

Minutes from ZBA meeting February 21, 2024

In-person and Remote meeting (Microsoft Teams)

Members Present: William Andrews, Eric Reustle, Robert Butler, Robert Humes (*Michael Gelb – via Teams*)

Associate Member Present: Don Spargo

Administrative Clerk: Amy Bonina

Town Planner: Michael Antonellis

Town Manager – Joseph Laydon

Select Board Members – Maureen Dwinnell, Laura Hebb, Brett Simas

Attendees:

Christopher Alphen, MA Housing Partnership Tech Assistance / Legal consultant

David Pyne – Development Associate - Lobisser Building

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

Ed Marchant – 40B Consultant Lobisser

David Glenn - Stantec Engineer – Peer Review

Jeffrey Dirk Vanasse & Associates – Teams

Evan Drew – Traffic Engineer Stantec – Teams

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

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

Meeting Opened at 6:30pm – W. Andrews

Continuance of Public Hearing - 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.

TRAFFIC

Traffic Presentation - J. Dirk – Vanasse & Associates - Posted to website w/ update to Fiske Ave -Exhibit S

Evan Drew / Stantec – Traffic Engineer – Response 2/16/24. – Exhibit T

W. Andrews – Said Fire will be discussing entrance curviness and if that can be addressed for next meeting.

Questions from the Board:

D. Spargo – Concern is Fiske and 140 with School buses going across. Report numbers do not sync with a.m. school times. Concerned with the amount of traffic.

J. Dirk – Study should coincide with school traffic, 7-8 a.m. does capture school time. 4-5 p.m. does not necessarily coincide with school time but the project will not add a lot of traffic during afternoon pick up / drop off. Looked at crash history regarding safety of crossing 140. Not a high crash location and is not disproportionate to other areas. No sightline impediment. Police detail has been there since residents had concerns which has made the intersection safer during school pick ups and drop offs.

Opened to questions from Residents:

James Meyer – 35 Fiske Ave. – Has two young children and has safety concerns. 7-8 a.m. are outside school hours which is 8 a.m. – on. Jan 10th which was a day of the continued study was a 4" rain day. Personally had a flight cancelled and a train delayed for 4 hours and has to imagine traffic was most likely severely reduced this day as well as there being a school delay. Had asked at previous meeting not to do study during a snow day / inclement weather day.

Question: figure 3 vs figure 8. Current traffic vs. projected traffic to 2031. Concerned about traffic from the project turning right onto Fiske Ave. to access Hartford Ave N to access 495. Report indicated 4 cars turning right in a.m. and 19 turning right in the evening. If project has 100-130 vehicles by 2031 there will continue to be 4 cars in the a.m. and 20 cars in the evening? Is he reading the report correctly? How is it possible to have 1 additional car in 7 years? In review: Would like corroboration of a.m. vehicles to time school actually starts, wanted to share concern about rain date that data was gathered on, and confirmation of current vs. planned traffic numbers due to only 1 car difference in plan.

Sue Perry – 24 Hazeltine Rd. – 8:30-9:15 is actually time buses are coming and going. Has seen 2 elderly people fall and one broke her leg.

Dick Kennedy – 22 Hazeltine Rd. – 4" of rain turns Fiske into a one lane street. Any increase in volume will make it worse. It is incredibly dangerous to cross 140. Fiske Ave intersection and crossing 140 is very dangerous especially for new drivers.

J. Dirk – 4" of rain over course of day is not going to impact peak traffic counts. They do numerous traffic studies in designing schools and the worst scenario to drive your kids to school is during rain which is why they wanted to include that day as pick up / drop off

during inclement weather is increased. Traffic counts on Fiske ave, may seem low but they are almost exactly the same on a snow, rain or regular day and they looked at 3 separate dates. They verified this observation with the detail officer.

Have looked at using Fiske Ave as a cut through. Using it brings residents to the same point if they were to use Main St. and went through the other intersections. They did assign a portion of additional traffic down Fiske Ave (10%) even though volume and distribution don't suggest it but they wanted to see what additional volume would be which would be around 2 cars. Does not believe project will increase traffic in that area. It does however increase the traffic and difficulty of getting onto 140/Main St..

E. Drew – Did not have more to add other than the additional impact. They did look at crash data but it does not take into account close calls which go unreported. It is important to keep tabs on accident reports in the area. DOT Main St project is coming up and all concerned parties should also take part in those discussions and provide feedback over concerns about that intersection as well.

W. Andrews – Positive that has come out of this discussion was that the Police detail was added to school to manage the cars queuing for pick up/drop off.

J. Meyer from Audience – School was delayed that day.

M. Kasilowski – 10 Whitney Lane – Reiterated there were heavy rains on date that study was done. Many people work from home during bad weather. School and Hartford Ave intersections are backed up, Waze redirects drivers onto Fiske Ave during good weather.

J. Dirk – Had 3 dates were looked at as well some of the dates looked at were when road work was continuing so they didn't submit those dates.

STORMWATER

P. LaVoie – Engineer / Lobisser – Worked in conjunction with Stantec review - Exhibit U

Dave Glenn / Stantec – Peer Review – Exhibit V – 2/16 – Additional comments were submitted today.

W. Andrews – Any additional concerns or outstanding issues that Stantec has should be worked out with Mr. Lavoie prior to the next meeting.

Questions from the board:

E. Reustle wants to hear all of abutter concerns.

D. Spargo. Tree over 6" in diameter. Concerned about tree disturbance. Who is involved in the selection of trees to be planted?

D. Pyne / P. Lavoie – Lobisser identified 6" trees and has provided areas of no disturbance. Trees within the building area will be removed. Landscaping will be done for neighbors on the neighbor side of privacy fences but will be maintained by Lobisser. Landscape architect will determine type of trees where and they will be planted. On Site and Landscaping plan was discussed with abutters who it is directly affecting.

C. Alphen – Decision will be clear and will have to incorporate the landscaping plan will be part of the conditions. If they do not provide what was planned it would be a zoning violation.

K. McLaughlin – 52 Main St. – Entered into Public Comments on website

W. Andrews – will go to K. McLaughlin's property to see his issues and concerns in person. Meeting with DOT is 2/28, he will try to join.

P. Lavoie – Driveway for project will be coming in flat and go up at a 5% slope. Catch basins 1 & 2 stormceptor, 3 & 4 go into detention pond. Last two catch basins are 30' from roadway. Hydro CAD shows basins.

D. Glenn – Less water will end up on Mr. McLaughlin's property based on new plans.

K. McLaughlin – Why wasn't culvert on 140 included in any of the studies. If catch basin is 30' up the street, and that is the last point of collection water will end up down the road.

P. Lavoie – Catch basin and culvert is interest point and should catch remaining water.

K. McLaughlin – Doesn't understand how the new driveway which is non porous and last collection point is 30' from street is going to stop water from the end running down Rte 140.

P. Lavoie – Two catch basins should catch most of the water and below that is small area which water is being reduced before it gets to the area beyond the catch basins. That area on opposite side of culvert, they reduced size of the drainage area draining to the culvert. The existing 20,000 of sq/ft was getting to the culvert and they have reduced the area to 8,200 sq/ft. Reduced the area by more than half and pushed it toward the wetland in the middle and by doing so, less water will end up on his property.

K. McLaughlin – Showed Mr. Lavoie area he is referring to. 600 Sq/Ft of area where water will go down the road. Taking an area that was a "sponge" and putting a road there will increase the water.

P. Lavoie - Reiterated that there will be a decrease in water that will be flowing in that direction due to the decrease of the existing area from 20,000 sq/ft to 8,200 sq/ft.

W. Andrews – Wants to meet with Kevin on his property. Reiterated the reduction of water

K. McLaughlin - Concerned about the drainage on his property is part of the drainage. Why wasn't his property and the catch basin included in part of the review?

W. Andrews – Challenge is they have to take into account what exists now and they have to not make the water situation worse. They are actually trying to improve the water situation by sending less water to his property. The amount of area that is being removed is 14,000 sq/ft. 600 remain in that area between the driveway catch basins and the road.

K. McLaughlin – Catch basins should have been part of the consideration and study. Why is tonight the first time it's being considered and discussed?

W. Andrews – Water is their number one concern and the peer review engineer, D. Glenn is confirming that less water will be going to his property and we look at that as a benefit to Mr. McLaughlin.

K. McLaughlin – Still doesn't understand how you can put a road in front of the catch basin and make the volume of water less. They are removing the sponge and replacing with a hard surface.

W. Andrews – There is a water swale there which indicates lots of water flows and they put a swale in to direct water. The swale exists on the property to direct water away. Bill will show Mr. McLaughlin when they meet.

John Reed via Teams – All can agree that the water ratios are high, noticed that plans have conifers and deciduous trees. Building will occur where the conifers are. What is the net result of that? The trees drinking water will disappear. Believes that will have an impact on an increase in water. Why is it not appropriate to do a hydrogeologic study?

W. Andrews – Not allowed to put on conditions that we do not require of other development or building in town onto this project. Additionally, the developer was asked and K. Lobisser already stated they would not conduct one as he would rather spend it to better the landscaping and requested improvements by abutters for the development. Water does indeed flow underground which supplies water to wells.

J. Reed – Appreciates comments and understands constraints but situation is different and this project warrants it.

W. Andrews – Appreciates all comments and concerns. Reiterated that the current plan should reduce water based on review by Stantec. Asked if there was a way to run report to show Mr. McLaughlin the reduction in water that will be seen on his property.

K. McLaughlin – Streams are buried so how can they even measure that water.

W. Andrews – We dealt with the hydrological study discussion previously and it is not an option and we cannot require them to do one legally and second, the developer already said he would not do one.

Dan LaCasse – 6 School St - via teams chat, **M. Antonellis** relayed to please raise hands to speak instead of making comments in chat. Via chat, Mr. LaCasse raised concerns regarding water management for School St., water runs between 6 and 10 School St. Was increased during most recent rain storms.

Craig Weinfus – 8 Hazeltine Rd – 1) When you visit Kevin's property, could you please show him the stream onto Pleasant St.. 2)Would like the board to consider if the neighborhood can amass the money to pay for the hydrogeological study to be performed, would it be allowed? 3)Traffic Study comment (came late and missed discussion) curious when it was done and drove daily and consistently from Jan 1 – Feb 8 across 140 at the Fiske Ave intersection and marked it on his calendar no rubber crossing hoses to measure traffic. How was traffic study conducted without the hoses?

C. Alphen – measuring hoses are no longer utilized. Believes video was used for this study they use video technology to calculate volume.

M. Antonellis – Through the chair, he was fairly sure they had mentioned using video technology.

Rick McGuire – 11 Whitney Lane, Chatted with Mr. Lobisser after one of the meetings he was able to discuss his concerns about the entrance road and the proposed buffer zone. After that meeting, Lobisser moved the entrance road further from 11 Whitney Lane which is appreciated. Mr. Lobisser and some on the team spent 2 hours with neighbors at Whitney Lane on their properties and will address water concerns by adding a storm drain on the west side of the drive taking water to the pool and also will be adding a swale along the property line to a holding pond. Also trees will be maintained and he will do his best to save trees and buffer area to reduce noise and light pollution, as many trees as possible will be saved as a best effort. Met with BOS and would like input will be consolidated into a list of conditions. Reiterated that Mr. Lobisser agreed to plant conifer trees on abutters side of fence but on his project property as well as on the inside so they can be maintained but seen by the abutters. Mr. Lobisser's development wants to be a good neighbor and he appreciates their time and efforts.

C. Alphen – Adding these items are acceptable for the order of conditions but beyond that if ok with the applicant as well as adding it into the ZBA decision as well to provide extra security to the residents and the board.

M. Antonellis – Reiterated adding the conditions to the ZBA decision and remarked that improvements noted would be on the applicant's property as it would be difficult to extend conditions off of the property.

W. Andrews – Brought up timeline for decision. Have two remaining meetings to sort it all out, March and April and the public meeting closes in May.

Peter Hart – 11 Pleasant St. – Water going through Mr. McLaughlin's property to Mr. Hart's property. Lived there his whole life and his father had to add sump pumps in his lifetime. Asked about the water being consolidated into one area but may have misunderstood. Joined Mr. McLaughlin on his property and noted water was coming underneath the pipe instead of through the pipe. Water on his property appears to come from under the road and from Mr. McLaughlin's property adding to it. Concerned underground springs will be added to causing additional issues since there has not been a hydro geological study. Won't be one as it would halt the whole project. **W. Andrews** said it would not. Asked about why the water was treating. Will it pollute the water? **W. Andrews** explained that the water picks up trash, salt, sand from roadways. Water is brought to settling ponds which removes the trash, sediment and debris. You can see an example on Williams St near condos.

P. Lavoie – Said it is mostly salt, sediment from roads and the area it settles in is then cleaned.

W. Andrews also shared an example in Grafton at Silver Lake where the sediment is flowing into the lake and forming a new area 15' into the pond. This is how it shouldn't be.

P. Hart – Believes that is what's happening on his property. He has to dig out area with sediment. He really hopes the changes will make it better. What is the recourse if the water issue becomes worse?

E. Reustle – Our permitting does not take away the private rights of the residents. If they increase water, residents can make a nuisance claim.

P. Hart – So if we are all wrong, all they have is a nuisance claim, something that goes on for years and years? We don't have the money that Lobisser has. Who is paying for these studies?

W. Andrews – Goal of this hearing is to manage water. Lobisser pays for the studies and has their own engineer and Lobisser has to pay for the peer review who is the Town's representative, Stantec to double check everything.

K. McLaughlin – They discussed that storm water would be treated. How will it be treated? Area is not insignificant and would appreciate answers.

W. Andrews – Requested D. Glenn from Stantec to look at final revisions submitted. Encouraged that square feet is being reduced. **K. McLaughlin** doesn't understand how they haven't taken his property issues into account. **W. Andrews** said they are reducing the area which is collecting water, to put it into other terms, they are reducing the size of the roof that is collecting water into the gutter. Has DPW looked at culvert to see if it is in good shape?

M. Antonellis – Asked DOT to evaluate the culvert on Mr. McLaughlin's property on Feb 28th. Also for the upcoming TIP project. **W. Andrews** will join that meeting. Someone from audience. Should Stantec be there as well?

K. McLaughlin – Still doesn't understand how they cannot take his property into consideration? He is an abutter directly across the street.

W. Andrews – The water study looks at the water **on** the project property. Reiterated that the applicant's team is reducing the area of water coming to his property from 28,000 Sq/Ft to 8,200 Sq/Ft, cutting the amount of water by more than half.

K. McLaughlin – They are putting it into a pool to go across the street.

W. Andrews – The water will go in the pool, doesn't know what isn't being understood as the water is being reduced by more than half.

K. McLaughlin – Doesn't understand how can study can be thorough and accurate in regards to the actual conditions of the property.

W. Andrews – The study is of the project property that we are studying. Many people have water issues. Residents uphill, this will do nothing to help them. They are trying to help the people, including Mr. McLaughlin who is downhill, trying to cut the water by more than half. Apologized for frustration has had a long day of travel.

C. Alphen – The legal standard which is the Mass State standard required through peer review have been met. Peer review's (Stantec's) job is to verify that the applicant has met standards.

K. McLaughlin – That standard is that not one more gallon of water will go onto other property, correct? **C. Alphen** – Correct

P. Hart – Then they can make a nuisance claim...

W. Andrews – We are trying to have a respectful process.

E. Reustle – (Mr. Hart) You had asked what your recourse was and was told that they would be able to submit for private claims if needed. Permitting doesn't make everything ok to cause issues for others.

Christine Wolfe – 25 Hazeltine Rd – Abuts wetlands. Question is about sediment basins. Can you please show them on the map? Concerned about mosquitos, very wet area behind her home. **P. Lavoie** showed where catch basins will be and indicated they should drain within 25/35 hours depending on conditions.

P. Hart – 11 Pleasant St. – Apologized for his Nuisance claim comment earlier. Doesn't understand how if you have a pitcher of water flowing straight, if you change and run it down 5 different channels it's the same amount of water, if it goes to a catch basin and they eventually fill, how there is less water. Water will eventually flow down.

W. Andrews – Understands. It is important to catch the water and the goal is to have the water will disseminate back into soil.

W. Andrews – Any questions from the board?

R. Humes – Reiterated that they will be retaining the water not adding to it, reducing the water collection area and improving it with the proposed fixes. Other projects have improved water issues for others. ie) Near valley tech. Feels that managing the water will make it better.

M. Antonellis – Next meeting will be March 20th. Will discuss civil engineering, will include fire department comments. As part of civil, will address landscaping.

Final list of waivers to be compiled for review at last meeting. D. Glenn

Motion to continue public hearing for 40B Application – 47 Main St. to March 20th, 6:30pm - E. Reustle, 2nd Butler

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

Motion to approve minutes from January, 2024 to be reviewed at next meeting

Motion to adjourn meeting: R. Humes, 2nd E. Reustle

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