen Donoghue, Glenn Garber, and Jonathan Silverstein.

Mr. O'Brien began the meeting by thanking the community for their involvement throughout the process. He also thanked Jody Kablack, Ms. Saint Andre, Mr. Garber, and Ms. Donoghue.

The Clerk read the public notice.

Board of Appeals deliberations on draft decisions for:

1. 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.

The Board agreed that they would like a conditional approval with a lower number of units or denial. Mr. O'Brien stated that a flat denial is acceptable but concerned it won't have the best legal holding and is in favor of a conditional approval at 30 units. He added that he believes the parcel is developable but not at the level proposed. Mr. Klofft added that his proposal of 30 units is less about specific numbers and more about safety issues. Mr. Palmer had no comment. Ms. Rubenstein stated that the draft decisions make great arguments for voting no and all criteria that they are advised to consider points to a denial.

Mr. Ray is concerned with the lack of planning and the applicants lack of information on wastewater/stormwater. He added that he believes parcel is buildable for a smaller number of units and if he was voting, would vote for a reduction to 30 units.

Mr. Riordan stated that a flat denial is defensible legal case. He stated that he is afraid that it will allow the applicant to make the case in an appeal that if the Board is ok with safety concerns associated with 30 units then more units will not increase those safety concerns.

Mr. Palmer stated that if a conditional approval of 30 units could save the Town money on litigation he would be in favor of it.

Mr. O'Brien asked for a legal perspective from Ms. Saint Andre about what is better for the Town, a flat denial or a conditional approval.

Ms. Saint Andre stated that from a legal perspective if the Board denies the permit outright and the applicant appeals to Housing Appeals Committee, then the Town would have to prove that the issues of local concerns outweigh the need for affordable housing. She added that the history of Appeals Committee and Appellate courts is that if a town is below the 10% threshold then the need for affordable

housing usually outweighs local concerns. In some cases, where there has been extreme safety and health concerns the denial is upheld. In respect to granting a conditional approval, the only difference is the applicant must establish that the development is uneconomical. She added that the Town saw an economic analysis that showed the development as presented to the board originally was uneconomical. If the town reduces the scope of the development, then the applicant must prove that than the local concerns do not outweigh the need for affordable housing. She concluded that it is a difficult case and her advice is if the Board finds it appropriate to grant a conditional approval they might be better off.

Mr. Gossels added that from a planning point of view this area had been targeted for preservation and asked if approving 30 units undermines that argument. Mr. Klofft stated that the area is developable for single family homes.

The Board discussed the fact that as of July 18, 2016, the town had met the 10% affordability threshold and its effect on their decision. Ms. Saint Andres stated the statutes have changed to state the date of application is used to determine the affordability percentage not the date of decision. Ms. Saint Andre agreed to include language about the Town achieving the 10% affordable housing threshold in the conditional approval.

Mr. Palmer asked for clarification on the reasoning behind the 30 units. Mr. Klofft stated that the number of units is based on the number of units allowed when there is only a single egress. Mr. Garber added that it is an ITE standard.

Mr. Klofft motioned to approval the application with a condition that the maximum number of units is 30 and the other conditions stated in the draft decision dated on September 20, 2016. Mr. Palmer seconded all were in favor.

The Board proceeded to review the draft decision and suggest edits.

A discussion ensued about waivers. Ms. Saint Andre stated that she did not waive any of the dimensional requirements because 30 units should be able to fit on the site. Ms. Saint Andres said she can add language about it as a condition.

Ms. Rubenstein added that pedestrians leaving the development would need to cross three streets to get to the school and it is a significant safety concern.

Mr. Garber stated that there was concern in the community that the development would not be reviewed by the Board if the applicant went forward with 30 units. Ms. Saint Andres stated that if the applicant decided to go forward with a plan for 30 units they would need to go back to the Board for review. Mr. Gossels suggested expanding the language of number 5 on page 17 to make it clear.

The Board discussed required parking spots and decided on no more than 75.

Ms. Rubenstein asked about mitigation and suggested the applicant must cover the costs associated with crosswalks, lighting, signage, and devices at the intersections immediately adjacent with the development. Mr. Klofft added that they should include bicycle pumps and water, should the bicycle trail be built. Mr. Gossels added that the new crosswalk must be planned in coordination with the BFRT. After the

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discussion, Ms. Saint Andre suggested including a condition that required that applicant to fund a signalized crosswalk across Hudson Road to the future BFRT as a condition.

Mr. Gossels motioned to approve the decision as amended. Mr. Klofft seconded and all were in favor. It was agreed that the Board would sign the decision after the session.

Mr. O'Brien asked if there are any other business items.

Mr. Klofft brought up the issue of chickens and stated that he supported the Code Enforcement Officers decision however he wants to make it clear that the Board did not appreciate them jumping the procedure.

Mr. Gossels motioned to close the hearing, it was seconded and all in a favor.

There being no further business, the meeting was adjourned at 8:53 p.m.