

Zoning Board of Appeals
Town Offices
Tuesday, December 4, 2007
Case No. 06-03

Hearing for Comprehensive Permit for Sugarbush, LLC

Members present: Steve Krol, chair; Tom Herrick, clerk; Jim Bernotas, Barre Tozloski, Jim Williams, Jr., Associate members: Stuart Beckley, Todd Nuerminger and Planning Board Rep., Steve Schneider

Town Counsel: Jason Talerman.

Representatives from Sugarbush, LLC: Joel Kahn, consultant to applicant; Lou Levine, counsel to applicant.

Krol opened the hearing at 7.16 PM and noted that this was a continuation of case 06-03 which began in October of 2006. He announced the extension of the time limit for filing of the ZBA decision to January 11, 2008, with a memo signed by both the applicant and the ZBA chair. He also acknowledged a phone conversation with Kahn where it was agreed that negotiations can happen at any time during the deliberation and appeal process.

Krol reads Section 5 from the Comprehensive Permit Rules of the Sunderland Zoning board of Appeals that state the board must vote within 40 days after the closing of the hearing and, unlike regular ZBA Special Permits and Variances, only a simple majority is necessary for a decision. The board may choose one of three possible decisions: 1) approve the application as submitted; 2) deny the application on the basis that the project would have adverse community impacts which would override the need for affordable housing or; 3) approve the application with conditions. Krol notes that the six criteria for regular SP applications do not directly apply in comprehensive permit cases, but rather the board needs to consider any adverse community impacts vs. the community's affordable housing needs; however any conditions added to an acceptance can not render a project economically unfeasible. Applicant may appeal a denial or any conditional approvals that render the project economically unfeasible. Krol quotes some passages from "Local 40B Review and Decision Guidelines" published by Massachusetts Housing Partnership, November, 2005.

Beckley asked about the range for a denial. Talerman stated that anything concerning

community health, welfare, safety, or environment were valid reasons for a denial. He noted again that an acceptance with conditions was the same as a denial if the conditions were so restrictive that the project would be unfeasible. Schneider stated that the applicant has said 150 units is a minimum for economic feasibility – this seems like an all or nothing situation. Talerman again stated that anything can be negotiated at any time; during the appeal or re-appeal period. Total redesign is probably out but applicant has suggested height modifications.

Krol suggested a procedural method: vote on the granting the comprehensive permit application as is and then state specific concerns from each of the board members.

Tozloski moved and Herrick seconded a motion to accept the SP application as submitted. Unanimous “no” vote.

Krol listed his concerns in the safety area: 1) traffic safety and access to 116; 2) pedestrian safety at bus stops, 3) pedestrians on 116, 4) high speed limits, 5) with Plum Tree access opened would require traffic light at Plum Tree and 116.

Bernotas noted that 150 new units mean a lack of adequate services generally.

Krol noted a fire safety problem with the lack of a ladder truck and Herrick cited the need for more police protection with 150 new units. Krol noted fire truck access problems; not enough turn space in the parking areas. Schneider asked about adequate town water in the event of a fire in the project and Krol noted that a water district agreement would have to be made.

Krol asked about environmental concerns. Bernotas asked if the ZBA should consider a population increase of 8.9% as impacting the neighborhood or the whole town.

Talerman said both: impact on the whole town and the immediate area.

Krol expressed several environmental concerns: 1) wetlands issue, 2) site use may be better adapted to open space rather than used for housing, 3) housing would put pressure on a water resource area; there is an aquifer issue here. Talerman referred to two problems: housing was on wetlands buffer-zone so replication would have to be required and the culvert crossing on the site may be inadequate. Krol noted that Nielson has put in a strengthened culvert crossing which should be adequate for heavy traffic.

Herrick stated that the entire project area was within a "Core Habitat region" and requires the "highest priority of protection" as per the Natural Heritage and Endangered Species program. Beckley was concerned about lighting. Krol mentioned drainage and

need for the site to withstand a 100-year storm event. Nuerminger asked about maintenance of utilities and Bernotas stated that the waste water and potable water facilities should be maintained with properly trained and qualified personnel. Maintenance is often not a priority during the planning/construction stages and is often neglected after a project is completed. Talerman stated that the waste water plant was within the water resource area for the complex residents, but that this issue can be resolved. Krol referenced an engineering study showing that the waste water and potable water facilities could co-exist on the same site. Schneider was concerned about known waste-water plume from the 7-11 area and Krol stated that this concern had been pointed out to the applicants.

On welfare issues, Krol was concerned about: 1) impact on schools and 2) town liability impact if there was a failure of any of the systems. Talerman stated that the project owners had the liability for any damage due to failure of their systems; impact on schools could not be predicted – if the housing went to students there would be little impact on the schools; if renters were mostly families there would be substantial impact. Schneider asked about an impact analysis on police and school if the mix were 75% students.

Krol reads from "Local 40B Review and Decision Guidelines" which states that a small town may deny if the project is deemed to be too large. Projects less than 150 units are considered small, over 150 units are large; the Sugarbush project is close to the limit. Krol further stated that the project could have a substantial future impact on the town which has a history of taking over rental complexes which are in default on taxes and this will open the town to liability issues.

Beckley asked about phasing the building of the project thus mitigating the impact. Talerman stated that phasing could be included as a condition with approval but piece-meal phasing was out; perhaps two phases would be ok – the proforma analysis shows tight profit margins thus multiple phasing stages would be out.

Krol stated there would be a ripple affect on public services; Bernotas cited example of the required new fire truck which would require the building of a new municipal building; Nuerminger noted that increased Plum Tree Rd. traffic would affect the residents of Plum Tree Road.

Krol asked if there were any positive impacts: Talerman stated that there were seldom any positive impacts particularly if the project is located within a residential area but there may be some job creation, i.e., maintenance jobs and more commerce on the Rt-116 strip.

Krol stated that the state is telling Sunderland that it needs more affordable housing; Herrick asked if the state was wrong in this case; Talerma n stated that it is difficult to argue that the state was wrong in its assessment but this could be used in negotiations.

Krol stated there were not many benefits in this project; too large a project for a small town. Tozloski suggested a reduction of units; Williams supported but questioned what would be feasible. Talerma n said the state may support a cut in the number of units if the town had a valid reason; cutting the top floor may be understandable but the state may say this would be the same as denial if the result was economically unfeasible.

Talerma n asked if we wanted to redesign or just tweak.

Tozloski stated that local impact concerns outweighed affordable housing need. Williams said no redesign. Talerma n noted that some changes which appear radical are relatively easy to accomplish such as eliminating the southern building or no third floor but an extensive wish list requiring a major redesign would not go over. Beckley asked about the approval process and Talerma n again stated that a ZBA approval with extensive conditions would be considered the same as a denial during the appellate process.

Bernotas said can not have minor "tweaking" but we need major changes; however, applicant says 150 units are necessary but this is too high a density for small town. Talerma n stated that this is a very large project for a small town and a major change is the only answer; town house condos would be a better use of the site.

Krol said that 120 units or even 80 units would still be unsafe due to increased entering traffic on 116; did not know a "safe" threshold. Bernotas added that we can not redesign the whole project but he did not know what an acceptable level would be.

Herrick stated that the project was not acceptable and it was really not affordable housing but more like luxury housing as 75% of the units would rent at an average current price of \$1,600. per month while the subsidized "affordable" units would rent at around \$1,200. per month.

Krol asked if we should vote on denial. Talerma n suggested not to vote at this time but rather he would draft a denial decision for board consideration at the next meeting on December 19. The written document, some 10-15 pages of all the ideas presented so far, could be edited and changed at that time.

Krol closed the hearing at 9.03 PM with a recess to December 19 at 7:00.

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