

Zoning Board of Appeals  
Town Offices  
Thursday, November 15, 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: Scott Nielson, owner & applicant; Joel Kahn, consultant to applicant; Lou Levine, counsel to applicant.

Krol opened the hearing at 7:00 PM. and acknowledged receipt of a Mass Fisheries & Wildlife "Natural Heritage & Endangered Species" letter dated December 1, 2006 from the applicant. He read the letter into the record and noted receipt of a "wish list" memo from Richard Heaton of H & H Associates, the pro-forma evaluator. Krol also noted receipt of a memo from the Sunderland Conservation Commission dated November 8, 2007, suggesting that the Town not provide a waiver of the town wetlands bylaws. Krol also stated there was a site visit on Saturday, November 3rd, with most members present.

Herrick asked about the Sunderland Planning Board letter which was presented at the last meeting. Krol answered that the letter could be discussed later and that today's hearing will focus ZBA comments on the project.

Davis Hawkowl, attendee, asked that this and other 40B hearings be delayed pending the outcome of a ballot petition to repeal the 40Blaw. He also distributed a printed Email with comments regarding the issue. Krol stated that today's hearing would continue with board comments regarding the project.

Kahn, in his opening remarks, thanked the board for their volunteer work so far and stated that 1) 40B was designed to provide affordable housing to the community and the Sugarbush project will meet that need and that the site is well suited to minimize the traffic impact on the community.

Further, they have completed a technical and peer review and will work with the town and Mass. Highway for an acceptable traffic plan, that is, the best plan for the overall safety of the community; 2) have presented a proforma plan and will be willing to discuss details and changes, and 3) regarding the Conservation Commission letter, he is confident that changes can be made to meet all concerns.

Krol stated that we have heard a lot of technical presentations so far and it is now time to hear from the individual board members including the associate members.

Williams stated that this process has gone on over a year now; but just because it can be done does not mean that it should be done. Applicant has presented a lot of technical studies but has never shown community need; best use of the property is as a water resource area, not a site for an apartment complex. Williams would not support the project and would grade it as overwhelmingly negative for each of the criteria used in evaluating regular applications before the ZBA.

Bernotas would support everything Williams said and added that he was also concerned about safety; 1) pedestrian safety-kids crossing to 7Eleven – already have been accidents; 2) fire and police departments are against the project; fire department does not have the necessary truck; 3) school population would increase causing more safety concerns. Finally, there has been no public support for this project and the town can not financially support the infrastructure needed for a sudden 8.9% increase in dwelling units and population.

Nuerminger stated that he has heard only negative feedback about the impact of the project; that it would overload the school and the fire and police departments. Also, there is a conservation issue since the project intrudes into the wetlands buffer zone.

Schneider stated that this 40B project is not what the town wishes and would be negative in all the six criteria used for regular ZBA approvals. The project is a high income project rather than the "low to moderate" housing that the state suggests thus it does not meet the criteria of "social and economic" needs. Project has luxury housing (high ceilings-three. floors) at expense of safety. He questioned the adequacy of utilities and noted that Plum Tree Road access must be limited; also, request for waivers was excessive - was a waiver for lights necessary. Schneider also distributed a Natural Heritage and Endangered Species Program map showing that the project property falls entirely within a "Core Habitat region" which is areas which need the "highest priority of protection". Finally, on financial impact to the town he was concerned about water sources and sewage treatment which should be monitored and the town protected with some type of escrow arrangement.

Krol stated that the project was too big for a small town; that an immediate increase of 8.9% would have a substantial negative impact on the infrastructure particularly in the fire safety area since there is no equipment for a three story fire. Also, parking areas around the buildings are still inadequate in an emergency situation despite an increase of parking slots to two per apartment. Tenants will probably be students so two parking slots per apartment is still inadequate. Biggest concern was safety on Plumtree Road and route 116. The Cliffside apartment location has been the site of several accidents despite a change in design. The Sugarbush project would worsen the situation and make 116 even more dangerous. Plumtree Road access is not feasible since it is too narrow as was clear from the site visit.

Herrick stated that the project may not be financially viable since the proforma statements were based on a profit margin of 6.9%. If this was increased to about 12%, which the state recommends as an allowable profit, the project is not financially feasible in any of the scenarios analyzed—two story, three story, two building, three building, etc. If the project was built and goes bankrupt, the town would have to take over for back taxes and there would be substantial problems with resale, etc. Also, population for the area for the past five to 15 years has been flat suggesting that there is no demand for new rental housing.

Tozloski stated that he supports everything that has been stated so far and added that he has heard nothing positive about this project; a unique situation in all of his thirty years experience on the zoning board. Also, town can not afford \$500,000 for a new fire truck.

Beckley stated that he appreciated the site visit and he was concerned about landscaping plans; parking will create a huge unaesthetic paved area – therefore parking should be limited and a first rate bus stop created. He supports the 40B concept but safety issues should be addressed.

Krol stated that we have heard from all board members. Williams noted that with the drop in house purchases there is increasing need for affordable housing.

Talerman stated that now is the time for horse-trading, that is, an approval with conditions. Some boards have approved with changes, other boards have voted up or down. Some changes – height, etc. – can be left to later discussions.

Tozloski stated that the project was not affordable housing from the beginning; it will not help low-income Sunderlanders.

Krol: applicant response? Kahn requests a five minute recess.

Recess over, Kahn states that we clearly have differences and strong feelings but there is no

new information which would make a difference therefore suggests closing the hearing and proceeding with the process.

Krol asks if anything is on the table – like the third story for example?

Levine stated that if the issue is height – number of feet above the ground – there is room for discussion, but the number of floors and number of units is fixed.

Krol stated problem was safety which goes beyond height; did not see willingness to negotiate after 5 minute recess.

Kahn suggests: “close hearings”.

Talerman suggested a meeting to decide next move; this does not preclude compromise.

Levine agrees with Talerman that we stop here, but that project must have 150 units to be viable; that there is no more information to give and that the project may be approved with restrictions.

Nielson stated that we can do a lot of horse-trading and agrees with both consultants that the hearing should be closed and proceed to the next phase. Also notes that project will contribute to Sunderland and surrounding area.

Krol asked for public comments.

Mike Zeoli, chair of the Sunderland Finance Committee asked about financial impact to the town if there is an instant 10% increase in population.

Mr. Hawkowl stated that his research of 40B rental projects show that they are frequently flipped – i.e. sold to another owner shortly after completion and that this project will violate open space and negatively impact all areas of the town. He further stated that the project is away from center of town and that it should be denied.

Talerman stated that at the state level, even Mass. Housing had concerns.

Schneider asked about lighting standards and the need for a waiver. Kahn answered that this would be attended to.

Williams moved and Tozloski seconded that the hearings be closed. At the call for discussion

Talerman stated that negotiations can happen at anytime and closing does not foreclose possibilities of negotiations.

Unanimous vote to close hearings. Next ZBA hearing on December 4, 2007 with December 19<sup>th</sup> chosen as a tentative next meeting date; decision to be filed on January 11, 2008

Krol closed the hearing at 9:35PM.

DRAFT