



TOWN OF UPTON, MASSACHUSETTS

Code Enforcement Department Zoning Board of Appeals

Minutes from ZBA meeting October 18, 2023

In-person and Remote meeting (Microsoft Teams)

Members Present: William Andrews, Eric Reustle (on teams), Robert Humes, Robert Butler, Michael Gelb (on teams - recused for public hearing- 47 Main St.)

Associate Member Present: Don Spargo

Administrative Clerk: Amy Bonina

Town Manager: Joseph Laydon

Town Planner: Michael Antonellis

Attendees:

Christopher Alphen, MA Housing Partnership Tech Assistance / Legal consultant

Kevin Lobisser – Owner and President - Lobisser Building Corp.

David Pyne – Development Associate - Lobisser Building

Ed Marchand – 40B Consultant Lobisser

Mike Dean – Civil Engineer – D & L Design Group - Lobisser

Peter Lavoie – Civil Engineer - D & L Design Group - Lobisser

John Smolak – Attorney - Lobisser

Jeremy Baldwin – Maugel DeStefano Architects - Lobisser

Attached sign in sheet – Town of Upton Residents – **Exhibit A**

Online attendees captured via screen shots – **Exhibit B**

Meeting Opened at 6:30pm – W. Andrews

Public Hearing:

Variance – 126 Elm Street - Application by owner, David Duffy, Jr. requesting a variance to allow for a front set back of 42 feet where 50 feet is required at 126 Elm St., Upton, MA (Parcel ID: 016-072)

Jeff Stefanik of Guerriere & Halnon, Inc Engineering called in on teams and through chat indicated his microphone is not working. He asked if Michael Antonellis can explain the application. Unfortunately, we cannot unless someone from the application is online or in person. Grandson called in and is not aware of the situation specifics. Jeff via teams chat asked for a continuance of the application.

Motion to continue: a variance to allow for a front set back of 42 feet where 50 feet is required at 126 Elm St., Upton, MA (Parcel ID: 016-072) to November 15, 2023 meeting.

R. Butler, 2nd R. Humes

Vote: 5-0 - E. Reustle, B. Andrews, R. Humes, M. Gelb, R. Butler

Open Public Hearing for the Comprehensive Permit for 47 Main St. – W. Andrews

E. Marchand – 40B Consultant for Lobisser asked if Mullin Rule has been enacted:

For Reference: c. 39, §230, which provide that a member of a board, committee, or commission holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to the member's absence from one session of such hearing, provided that certain conditions are met, or take any other action relative thereto.

– J. Laydon, Town Manager said no it had not. 2 members were on Teams. M. Gelb (recused as an abutter), -W. Andrews, Chair mentioned they all know the importance of them all being at every meeting and voting members will be W. Andrews, E. Reustle, R. Humes, R. Butler and D. Spargo.

Presentation on MGL Chapter 40B - Provided by Attorney C. Alphen, Mass Housing Partnership Technical Assistance Legal Consultant. – **Exhibit C**

- 180 days to complete the application. (April 16th, next meeting would be 17th, then 40 days to make a decision.)

Reading of the Public Hearing Notice: W. Andrews

Comprehensive Permit – 47 Main Street (AKA 0 Main Street) - Application (“Application”) of Lobisser Building Corp., 1 Charlesview Road, Hopedale MA 01747 (“Applicant”), for a Comprehensive Permit for a proposed project known as Upton Apartments, to be located on a site consisting of approximately 6.75 acres, known and numbered as 0 Main Street (AKA 47 Main St.), Upton, MA (Assessors Map 202, Lot 108) (the “Property”). 0 Main Street is located between 45 Main Street and 51 Main Street. The Application includes a proposal for a total of sixty-eight (68) garden-style rental units, parking (including three detached garage buildings), landscaping, and associated improvements, all as shown on the plans and specifications included within the Application.

Presentation by the applicant:

Kevin Lobisser, President – Presentation - **Exhibit D**

Ed Marchand – 40B Consultant Lobisser – spoke briefly on process

Peter Lavoie – Civil Engineer for Lobisser - Presentation - **Exhibit E** - Overview of site plans, Drainage design, Stormwater management, Parking, landscaping, snow and trash removal. Will provide more detail once they receive peer review from Stantec.

Jeremy Baldwin – Architect for the project for Lobisser. Presentation - **Exhibit F**

Discussion on Scope of Services and contract for Peer Review. Vote on need for Peer Review.

Will be reviewing the subjects of Stantec Scope of Services - Exhibit G. Civil, site plan regs, zoning by law, general engineering, stormwater, traffic engineering. \$10,739.

Vote to accept and execute the contract with Stantec:

R. Butler, 2nd D. Spargo

Vote: 5-0 - W. Andrews, R. Humes, D. Spargo, R. Butler, E. Reustle

Ed Marchand – Agreed that they are amenable to the use of Stantec for peer review and they will also get to pay for that peer review, that is not a public cost.

W. Andrews – Please when noting concerns, it is extremely helpful and appreciated to also receive suggestions on solutions that may be amenable.

Open Public Comments:

Meghan and Daniel Lacasse, 6 School St. – photo of the building that was provided does not allow for privacy. They are looking for more privacy due to their proximity to the new project. Wanted to note, their concern of lack of evergreens, renderings do not take into account winter views.
Privacy concerns – many others raised hand.

Paul Norton – 4 School St. – Comments about lack of evergreens. Photography was a wide angle lens which makes far away object to look smaller so not an accurate depiction of views. Also concerned about privacy and light pollution
Light pollution – many others raised hands

Marsha Kasilowski– 10 Whitney Lane – was granted time to present and can present more at the end if time allows.

Exhibit H

Concerns about fire, wetlands, habitat, maintaining privacy, Drinking water, water damage / flooding. Removing trees and brush. Hydrological testing needs to happen regarding possibility of streams. Pumping stations. Traffic issues, inadequate parking spaces. Concerns about historic homes and native American stone croppings. Salamander and frogs.
Issues with the application. Wrong person 51 Main, asked for clarification from Conservation.

John Reed – 19 Whitney Lane – 60' from the building. Depiction of pictures does not reflect a winter picture with deciduous trees without trees. Would like new plan to include fence and evergreen trees. Quoted Upton center business district revitalization and design standards. "Buildings are required to be oriented to minimize the intrusion of privacy of residents in adjacent buildings. Windows that overlook the living areas of adjacent buildings are unacceptable." Privacy issues need to be addressed. Asked Mr. Lobisser why he had not met with abutters as ZBA suggest that developers meet with abutters.

Kevin McLaughlin – 52 Main St. – Property has been destroyed with water run off from previous developments of Hazeline/Whitney and Laurel Lane/Spruce St. and is extremely concerned about water run off. Concerned about culvert where water will lead to and snow removal areas.
B. Andrews let Mr. McLaughlin know that they did a presentation regarding water management prior to him being able to arrive. No project will be allowed with more water leaving the site. Offered to sell his property to Lobisser for purchase with no response.

Rick McGuire – 11 Whitney Lane. Wetland concerns. Even during the draught last Summer, there was water flowing towards properties. At the corner of Warren St. and High st., 2 streams were buried back in the 70's for the Whitney / Hazeltine development. Octogenarians and residents in their 90's who said it was a cranberry bog back in the day. Flowing water and springs exist which we need to address and fixed possibly by culverts. He does appreciate the buffer space Lobisser has created by changing the driveway approach. He would like additional fencing and trees.

Sue Perry – 24 Hazeltine – took walk with Conservation in 2022 and has witnessed first hand the wildlife which live in that area. The proposed area provides water and area for the wildlife and she is a voice for them.

Mary Ellen Kennedy – 22 Hazeltine. – Calculation of open space that Lobisser is providing of 67% seems to be a discrepancy with 50% that she can determine and that does not include paved area. Who determines the economics of making this economically feasible? What is the number of units?

Atty, C. Alphen stated that economical feasibility is part of review by Mass Housing for eligibility and also makes sure they are not over profiting from the development. They will verify the open space percentages.

Claire O'Dell (Givani), 55 Main St. – Always had water problem from the previous development of Hazeltine and Whitney Lane. Her family has lived there for 70+ years so they know the history of the property. Also agrees that streams lie behind and one is near her home. Also concerned about displacing wildlife.

Craig Weinfus - 8 Hazeltine – Can this be sold to another developer? Could it be changed to section 8 housing? Atty C. Alphen stated that conditions are set on this property and would be transferred to any new owner in perpetuity. Also, any changes in ownership or changes to project would have to be approved by Mass Housing.

Bob Noreau - 57 Main St.- Does not see practicality of units. Why this location surrounded by single family homes? Will not fit in aesthetically. Property values will decrease, will their taxes be decreased? Concerned about increase in tax due to increase in demand for utilities and services.

Laurie Wodin – 7 Nelson St. – Wonders where streams are in relation to other streams and what flooding repercussions could be. If there are continued issues with water after do the families affected have any recourse by builder? Engineer for Lobisser, **P. Lavoie**, does not believe there are streams, just wetlands. **W. Andrews** reiterated that Stantec will continue to look into water and water management. Lori also mentioned that she was on the committee for the revitalization of Upton Center and part of the vision for the "downtown district", is for the architecture to be historically accurate. Hopeful they may consider redesign to the façade to be more historic.

James Meyer – 35 Fiske Ave – 3 reasons they moved to Upton: Safety, Education and Investment. Not so concerned that units will add too many children to school system. Mostly concerned about safety with a potential increase of traffic to Fiske Ave., children on bicycles and will be repaved once water lines are replaced so will be a main route to High St. to 495. Concerned about the investment and affecting property values. Is it possible to reduce units, add commercial to the lower level to add amenities to the town? **W. Andrews**, Stantec will look at traffic as part of their review. Will be asked to review Fiske Ave as well.

David Bartlett – 21 Plain St. – He has always had water in basement, sump pumps, generator, back up. Concerned that water will cross from Main, go to Pleasant, and to Plain St. stream which leads to Depot St.

Craig Weinfus - 8 Hazeltine – Requested if M. Kasilowski can continue once all public comments are complete. **W. Andrews** said yes if it will bring up additional points.

David Mercier - 149 Main St. – Is in support of the project as he currently lives in Lobisser's other large apartment complex in town. The 149 Main St. project has given him the opportunity to live in Upton and to escape the hustle and bustle of the city and city rents. Appreciates that instead of a triple decker in Worcester he can reside in a nice apartment in Upton.

M. Antonellis via teams chat and W. Andrews asked if there were any requests for additional comments online. No one requested time.

Due to time allowances, M. Kasilowski was given permission to continue her presentation. **Exhibit H**

W. Andrews explained Stantec's involvement of review of Lobbier studies and **M. Antonellis** noted that we will note topics to be discussed on the agenda which will be posted on the town website. **W. Andrews** reiterated that water concerns will not help anyone located uphill from the project. This will be a 6 month process of open meetings.

Joe Laydon, Town Manager mentioned residents can sign up for notifications of meetings via E alerts. They can also receive agendas not only for ZBA but for other boards too. Resident mentioned they are not receiving them. If you are not receiving them, please sign up again as we launched a new website.

Atty, C. Alphin suggested the subject for the next meeting could be Traffic for the next meeting. Resident, **D. Kennedy**, mentioned they are replacing pipes on Fiske and would not get a regular traffic reading. **Mary Ellen Kennedy** believes they are working through Nov or until it gets too cold.

E. Marchand, 40B consultant for Lobisser. Drainage is the critical path issue for Lobisser as well. They would like to request traffic as the next topic as well for the November meeting.

Dick Kennedy – 22 Hazeltine Rd. - Traffic Study does not take into consideration Fiske Ave. and wants to make sure it is reviewed as well. **E. Marchand** said they will review as well.

Atty, C. Alphin – Stantec was provided with Town Department comments and concerns and reviews are already underway.

M. Antonellis – reiterated that pre determining topics for review and discussion for each meeting will be a good way to have everyone prepared and to keep all on track for the 180 day review period. All departments but Fire have commented. All public comments will be posted as well.

ZBA will check receipt of letters against the abutters list.

Conservation clarification of letters to abutters.

Patrick David Shofer, 6 Pine St. – What is the additional responsibility of the developer if it is proven that there is an existing water issue? Ground water issues? Remediation? Communication is a concern.

W. Andrews is hopeful that this development will help down hill neighbors with water issues and should not affect up hill neighbors with water issues already.

Vote to continue Public Hearing the Comprehensive Permit – 47 Main Street (AKA 0 Main Street) to November 15th, 6:30 at the Community Center.

R. Humes, 2nd D. Spargo.

W. Andrews, R. Butler, R. Humes, D. Spargo, E. Reustle

Motion to vote for E. Reustle for Vice Chair.

R. Butler, 2nd D. Spargo.

Vote: 5-0 W. Andrews, D. Spargo, R. Humes, R. Butler, E. Reustle

Motion to approve minutes from September 20th, 2023.

R. Humes, 2nd D. Spargo

Vote: 5-0 W. Andrews, D. Spargo, R. Humes, R. Butler, E. Reustle

W. Andrews acknowledged the request from Holy Angels Church to withdraw their application from June 28th, 2023 without prejudice to sub divide church property to a later date as it is pending approval of the Diocese of Worcester.

Motion to accept withdrawal of application: R. Humes, 2nd D. Spargo

Vote: R. Butler, W. Andrews, R. Humes, E. Reustle - **No Vote Required**

Motion to adjourn meeting: D. Spargo, 2nd R. Humes

Vote: 5-0 - W. Andrews, R. Butler, R. Humes, D. Spargo, E. Reustle