

Call to Order:

The Planning Board Meeting was called to order at 7:32PM on July 27, 2021 in the Third Floor Conference Room of the Town Offices. Present were Chair Zachary Bergeron, Vice Chair Rocky Leavitt; Members Vincent Chiozzi, Jr. (via phone call), Neil Magenheim, and associate Morgan von Prella Pecelli. Also present were Paul Materazzo, Director of Planning (via Webex), Lisa Schwarz, Assistant Director of Planning, and Tom Urbelis, Town Counsel (via Webex).

CONTINUED PUBLIC HEARINGS:**100-400 Brickstone Square – Special Permit for a Major Non-Residential Project (SP21-01) and a Special Permit for a Change in Parking Space Requirements (SP21-02):**

Mr. Bergeron opened discussion on the abovementioned special permits and announced that the focus of this hearing would be on traffic and parking. Todd Greenfield, representative for KS Partners, LLC, the applicant and owner, requested to provide an update on the bridge that was discussed at the previous Planning Board Meeting on July 13, 2021 and the cause of excessive noise that was disruptive to residents in that area. Mr. Greenfield indicated that a welder was hired by the applicant to mitigate the noise and worked on approximately one third of the bridge which had decreased the noise significantly. Dan Rooney, resident at 3 Kenilworth Street, who had brought this concern before the Board had the opportunity to speak with the welder and expressed his satisfaction with the work that had been completed. They are scheduled to complete the project by Friday, July 30, 2021.

Will Granbery and Steve Martorano, Civil Engineers with Bohler Engineering, as well as Jason Adams, Associate & General Manager at McMahan Associates, were in attendance to review the traffic assessment and answer questions. Mr. Adams presented the assessment methodology which included a review of available traffic data and MassDOT crash data, a trip generation study, a parking demand analysis, and a review of project access. From this analysis, Mr. Adams shared several conclusions. First, the crash data indicated that some safety improvements would benefit the area, referencing the intersections at Riverina Road and Haverhill Street and York Street and Haverhill Street in particular. Second, it was determined that the project would not be a significant traffic generator, with a predicted increase of approximately 1-2% to the existing traffic volume. In response to Mr. Bergeron's question on when this data was collected, Mr. Adams stated that these numbers reflect traffic before COVID and specifically in the years 2016 and 2019. Lastly, it was concluded that the parking expected to be generated could be accommodated on the lot serving the project site, and the overall amount of parking provided for the entire campus is appropriate, with more parking than is needed.

Mr. Adams proceeded to share recommendations based on the parking analysis, with the first being to limit cut-through traffic on Riverina Road. He noted that a high percentage of crashes that occur are left-turning vehicles from Riverina Road onto Haverhill Street and during commuter periods. Following the Planning Board meeting on July 13, 2021, the Board received an email from Robert Bolton, resident at 26 Riverina Road, who strongly opposed the recommendation to restrict this left-hand turn. In consideration of this feedback, Mr. Adams revised the recommendation to install signage limiting access during peak periods to residents only; however, Officer Glen Ota commented that this is not likely to be feasible or enforceable, and he has not seen this type of restriction anywhere in Town. Other

recommendations included improving the sight distance at the Haverhill Street and York Street intersection by removing 1-2 parking spaces and educating employees on site access.

Ms. von Prella Pecelli inquired about whether trucking traffic had been considered in the analysis. Per Mr. Adams, the traffic should not be frequent, and the loading dock at the backside of the site provides easy access from Haverhill Street. He also anticipates most truck traffic during off-peak hours; therefore, it will not have any appreciable impact.

Mr. Bergeron invited Officer Ota to add any comments. He referenced the resident email and stated that it would be unfair to put turning restrictions on Riverina Road. Mr. Bergeron asked if it would be possible to make this road accessible only to residents; however, Officer Ota again warned that this would be difficult to enforce. They proceeded to discuss the various traffic patterns in more detail and concerns about safety. Officer Ota added that he is comfortable with the safety profile based on the limited number of trips that will be added and the suggestion to remove parking spaces.

Mr. Leavitt asked what benchmarks would be in place should an additional parking structure need to be constructed. Per Mr. Martorano, a parking occupancy of 80-90% of the entire site would trigger a need for the construction of another parking structure. He offered to propose some language regarding parking occupancy thresholds that would be submitted to the Planning Board and reviewed at the next meeting.

Mr. Bergeron asked for next steps and what will be discussed at future meetings. Mr. Martorano said they would like to review comments from the Department of Public Works and Department of Public Health at the next meeting on August 18, 2021. Mr. Granbery added they will address comments from the stormwater peer review as well. Ms. von Prella Pecelli suggested that she will have questions related to energy conservation and aesthetics then. Mr. Bergeron asked if there would be any opposition to the Planning Board consulting with the Design Review Board. There was not. Mr. Martorano requested that it be conditional when they have a tenant, as architectural plans could change.

On a motion by Mr. Magenheim, seconded by Mr. Leavitt, the Planning Board voted to continue the public hearing for 100-400 Brickstone Square for a Special Permit for a Major Non-Residential Project and a Special Permit for a Change in Parking Space Requirements to the August 18, 2021 Planning Board Meeting at 7:30PM. **Vote: (5-0)**

CONTINUED PUBLIC HEARINGS:

60 Canterbury Street – Special Permit for a Multi-Family Attached Cluster (SP20-03) and a Special Permit for Disturbance of Slopes in Excess of 35% (SP20-04):

Mr. Bergeron opened discussion on the abovementioned special permits and asked if the applicant had any new information to be discussed. Kathryn Morin, representing Yvon Cormier, applicant and Trustee of CA Investment, proceeded to address some concerns that were raised by the Planning Board at the last meeting on July 27, 2021 related to the perceived lack of cooperation, width of the roadway pavement, sidewalks, and the requirement to obtain approval of a conservation restriction from the Executive Office of Energy and Environmental Affairs (EOEEA). Ms. Morin shared that the applicant has

made an effort to work with the Planning Board, taking into consideration the questions, comments and concerns of the Board and abutters to the property, and she provided several concrete examples of how they have been addressed. Also, Ms. Morin stated that there is no bylaw requirement for EOEEA approval of the conservation restriction under section 7.3, and it was never a permitting condition for any past projects. In addition, Ms. Morin explained in more depth the local conservation restriction in relation to the EOEEA conservation restriction and how they are not synonymous and are not intended to serve the same purpose. As a result, there was no guarantee that the applicant could obtain EOEEA approval, and it could potentially be impossible. Ms. Morin claimed that it is outside the scope of the authority for the Planning Board to impose an EOEEA condition as a requirement because under Massachusetts law the Planning Board cannot defer a decision on a substantive matter in a permit to somebody else. She cited case law examples in support of her claim. Ms. Morin concluded by stating that the applicant requests issuance of the special permit without the EOEEA requirement.

Mr. Magenheim asked Ms. Morin if a failure to obtain EOEEA approval would prohibit the sale of the Clubview units. She answered affirmatively, if the Planning Board approves the special permits with condition #15 and that condition stands.

Mr. Bergeron asked Mr. Urbelis for his comments. Per Mr. Urbelis, the bylaw has a section which solicits comments and recommendations from other Boards. Also, he stated that the proposed restriction that the applicant submitted includes approval for EOEEA; therefore, the applicant cannot make the argument that imposing a condition is not within Planning Board's purview. Furthermore, Mr. Urbelis explained that in the proposed restriction and every other restriction that has been submitted, the applicant has specified that the restriction is meant to be in perpetuity which requires EOEEA approval according to the Massachusetts Appeals Court. He cited a case law example and other sections of the bylaw to support his argument. In addition, Mr. Urbelis explained that they were prompted to redraft condition #15 as it was evident at the last Planning Board meeting that the applicant was going to reserve his right to challenge this condition of the special permit. He added that providing this level of detail in the special permit decision would be helpful for a judge to understand the Planning Board's position should the applicant claim that the decision is arbitrary and capricious.

Mr. Chiozzi stated that he is comfortable with conditions #15 and #19 and expressed that he has a comment regarding condition #16 to be discussed during deliberations.

Mr. Leavitt expressed his concern that the applicant would appeal the Planning Board's decision and the likelihood of it not being addressed for 3 years at the Land Court. He also shared that an appeal would negate efforts to date made by the Conservation Commission. Furthermore, Mr. Leavitt expressed his hope that the efforts of Ms. Byerley and Mr. Urbelis in making condition #15 more robust would be perceived as favorable by the community regardless of the outcome.

Mr. Bergeron asked Mr. Materazzo for his opinion on the impending decision. He responded that it is the Planning Board's responsibility to protect the Town and he believes that the drafted condition presents a good compromise between the Town and applicant.

On a motion by Mr. Magenheim, seconded by Mr. Leavitt, the Planning Board voted to close the public hearings on 60 Canterbury Street for a Special Permit for a Multi-Family Attached Cluster Development under Section 7.3 and a Special Permit for Disturbance of Slopes in excess of 35%. **Vote: (5-0)**

The Planning Board proceeded to deliberations. Mr. Chiozzi expressed his concern that condition #16 did not include the provisions outlined in condition #15 and requested that language referencing these provisions be added. After a brief discussion, the Planning Board suggested the inclusion of the following phrase to condition #16: “notwithstanding the requirements in condition #15 prior to the issuance of the building permit.”

Mr. Bergeron reviewed the design standards outlined in a memorandum from Ms. Byerley that was submitted to the Planning Board prior to the meeting. He questioned whether the standard to protect the natural environment and to conserve open space (#2) could be met without condition #15. He also stated that the standard to provide housing which will not be detrimental to the established or future character of the neighborhood and Town (#5) would be a challenging case to build and provided the removal of the community pool on the existing property as an example.

Ms. von Prella Pecelli requested the inclusion of native species to condition #20 which outlines landscaping criteria. Mr. Magenheim reviewed the Landscaping Plan previously submitted by the applicant and noted trees that the Board believed to be native species.

On a motion by Mr. Magenheim, seconded by Mr. Chiozzi, the Planning Board voted to find the applications for the special permits at 60 Canterbury Street will not be unreasonably detrimental to the established or future character of the neighborhood and Town and is in harmony with the general purpose and intent of the bylaw and to approve with conditions, as amended, the applications for a Special Permit for New Multi-Family Construction Attached Cluster Development and a Special Permit for Disturbance of Slopes in Excess of 35% at 60 Canterbury Street to be known as Clubview Estates. **Vote: (5-0)**

DISCUSSION ITEMS:

Minutes:

On a motion by Mr. Magenheim, seconded by Mr. Leavitt, the Planning Board voted to approve minutes for the April 27, 2021 and May 6, 2021 meetings. **Vote: (5-0)**

Other Planning Related Topics:

Mr. Leavitt requested an update on the traffic light on Lowell Street by the IRS building. Ms. Schwarz will follow-up with Officer Glen Ota.

Ms. Schwarz provided an update on the Master Plan Steering Committee visioning process. She shared that 192 residents completed a survey to participate in a focus group, with 154 residents providing contact information. Ms. Schwarz will be forming approximately 20 focus groups, each comprised of 6-9 residents and grouped by varied demographics, to collect data on current perceptions of Andover and future goals. More information will be shared at the next Planning Board meeting on August 18, 2021.

Mr. Magenheim requested an update on the parking lot. Ms. Schwarz shared that there are design changes to the plans being considered based on community feedback. This will delay the project from a July/August start date to Fall/Winter 2021 and expected completion in 2022.

The Planning Board discussed the format of the next meeting and whether it will be virtual or in-person. Ms. Byerley will confirm and notify the Board.

Adjournment:

On a motion by Mr. Magenheim, seconded by Ms. von Prelle Pecelli, the Planning Board voted to adjourn the meeting at 8:55PM. **Vote: (5-0)**

Documents:

100-400 Brickstone Square:

- Cover letter from Bohler to the Planning Board – 6.16.21
- Special Permit Application Package – 6.15.21
- Proposed Site Plan Documents from Bohler for KS Partners – 6.15.01
- Drainage Report from Bohler for KS Partners – 6.15.21
- Memorandum from McMahon Associates to the Planning Board re: Traffic Assessment – 6.14.21
- 26 Riverina Road Resident Email – 7.19.21
- Department of Public Works IDR Comments – 7.14.21
- Department of Public Health IDR Comments – 7.15.21
- Memorandum from Horsley Witten Group to the Planning Board re: Initial Stormwater Peer Review – 7.12.21
- Memorandum from Jacki Byerley to the Planning Board – 7.16.21

60 Canterbury Street – Clubview Estates:

- 15-639 Comprehensive Conservation Restriction Exhibit B – 6.22.21
- Open Space Restricted Common Area Draft Plan – 6.29.21
- Site Development Plan – 6.29.21
- Letter to Jacki Byerley from Attorney Morin re: Conservation Restriction – 6.14.21
- Letter to Jacki Byerley from Attorney Morin re: Easements – 6.17.21
- Andover Country Club Conservation Restriction Overview Plan – 7.1.21
- Comprehensive Conservation Restriction EOEEA – 6.14.21
- Email from Chris Clemente, Inspector of Buildings to Jacki Byerley re: Open Space 1.19.21
- Memorandum from Jacki Byerley to the Planning Board re: 60 Canterbury Street Recommendation – 7.22.21