



TOWN OF UPTON, MASSACHUSETTS

Code Enforcement Department Zoning Board of Appeals

Minutes from ZBA meeting November 15, 2023 – DRAFT, NOT YET APPROVED BY THE BOARD

In-person and Remote meeting (Microsoft Teams)

Members Present: William Andrews, Robert Butler, Robert Humes (joined prior to 47 Main St. discussion via phone), 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 Marchant – 40B Consultant Lobisser

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

Jeffrey Dirk – Traffic Engineer for VAI

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

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

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)

John Frederico of Guerriere & Halnon, Inc Engineering in person to present.

Motion to approve: 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).

D. Spargo, 2nd R. Butler

Vote: 4-0 D. Spargo, R. Butler, M. Gelb via phone, W. Andrews

***After the meeting and after not receiving receipt of mailings to abutters from the applicant, it was determined that the applicant will go in front of the ZBA at the Dec 20th meeting so they may send out the public notices. They requested an extension of the decision to Dec 20th.

Special Permit – 125 Warren St. - Application by owners, Lee and Janet Maglione. requesting a special permit for an accessory apartment (Section 300-7.6) at 864 Sq/Feet to be attached to the existing home above a garage located at 125 Warren St., Upton, MA (Parcel ID: 016-072)

Motion to approve: A special permit for an accessory apartment (Section 300-7.6) at 864 Sq/Feet to be attached to the existing home above a garage located at 125 Warren St., Upton, MA (Parcel ID: 016-072)

R. Butler, 2nd D. Spargo

Vote: 4-0 D. Spargo, R. Butler, M. Gelb via phone, W. Andrews

Special Permit – 93 Crockett Rd. – Application by owners Eugene and Lynne DiPoto, requesting a special permit (Section 300-3.3) to reconstruct a pre-existing nonconforming single-family dwelling with regards to frontage, area and setbacks.

Henry Lane, Attorney - Presented for the owners. Owners would like to turn it into their permanent home. Approval process has passed conservation and has an order of conditions. The new footprint will be pulled back further from the lake.

John Frederico of Guerriere & Hanlon Engineering discussed septic issues.

D. Spargo asked about height. The new layout will be within regulations.

W. Andrews, asked about a condition for downlighting. There is no plan for any other type of lighting.

Motion to approve: A special permit (Section 300-3.3) to reconstruct a pre-existing nonconforming single-family dwelling with regard to frontage, area and setbacks 93 Crockett Rd. with the condition of no downlighting.

R. Butler, 2nd D. Spargo

Vote: 4-0 D. Spargo, R. Butler, M. Gelb via phone, W. Andrews

Special Permit – 10 Pearl St. – Application by owner, Hayley Mozart requesting a special permit (Section 300-7.6) to approve a 432 sq/ft accessory apartment, originally constructed in 2017.

Motion to approve: a special permit (Section 300-7.6) to approve a 432 sq/ft accessory apartment, originally constructed in 2017 at 10 Pearl St..

D. Spargo, 2nd R. Butler

Vote: 4-0 D. Spargo, R. Butler, M. Gelb, W. Andrews

Eric Reustle arrived. R. Humes delayed in traffic. W. Andrews making a call to find out arrival time. M. Antonellis reached out to see if he can call in.

W. Andrews asked Lobisser if they would accept a smaller board. **E. Marchant** does not want to proceed with smaller board. M. Antonellis is calling R. Humes. We have not yet adopted the Mullin rule.

Discussion of conditions for 31 Shore Drive landscaping:

C. Sandini – 33 Shore Drive present

M. Pereira - 31 Shore Drive present

Clarification of vegetation/plantings between residences 31 and 33 Shore drive on the landscaping easement.

C. Sandini requested 5' giant arborvitae as the deer will not harm them and are deer resistant and grow at the rate of about 3' per year. Asking for 12-15 trees.

W. Andrews thought they may be cost prohibitive and something 3' may be more affordable.

To Clarify they would like to have 3' tall evergreens or giant arborvitae, to be planted by May 25, within a 90-95 feet span and the width dependent upon what is recommended for the chosen plants.

C. Sandini said he would be willing to have her do 70-75 feet span which if planted every 5 feet would work out to be approximately 15 plants. Applicant still needs to widen driveway for parking. They are still parking on the lawn.

W. Andrews clarified that depending on the type purchased if 3' when purchased, they will need to fill in horizontally to create a privacy barrier.

R. Humes called in via Teams from his phone. Voting members are present.

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

Reading of the Public Hearing Notice: W. Andrews

Presentation by the applicant K. Lobisser provided updates for:

- Since last meeting they have walked site with peer review engineering firm, Stantec.
- Have submitted the fire truck simulation plan for fire's review.
- Wetland Scientist is finalizing information for the notice of intent for Conservation meeting in Dec.
- Have met with neighbors on School St. relating to additional screening and landscaping and possibly on their property including on their low lying area. Will have engineers look at it with Conservation input.
- Has been in contact with Marsha, regarding traffic and drainage. May try to schedule meeting with neighborhood and Lobisser after Thanksgiving.
- Worked with lighting professional and have updated their lighting so there is zero light spillover onto other properties.

Presentation by Jeffrey Dirk who is the managing partner at Vanasse & Associates (VAI) Traffic consultant of Lobisser – Applicant traffic Study - Exhibit K

Evan Drew – Town of Upton, Stantec Peer review, Traffic consultant for Town of Upton– Exhibit L

Public Comments:

Sue Perry – 24 Hazeltine Rd. – Fiske ave. crosses Rte 40. Wants us to know the busy side with the school is the side they are concerned about and what should be looked at. Also wants to make sure study doesn't reflect covid numbers.

W. Andrews - Study was done in Jan '23 and adjustment has been made for time of year as well.

Dick Kennedy – 22 Hazeltine. – School St. intersection is at capacity. Light proposed at School St. People will bypass and shoot down Fiske instead. A way to avoid the increased issue would be to make Fiske one way.

W. Andrews – No light is currently proposed at School St. by Mass DOT with the 140 project changes.

Stacey Sicurella– 16 Warren St. – Concerned about high concentration of buses and school children and was that taken into consideration.

E. Drew – Type of vehicles is gathered in traffic data collection and is incorporated into the analysis.

W. Andrews – Fiske Ave study will most likely capture buses going to Memorial only, not BVT or Nipmuc.

Paul Morganelli – 3 Laurel Lane - traffic study numbers peak hours of study are not adding up to what he sees.

W. Andrews – Traffic numbers are based upon raw actual data.

Traffic numbers were not covid adjusted for the residential commuting number.

J. Dirk discussed that as of March of 2022 forward Mass DOT does not require a covid adjustment as the state believes as of this date it is the “new normal” for commuting.

Peak hours and data provides a graph of how much traffic will be produced at what time can be produced and can be provided. **Graph to be provided in response to peer review. – **Exhibit M**

Rick Maguire – 11 Whitney Lane – Reiterated the need for the study of Fiske Ave. He sees now a large que waiting to get into school between and 8:15-9am on Main St. would like that looked at during the Fiske Ave study. He is also concerned about if we have looked at increase of traffic and growth in other towns such as Northbridge, Douglas, Uxbridge, Grafton and Mendon as Upton is a cut through community to 495. He believes we are already over capacity on Fiske Ave, High St. and Main St.. Afternoon traffic at the school when traffic is heaviest around Fiske needs to be looked at times that traffic is heaviest 2-3, commuters between 4-6. Does not believe census numbers do not reflect actual numbers and don't take into account cut through town traffic.

J. Dirk - said video recording of their traffic study will pick up the issues mentioned.

Patrick Hurley - 13 Whitney Lane – Requested to see what the traffic will look like with cars / traffic in and out of the driveway of 47 Main will look like.

W. Andrews, Chair - Asked Lobisser to discuss directly with the resident so they can produce something for the abutters to the driveway.

Resident is also a bike riding fan. Will there be a bike path on the driveway?

K. Lobisser - There will be a sidewalk.

John Reid – 19 Whitney Lane – It is already difficult to get out during rush hour onto Main St.. His prediction of traffic flow as with other opinions will be a right turn onto Main and then a right onto Fiske Ave.

Mary Ellen Kennedy – 22 Hazeltine – Has a few questions / comments: 1) Does not think the study of Fiske Ave. should be done now. She believes that due to recent closure and construction on the street, the public does not realize it's open and numbers are currently lower than normal.

W. Andrews, Chair – Due to the limited timing of the open public meeting we can't wait too long. Mrs. Kennedy finds it hard to believe that the number of 1.5 spaces for a residential complex is accurate for suburban.

J. Dirk – only looked at the suburban number.

3) Snow removal - What will be done with the piles of snow to keep it out of view and concerned about what happens to the melting snow and drainage.

J. Dirk – Piles will be cut down and moved on site if too high, typically over 3’.

K. Lobisser – said sometimes snow will be removed off site.

Mrs. Kennedy would like it added to the conditions that snow removal should be removed off site.

As far as traffic, she is also concerned about what was mentioned in the Police comments regarding line of sight issues when there is Funeral parking on Main St. from Fiske Ave. and she would like the continued study to look at that concern as well as the school staging parking issue on Main.

Marsha Kasilowski – 10 Whitney Lane – Confirmed that Governor’s Landing was taken into account in study. Reiterated concerns regarding out of town cut through traffic from surrounding towns.

W. Andrews said the studies provided are projected out 7 years and that anticipated increase of general traffic growth is included.

Wondering about the high density of affordable housing and MBTA community rules. Has that been taken into consideration?

With the # of parking spaces, 111 spaces with additional, EV Charging stations, Handicapped spaces, paid garage spaces and visitor spaces she is really concerned about emergency vehicles access and large number of spaces and being blocked by additional vehicles that won’t have parking. Doesn’t think the number is high enough for ratio of units.

W. Andrews said he felt the 1.5 number seemed low too but did research and is happy to email Marsha articles on topic.

J. Dirk said there is a mass study and 1.5 is actually higher than what is required by mass but is the “sweet spot” for what works for these types of complexes. 1.38 is what is required.

K. Lobisser said their similar project in town is actually only at a parking at a level of 1.35.

C. Alphen asked if Lobisser will be requesting any waivers relating to parking?

E. Marchant said 40B Will be looking for waiver. Would like to do more covered parking as 44% of residents are 55 plus at 149 Main. All waivers to be requested will be reviewed.

Bob Noreau– 57 Main St. – Wants to confirm that the study states there will only be 1% of traffic growth per year. Does not believe that there will only be 1%. Feels the project is being positioned to give them no choice in the matter.

W. Andrews referenced the 40B presentation that C. Alphen made at the last meeting outlining limitations by the Town and requirements by the State to allow 40 B projects.

Board – Fiske Ave, buses and School still needs to be examined in regards to traffic.

M. Antonellis suggested that the topic for next meeting be chosen. C. Alphen suggested to go back to traffic towards the end of the meetings.

W. Andrews: Are we ready for a storm water discussion?

Stantec confirmed they could be ready.

Patrick Hurley – 13 Whitney Lane – suggested a Hydro geologic study be done.

W. Andrews – Water situation will not affect those up hill from the project. Only those downhill.

M. Antonellis suggested a review of storm water and feasibility of a hydro geologic study can be discussed as that will be the topic of the following meeting.

C. Alphen to Stantec – at the review of Stormwater, if they feel additional studies need to be done such as a Hydro geologic study, they can suggest that to the board.

Resident / not identified in audience: Current studies are for Surface water flow, not ground water flow which is why they need to do a Hydro geologic study.

Rick Maguire – 11 Whitney Lane – Believes the water table and existence of the spring is will cause existing water issue to raise to higher ground when the driveway and project goes in causing additional sink holes on properties.

W. Andrews, Water flows through wonderfully well in that area due to soil which he is experiencing on his own building project on School St.. Discussed materials that will be used are well engineered for drainage. Lobisser recently did soil tests and found well drained soil in the area.

Chris Alphin – Civil overview for next meeting? **Stantec** will be ready for Stormwater review with some initial Civil engineering comments.

Vote to continue Public Hearing the Comprehensive Permit – 47 Main Street (AKA 0 Main Street) to Dec 20th, 6:30 at the Community Center.

E. Reustle, 2nd D. Spargo

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

Motion to approve minutes from October 18, 2023.

E. Reustle, 2nd D. Spargo

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

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

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