Call to Order:
The meeting was called to order at 7:32 p.m. in the 3rd Floor Conference Room of the Town Offices. Present were Chairman Zachary Bergeron, Members Vincent Chiozzi, Joan Duff, Ann Knowles and Neil Magenheim, and Associate Member Rocky Leavitt. Also present were Lisa Schwarz, Senior Planner and Jacki Byerley, Planner.

Deliberations:

27-45 Main Street:
Mr. Bergeron opened the continued public hearings for 27-45 Main Street, an application submitted by Touchdown, LLC, for a Modification of a Special Permit (SP17-04) issued by the Planning Board in September 2017. The proposed modification is to eliminate all residential uses from the special permit and for the development to consist of 47,518 s.f. of retail, restaurant and other commercial uses.

Ms. Schwarz stated that she provided the Board with draft conditions to review if the Board were to vote to approve the application. She noted that the new conditions that were added for this modification are #2 d-h, #13 and #16-21. She noted that conditions #2 d-h are the updated plans.

Mr. Chiozzi stated that the site walk confirmed for him that he liked the original live, work, play project that included housing. He liked that the project included affordable housing units and non-coincidental uses that would help with the parking management. He added that if the project had originally come in without the housing, he doesn’t know if he would have voted in favor of it. He asked what options the Board has with the modification request. Ms. Schwarz stated that Town Counsel has advised her that the Board should not be rendering a decision based on their personal preference of the uses in the project. The decision should be rendered based on the compliance with the Zoning Bylaw. A denial of the modification will need a substantial reason that can be defended in court. Mr. Chiozzi stated that with this modification the Town will lose the affordable units which is a significant loss to the Town. It is not a zoning issue, it is trying to change an approved project to in his opinion a less desirable project. Ms. Schwarz stated that if the project originally came forward without housing the applicant would have sought a Special Permit for Major Non-Residential Project and a Special Permit for Change in Parking Space Requirements. Mr. Chiozzi noted that he was unsure on how he would have voted on those two special permits.

Mr. Bergeron asked if the project was still considered mixed-use without the housing component. Mr. Schwarz stated that it is a mixed-use project. Mr. Bergeron asked if the conditions that need to be followed before issuance of the occupancy permit actually carry as much weight as the Board wants them to have. Past experience with this applicant has taught the Board that the prior-to-occupancy conditions do not have the effect that the Board wants them to have. Ms. Schwarz stated she has had multiple conversations with the Inspector of Buildings and he and Town Counsel are both very aware of the situations that have arisen with this project and this applicant. They have advised Ms. Schwarz moving forward to be aware of all permits that are applied for under this address.
Ms. Knowles stated that the Board needs to make sure in any special permit decision that the conditions are very detailed. Mr. Leavitt questioned what will happen if the applicant does not follow one of the conditions because they are currently in violation of their special permit with two businesses operating without occupancy certificates and they have only been sent a violation letter by the Inspector of Buildings. He asked if the Board has to petition the court to start assessing fees for the continued violations. He felt that the violation letter had no teeth and questioned what recourse the Board has if the applicant continues to violate the conditions. Ms. Schwarz stated that the recourse is the Planning Division not signing off on building permits or occupancy permits. Mr. Leavitt noted that the applicant is directly violating the conditions of the special permit right now by occupying the building without occupancy permits, so he questioned why these same conditions would matter to the applicant in the future. He would like legal counsel to outline to the Board the exact process to start collecting violation fees from the applicant. He questioned the broad wording of condition #21 in regards to snow events because he felt with this particular applicant the Board needs to be explicit with what defines a snow event. There is a lack of trust with this project and everything needs to be hammered out before a vote is taken.

Mr. Magenheim agreed there is a significant lack of trust and stated that he wants the conditions to clearly call out what the Board wants in regards to the materials that must be used in the alleyway improvements, as well as specifying the location of the tree placement, and what is considered a snow event. Ms. Knowles and Ms. Duff agreed that pavers to be used in the alleyway should be specified in a condition. Ms. Schwarz revised condition #19 to specify the use of pavers in the alleyway and to tie the materials and lighting to what is on the plan referenced in condition #2h.

Ms. Knowles noted that the applicant would not supply the Board with an updated landscaping plan. She requested that condition #17 be changed so that the sentence “The plan shall add two (2) more Delaware Valley White Azalea beside (to the north of) the Elm” become the last sentence in the condition. She wants conditions to be placed such that the applicant must consult with the Tree Warden on the location and placement of all landscaping. Ms. Schwarz revised condition #17 to include additional notes about the involvement of the Tree Warden in the landscaping.

Mr. Leavitt questioned if the term snow event is subjective and if the Board should quantify it. Mr. Chiozzi stated that the condition #21 should be changed to reflect that no snow is allowed to be stored onsite.

Ms. Schwarz stated that if the applicant does not follow the conditions that Planning Division will not be signing off on any occupancy permits for the building. The Board has been informed that a restaurant has signed a lease with the applicant.

On a motion by Mr. Magenheim seconded by Ms. Knowles the Board granted the modification of a Special Permit for Planned Development Mixed Use for 27-45 Main Street with conditions as amended. **Vote:** 4-1 with Ms. Knowles, Mr. Magenheim, Mr. Bergeron and Ms. Duff voting Yes and Mr. Chiozzi voting No.
146 Dascomb Road:
Mr. Bergeron opened the continued public hearings on 146 Dascomb Road, a Special Permit for Major Non-Residential Project and a Special Permit for ID2 Zoning District Uses. Mr. Bergeron stated that the topics to be discussed tonight were site layout and details as well as water and sewer.

Rick Friberg of TEC, Inc. an engineer representing the applicant reviewed the proposed stormwater systems for the development. He stated that he has addressed the stormwater peer reviewer’s comments, which were technical in nature, and has revised the stormwater calculations and plans.

Mr. Friberg noted that ledge visibly exists in the northeast corner of the site on a mound that is 20-25 ft high. A geotechnical study has not been performed. At each phase of the project a deeper dive will be taken to investigate the existence of ledge. If blasting were necessary to remove the ledge, there are state laws, National Fire Protection Association regulations and Town bylaws that will have to be followed. Blasting is not allowed to take place on a weekend or a holiday. Advanced notice would be provided through different forms of communication before blasting were to occur. Pre-blast surveys are performed on any structure within 200 feet at the cost of the applicant. Mr. Bergeron noted that seismic testing is done during the blasts to protect nearby property owners as well as the applicant. Mr. Friberg stated that Mr. Bergeron was correct and added that the site is very close to the Interstate 93 bridge. He measured the nearest buildings and residences and he noted that the nearest residence is 750 feet away on the other side of Interstate 93 and the HP building is 800 feet away. Mr. Friberg showed an image of the area with different distances from where blasting may take place. Ms. Byerley asked if Restaurant Depot would be open for business during the blasting. Mr. Friberg stated that it would be open for business during the blasting. Ms. Byerley asked if blasting can take place while cars are driving in Interstate 93. Mr. Friberg stated that it would be Federal Highway’s decision to allow blasting while cars are on Interstate 93.

Mr. Friberg reviewed the density and lot coverage. He noted that the maximum allowed density is 848,000 s.f. and the proposed density is 524,000 s.f. which is 60% of the allowed. Each building will be reviewed for conformance with density, lot coverage and height. The allowed height in the district is 50 ft or 4 stories. The height is measured from the average grade along the public way, or in other words, what a passer-by on the road would see, basements excluded.

Mr. Magenheim asked about the status of the cell tower. Mr. Friberg stated that the applicant intends to have his approvals in hand before he negotiates with the cell phone tower owner. The cell tower has a permanent easement so it may move, it may stay in its current location or it may be placed on top of a building. He noted that the cell tower is about 150 ft and when placed on top of the hill it is 200 ft high. Mr. Bergeron asked where the top of a building is measured. Mr. Friberg stated that the top is measured differently based on the roof style of the building.

Ms. Knowles stated that she wants reassurance from the Fire Department that they are okay with there being no separation from the Restaurant Depot building. Ms. Byerley stated that she would verify with the Fire Department. Mr. Friberg explained the ladder truck access to the building. He noted that with this development, public safety will have access around the entirety of the
146 Dascomb Road (cont’d):
property, which they don’t have now. Mr. Chiozzi noted that the buildings will be fully sprinkled. Mr. Friberg stated that the garage will also be sprinkled.

Ms. Byerley asked Mr. Friberg if he had submitted materials to the Inspector of Building for confirmation of lot coverage. Mr. Friberg stated that he submitted the information the prior Thursday.

Janet Clarke of 5 Carriage Hill Road asked questions about blasting. She asked how long the blasting would last. Mr. Friberg stated that he could not answer that question until a geologist and contractor were engaged. The Board recommended a variety of communication methods with the applicant in regards to blasting. Ms. Clark asked who would oversee the noise and timing of any rock grinding. Mr. Friberg noted that Interstate 93 acts as a sound barrier and there is also the physical sound barrier that was constructed on Interstate 93 at Dascomb Road.

Ms. Byerley suggested that the Board schedule a site walk and that the applicant flag off what will be located where and to mark corners of buildings. The Board scheduled a site walked for Tuesday, June 25th at 6:00 PM.

Mr. Magenheim asked about the status of the other outside approvals that the project requires such as MEPA. Mr. Friberg stated that the MEPA process is ongoing, and he anticipates submitting the final Environmental Impact Report (EIR) at the end of June. The MassDOT roadway approval will commence in conjunction with the MassWorks Grant. The Town is working to get the final MassWorks Grant contract in place.

Ms. Knowles asked for clarification on if there are choke points in the wastewater system today or if there will be with the addition of this development. Mr. Friberg stated that in dry weather there is no capacity issue today. He stated that a 10 year storm event was modeled and with that event coupled with I/I there is a capacity issue today at Central Street and Powder Mill Square. Ms. Knowles asked if that condition will be mitigated and Mr. Friberg stated that it will be mitigated. Ms. Byerley added that Chris Cronin, the Director of the Department of Public Works will be at the Board’s June 25th meeting to answer the Board’s questions.

Janet Clarke of 5 Carriage Hill Road asked Mr. Friberg to explain how the applicant and the Town will share the cost of the sewer mitigation. Mr. Friberg explained that the Town will be implementing a new fee on all projects to help to mitigate the I/I issues in the most affected areas of Town.

The Board decided that sewer and water will be discussed again at the June 25th meeting. Traffic will be discussed at the meetings in July.

On a motion by Mr. Magenheim seconded by Ms. Knowles, the Board continued the public hearings for 146 Dascomb Road a Special Permit for Major Non-Residential Project and a Special Permit for ID2 Zoning District Uses to June 25th at 7:35 PM. **Vote:** Unanimous (5-0).
146 Dascomb Road (cont’d):
On a motion by Mr. Magenheim seconded by Ms. Knowles, the Board scheduled a site walk at 146 Dascomb Road on June 25th at 6:00 PM. Vote: Unanimous (5-0).

Deliberations:

400 Federal Street:
Mr. Bergeron opened the deliberations for 400 Federal Street, a Special Permit for Major Non-Residential Project and a Special Permit for Change in Parking Space Requirements.

Ms. Byerley stated that the application is for a 90,000 s.f. two-story addition with a parking structure held in reserve until it is necessary to be built. She reviewed the draft conditions and noted that condition #3 pertained to under what circumstances the parking garage would be required to be built.

On a motion by Mr. Magenheim seconded by Ms. Duff the Board found that the Special Permits for a Major Non-Residential Project and to Reduce the Number of Parking Spaces will not be unreasonably detrimental or substantially detrimental to the established or future character of the neighborhood and town and that this is in harmony with the general purpose and intent of the Zoning Bylaw, and further moved that the Board approve with conditions the Special Permit applications for a Major Non-Residential Project and to Reduce the Number of Parking Spaces for 400 Federal Street. Vote: Unanimous (5-0).

Special Town Meeting:
The Board discussed the two warrant articles for Special Town Meeting. The Board decided to take no position on the articles as they are not in the Board’s purview.

On a motion by Mr. Chiozzi seconded by Ms. Duff the Board voted to take No Position on Special Town Meeting Articles 1 and 2. Vote: Unanimous (5-0).

Minutes:
Ms. Knowles noted that she had given staff some minor editorial comments on the April 23rd minutes.

On a motion by Ms. Knowles seconded by Mr. Leavitt the Board approved the April 23rd minutes as amended and approved the May 14th minutes as submitted. Vote: Unanimous (5-0).

Adjournment: The meeting was adjourned at 9:14 P.M.

Documents:

27-45 Main Street:
- Draft Conditions of Approval
146 Dascomb Road:
  • Presentation by TEC, Inc. on site layout and details as well as water and sewer

400 Federal Street:
  • Draft Conditions of Approval

Special Town Meeting:
  • Finance Committee Report Special Town Meeting June 19, 2019

Minutes:
  • Andover Planning Board Draft Minutes of April 23, 2019
  • Andover Planning Board Draft Minutes of May 14, 2019