

Town of Franklin



Zoning Board of Appeals

Thursday, March 28, 2024
Meeting Minutes

Chair Bruce Hunchard called the above-captioned Remote Access Zoom Virtual Meeting to order this date at 7:30 PM. Members in attendance: Bruce Hunchard, Philip Brunelli, Robert Acevedo, Christopher Stickney. Members absent: Meghan Whitmore. Also in attendance: Casey Thayer, Administrative Assistant.

This meeting is being conducted as a Remote Access Zoom Virtual Meeting. The Zoom meeting link and the Zoom meeting call-in number are provided on the agenda. The meeting is being televised and recorded for the public's information.

121 Grove Street - Fairfield Grove Street

Abutters: None.

7:35 p.m. Applicant is seeking a building permit to construct a 330-unit multi-family development. The building permit is denied without a comprehensive permit from the ZBA. Applicants present: Richard Cornetta, attorney for Fairfield Residential Development; Mr. Robb Hewitt, Vice President of Fairfield; John Shipe of Shipe Consulting Associates.

Mr. Cornetta reviewed that at the last meeting there were a few outstanding items. He said one being we wanted to review the list of exemptions/waivers requested pertaining to the project and second being that they are in active negotiations/discussions with the Town pertaining to potential mitigation contributions for the proposed impact of the project. He said he thinks they have resolved both of those issues. He said the ZBA should have a letter dated March 26 from RJ O'Connell which is their consulting engineering firm with an updated and pared down list of exemptions, and a letter from Fairfield dated March 25 which is addressed to Town Engineer Michael Maglio and Building Commissioner Gus Brown which documents and memorializes the offered mitigation from Fairfield.

Chair Hunchard stated that he has letters for peer review for engineer and peer review for traffic study and both of those are satisfied with what has gone on in the past few weeks to mitigate. He asked if each request for relief has to be taken separately or if all can be referenced together.

Mr. Bobrowski said if this were a subdivision, the law says each item must be shown on the record separately. He said there is no guidance like that for a comprehensive permit. He said he suggests to take them by the subject headings such as zoning waivers, other Town of Franklin chapters, and stormwater management bylaw. He said he would not break it down any finer than that.

Chair Hunchard said the ZBA members have been provided with the list of requested exemptions and zoning summary table. He said it starts with Franklin Zoning Bylaw Franklin Code Chapter 185.

Motion made by Philip Brunelli to grant the waivers requested by the applicant under Franklin Zoning Bylaw Franklin Code Chapter 185. Motion seconded by Robert Acevedo. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Chair Hunchard said the next one is Franklin Stormwater Management Bylaw Chapter 153. He said there was one brought up today that he does not think they have ever waived and has to do with fees. He said that regarding the fees, it does not add to a whole lot of money, and he does not think the applicant would have any problem covering these fees. Mr. Shipe said that is correct, and it can be stricken. Mr. Bobrowski indicated any motion should state that the 153-9 request for fee waivers has been removed from the list.

Motion made by Philip Brunelli to grant the waivers requested by the applicant under Franklin Stormwater Management Bylaw Chapter 153, except for the one in bylaw section 153-9 Fees which the applicant has agreed he will pay. Motion seconded by Robert Acevedo. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Chair Hunchard said they are now on Franklin Subdivision of Land Stormwater Management Regulations Chapter 300-11.

Motion made by Philip Brunelli to grant the waivers requested by the applicant under Franklin Subdivision of Land Stormwater Management Regulations Chapter 300-11. Motion seconded by Robert Acevedo. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Chair Hunchard said they are now on Franklin Chapter 181 Wetlands Protection Bylaw.

Motion made by Philip Brunelli to grant the waivers requested by the applicant under Franklin Chapter 181 Wetlands Protection Bylaw. Motion seconded by Robert Acevedo.

Discussion: Mr. Bobrowski asked if the Conservation Commission has weighed in here. Chair Hunchard said they got a letter from the Conservation Commission and it said the Conservation Commission is willing to work with the applicant. Mr. Bobrowski asked if the Conservation Commission provided a recommendation as to whether the ZBA should approve the waivers or not. Chair Hunchard said he does not have the memo in front of him; he said it was received a while ago. He said he thinks the gist of it was that they probably did not want us to grant as many waivers as requested, but were willing to work with the applicant. He asked Mr. Cornetta if the applicant would be willing to work with the Conservation Commission.

Mr. Cornetta said yes, and that the members of their team have been working with the Conservation Commission for some time now, and we have pared down the list of waivers quite considerably, and if you look at the content of the waivers, they are primarily ones which would be required for the project to proceed, but they will continue to work with the Conservation Commission to adhere to the bylaw as closely as they could.

Mr. Bobrowski said his focus is on the universality of the waivers. When it says the project is to be subject solely to the Wetlands Protection Act, that is a blanket waiver. He said he is looking at the list of March 26. He said he is conscious that the other boards have put time and effort into responding and that the Conservation Commission responded as they did and the ZBA is going to proceed accordingly.

Chair Hunchard said everyone should be aware we got two separate things from the Conservation Commission. He said the second one was a little harsher than the first one, but I do not think I read anything in there that they were saying the project should be denied, it just said they were willing to work

with the applicant. He said the applicant has said they are willing to work with the Conservation Commission. He said the applicant is already before the Conservation Commission. He requested Ms. Thayer send the letter from Conservation Commission to Mr. Bobrowski. He said it was sent out on February 8, 2024. Ms. Thayer confirmed that she sent it to Mr. Bobrowski. Mr. Bobrowski confirmed he received it. Mr. Bobrowski asked about a section on page 3 at the very top above the zoning table of a document dated March 26 which he read aloud about fees. He read: the applicant also requests waivers from otherwise applicable building permit and water and sewer fees as to the affordable units. He said he wonders whether Mr. Brown has weighed in on the building permit fee waiver and if DPW has weighed in on the water and sewer fees. Chair Hunchard said the DPW and Building Department negotiated a mitigation settlement so he does not know if they talked about it or not.

Building Commissioner Gus Brown said they have discussed that, and it has not been a finalized item. He said with some of the affordables, they are reducing the fees but not waiving them completely. He said he can get working on that and get it finalized. He said he will talk with the owner about it. Mr. Bobrowski said after 2008, he has rarely seen a blanket waiver of building permit fees for the affordable units, and the same would be true for water and sewer as to the affordable units. He said that is a big chunk of change. Mr. Brown asked what it has been with the affordables for waiving of fees. Mr. Bobrowski said years ago it was common to waive 25 percent of the building permits. Mr. Brown said he had other comments about the letter that was submitted on March 25 about the sewer infrastructure that did not sit too well with him. He said he can tie that into the fees. Mr. Bobrowski said the placement of this fee request caught his eye and wants to make sure everyone knows.

Mr. Cornetta said he would defer this to Mr. Shipe or Mr. Hewitt. Mr. Hewitt said they typically ask for waivers for fees associated with affordable units as those have very little benefit to us as to the overall development, and it is usually a benefit to the town. He said he thinks it is appropriate to ask. He said he wrote the mitigation letter with what he thought was consistent to conversations. He said he will talk with Mr. Brown or others at any time. He said they offered a total mitigation package of \$750,000 of which some is comprised of anticipated sewer mitigation. He said he understand that they would be required to either construct an onsite storage tank that holds and discharges the sewer at off peak hours or contribute an amount of money to improvements to the local pump station or infrastructure. He said they discussed that whatever would be the smaller amount would be the contributions by the applicant, and the remainder of the \$750,000 would be used by the town for other improvements in the area at their discretion for things like sidewalks, etc. He said that is what he attempted to write in the letter.

Mr. Brown said an amount of about \$150,000 would cut into the \$750,000, so that brings us down to \$600,000. He said that is not sitting well with him; that is a lot of money to take out of what the proponent is contributing to the town, and then to waive some of the fees as well. Chair Hunchard asked what he anticipated the fees would be. Mr. Hewitt noted the average square footage for the units is 1,000 sq. ft. Mr. Brown calculated the approximate fees based on \$200 per sq. ft. as an example. He said that would be about \$160,000 for waiving all the building permit fees. Mr. Stickney noted that \$200 per sq. ft. is probably low for this estimate. Mr. Brown discussed the amount of waiving the fees and the \$750,000 to be provided by the applicant. Mr. Hewitt said he hoped they would be given some consideration for reduction of fees for all the affordable units they are providing.

Mr. Shipe asked about other projects where fees are not being applied. Mr. Brown said there was a property on the northeast side of town that is a fully affordable unit, and we have given them a reduction in fees as they are all affordable. He noted concern about talking about an amount from another project and if it is okay to discuss at a public hearing. Chair Hunchard said there must be something in the decision that says you are going to do that, so it is a public record. Mr. Brown said it was a public record letter, so he does not have a problem reading it. He read aloud that the letter dated in 2023 to John Harding, project manager of Community Builders, from Gus Brown regarding 237 Pleasant Street,

proposed as a 64-unit affordable housing project. He read aloud from the letter the following: you have agreed to install all road improvement infrastructure on Pleasant Street for the above-referenced project and pay for the costs of materials and installation and labor per the approved plan for said project. Also, because the developer is a non-profit and the proposed development will be 100 percent affordable, I as the Franklin Building Commissioner, agree to charge 50 percent of the normal building department fees on this project. Mr. Brown concluded reading from the letter and said this is not the case with 121 Grove Street project.

Mr. Bobrowski said a better comp would be Western Woods for 280 dwelling units. Chair Hunchard said it used to be a different name. Mr. Brown said he has supported this project at 121 Grove Street from the beginning. He said, at this point, if it gets approved from the ZBA, he feels like the proponent is getting exactly what he asked for and that as for the Town of Franklin, we are taking a lesser amount to get some of the work done that we want done on the project. He said I feel like it is being nickel and dimed right now. Chair Hunchard said he agrees. Mr. Brown said he is all ears if the proponents want to add anything to this.

Mr. Hewitt said he understands the Town's position. He said he is willing to drop the request for the waivers and pay the full freight on the fees. He said he stands by the mitigation which he thinks is appropriate for the project. He said if they are required to do some onsite sewer improvements, he can cover it from our side, so you can be guaranteed the \$750,000 is discretionary funds to build sidewalks or whatever other uses the Town deems necessary. He said that is as far as he can go tonight without going back to the drawing board internally.

Mr. Brown said to be clear, Mr. Hewitt is pulling away the waiving of any fees by the Town for permits and so forth. Mr. Hewitt said the sentence that was above the zoning table is what we have been discussing. He said his sense is that Mr. Brown was not supportive of that waiver request. He said he may have overreached by including that. He said in the spirit of cooperation and having a good working relationship with the town, he would hate to see that go sideways. He confirmed he was withdrawing the request on the top of page 3 that Mr. Bobrowski had read aloud.

Chair Hunchard said they will strike those two sentences at the top of page 3. Mr. Bobrowski said he got it. Chair Hunchard asked if we have to revote that. Mr. Bobrowski said he thinks it was a separate thing; he did not include it as part of the zoning. ***NO Roll Call Vote Taken. Note: A motion had been made and seconded and no vote was taken. A new motion on this item was made later in the meeting.***

Chair Hunchard asked where did we leave off—Wetlands Protection Bylaw or are we down to Conservation Commission Bylaws, the local bylaws. Mr. Cornetta said he thinks Chair Hunchard left off on Chapter 181. Chair Hunchard agreed.

Chair Hunchard said he does not think these are anything that we have not given for any other affordable housing project, at least 40Bs. He noted the Conservation Commission is willing to work with the developer and the developer is willing to work with them. He said they have for the last year. He said with that he would entertain a motion for Section 2, Section 4.1.2, Section 4.1.3, Section 4.1.4, Section 7.11.2, Section 7.13.1, and Section 7.18.1.5.

Motion made by Philip Brunelli to grant the waivers requested by the applicant under Town of Franklin Conservation Commission Regulations, Section 2, Section 4.1.2, Section 4.1.3, Section 4.1.4, Section 7.11.2, Section 7.13.1, and Section 7.18.1.5. Motion seconded by Robert Acevedo.

Discussion: Mr. Brown said he thinks we have talked about it. He said at the last meeting we had with Conservation Agent Brecka Li Goodlander, that Conservation Commission and the agent are willing to work with the proponent. Mr. Cornetta asked if Chair Hunchard was including in the vote for this Chapter

181 Section 181-1 and Section 181-2 in this, and if he was including Franklin Chapter 271 – Conservation Commission Bylaws. Chair Hunchard said let's vote on what we are voting on which is Chapter 271 for the waivers from the local regulations and whatever else is in here also. Chair Hunchard said Section 271-6.C(3), Section 271-9.D, Section 271-9. H, I, J, K, L & M, and Section 271-13. He continued stating the following sections: Section 2, Section 4.1.2, Section 4.1.3, Section 4.1.4, Section 7.11.2, Section 7.13.1, and Section 7.18.1.5. He said they would take care of the three that go under Chapter 181 after this. He asked if there was a motion on the floor. **NO Roll Call Vote Taken. Note: A motion had been made and seconded and no vote was taken. A new motion was made.**

Motion made by Philip Brunelli to grant the waivers requested by the applicant under Town of Franklin Conservation Commission Regulations, Section 2, Section 4.1.2, Section 4.1.3, Section 4.1.4, Section 7.11.2, Section 7.13.1, and Section 7.18.1.5, AND Franklin Chapter 271 – Conservation Commission Bylaws, Section 271-6.C(3), Section 271-9.D, Section 271-9. H, I, J, K, L & M, and Section 271-13. Motion seconded by Robert Acevedo. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Motion made by Philip Brunelli to grant the waivers requested by the applicant under Franklin Chapter 181 Wetlands Protection Bylaw, Section 181-1 and Section 181-2. Motion seconded by Robert Acevedo.

Discussion: Chair Hunchard said he has had this discussion more than once with the Zoning Enforcement Officer. He said, my question to him was how many times have we granted these waivers did we cause any damage to the environment or any protected wetlands. Chair Hunchard said his answer and my answer is none. He said he thinks the developers always work with the Conservation Commission. He said he has never heard of any disrespect. He said he is comfortable voting on this.

Mr. Brown said he wanted to go into detail about what the Town of Franklin is running into. He said that with the \$10 million deficit in town, and the people on this call who are probably not in favor of this if it is approved, it is a tough time in our lives right now. He said the Building Department has supported the work that Fairfield has done in the past. He said we have tried to create a harmonious situation and result. He said it is just that the money we talked about earlier, and the struggles we are going through right now, he feels if Fairfield gets this approved, their project will get his full attention as it did on Dean Avenue. He said they know he is going to be there for them. Mr. Brown said he is not promoting what the ZBA is going to vote right now, either in affirmative or negative, but what he is saying is that they are going to get his full attention, and they know how he operates, and the project is going to go as well as it can go. He said if there is anything Fairfield can do for the town later on, depending on how this project goes, he said it may not be ethical for him to say this, but you have a town that is going to be in dire straits, and Robb and John you know how I am, and I will work with you if you get it approved, but I would like some consideration to what we have done in the past and how the Town of Franklin has taken care of you. He said you would not be here right now if we had not taken care of you on Dean Avenue and given you every service possible.

Chair Hunchard said he does not know if that has anything to do with this part of the meeting as we are just acting on the waivers. He noted that Franklin needs income. He said he does not know how much money this particular project is going to produce in tax revenue for the town. He noted the possibility of a need for an override. He discussed a project from many years ago. He said Fairfield finished their project and it came out very nice. **Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.**

Chair Hunchard asked if Mr. Bobrowski wanted the ZBA to take a straw vote. He said he was not closing the public hearing. Mr. Bobrowski asked if he can refer to the mitigation letter dated March 25, 2024, on

Fairfield letterhead addressed to Mr. Brown and Mr. Maglio. He asked to review the letter so he understands what to put in as a condition.

Mr. Cornetta said the meat of the language is toward the bottom of page 1, and essentially, they are offering \$750,000 to be used as follows which he read aloud:

Sewage Infrastructure: Following completion of permitting, Fairfield will pay for a study of the sewer infrastructure by the Town's consultant (\$25,000). If sewage infrastructure improvements are required based on the Town consultant's study, Fairfield will fund the lesser amount of either (1) construction of an on-site storage tank to store and discharge sewage off-hours or (2) provide funds for improvements to the Town's sewage treatment system. Based on discussions with Town staff, we anticipate the sewage infrastructure improvements would not exceed \$150,000. He said the **Other Area Improvements** are listed on page 2 of the document.

Mr. Bobrowski asked for clarification. Chair Hunchard explained the meaning of the distribution of funds. Mr. Brown asked Mr. Hewitt for clarification and said what you have in your site plan as far as your frontage improvements are concerned, that is not coming out of the \$750,000, that is included in part of your infrastructure to build out this project, correct? He said it has to do with out front, the frontage, the sidewalk, the grass area, on Grove Street at the front of this property. He said he wants to be clear they are building a sidewalk there over and above the \$750,000.

Mr. Shipe said the 10 ft. wide multi-use path is graphically depicted on the drawings and is not included in the construction of the project; it is in fact a potential extension of the path that the DPW is trying to make along Grove Street. Mr. Brown asked Mr. Shipe that aside from the path, are they putting a sidewalk in the front of this building along Grove Street. Mr. Shipe said they do not have a sidewalk between the multi-use path and the roadway; there is no sidewalk along there.

Chair Hunchard asked about the sidewalk being put in on Grove Street. Discussion commenced about the sidewalk. Mr. Shipe shared his screen and showed and explained where they depicted the location of where a future path could be. He said the design parameters match what Mr. Maglio provided to us on the project south of here along Grove Street. He said it might vary 8 ft. to 10 ft. wide. He said they made sure there was enough room to fit in a future path. Mr. Brown said the multi-use path doubles as a sidewalk. Mr. Shipe said absolutely.

Mr. Jeff Nutting, former Franklin Town Administrator, said that back 18 or 19 years ago he supported a similar development of over 200 units in this location. He said he is here to add his support to this project, again. He said housing is desperately needed in this part of the woods. He said this development is a class act having done Dean Avenue previously and is a shining example of the work they do. He said he hopes the ZBA would rule in favor of this petition with all appropriate protections for the town.

Mr. Stickney asked to clarify a previous conversation about the removal of the waivers where Mr. Hewitt said strike that, and they would take care of all the sewage treatment on the site. Mr. Stickney said he interpreted that as they would be waiving the \$150,000 in the letter. Chair Hunchard explained and reviewed Mr. Hewitt's meaning. He explained Mr. Hewitt is going to pay whatever is less. He said Mr. Hewitt is onboard with the \$750,000 minus the \$25,000 right off the bat and then whatever it costs.

Mr. Hewitt said what Chair Hunchard mentioned is consistent with his discussions with Mr. Maglio and Mr. Brown in that whichever is less costly, either the improvements to the pump station or other infrastructure or putting a tank on our site, it was anticipated that either of those would be appropriate to handle this potential mitigation.

Chair Hunchard asked if Mr. Bobrowski wanted him to take a straw vote to have him draw up a decision. Mr. Bobrowski said he would like the straw vote to be in the form of a motion that would instruct him (move to instruct counsel) to prepare either a.) an approval with conditions, or b.) a denial. He said he would take it from there to prepare one of the decisions. He said he would not prepare both as that is a bad idea.

Motion made by Philip Brunelli to instruct counsel to draft a favorable approval with conditions for the project located at 121 Grove Street. Motion seconded by Robert Acevedo. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Motion made by Philip Brunelli to continue the public hearing to April 11, 2024 at 7:35 PM. Motion seconded by Robert Acevedo. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

General Business

Meeting Minutes March 14, 2024

Motion made by Robert Acevedo to approve the Meeting Minutes as presented for Thursday, March 14, 2024. Motion seconded by Philip Brunelli. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Motion made by Philip Brunelli to adjourn the Remote Access Zoom Virtual Meeting. Motion seconded by Robert Acevedo. Roll Call Vote: Brunelli-YES; Acevedo-YES; Hunchard-YES. Unanimous by the Board.

Meeting adjourned at 8:53 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary

Signature: _____



Date: _____

