

**Zoning Board of Appeals
Minutes
February 5, 2024**

A meeting of the Zoning Board of Appeals was held in person at 380 Great Road, Stow, and via Zoom Web Conferencing Service on February 5, 2024, at 7:00 pm.

Present: David Hartnagel, Andrew Crosby, Andrew DeMore (via Zoom Web Conferencing), Ernest Dodd, and Ruth Kennedy Sudduth (via Zoom Web Conferencing)

Associate Members: Leonard Golder

Absent: Associate Members Maria McFarland and Michael Naill

Staff Present: Michael Slagle

David Hartnagel called the meeting to order at 7:00 pm.

Minutes

January 8, 2024

Ernest Dodd moved to approve minutes of the January 8, 2024, meeting as amended. The motion was seconded by Andrew Crosby and carried by a vote of four in favor (David Hartnagel, Andrew Crosby, Andrew DeMore, and Ernest Dodd). Ruth Kennedy Sudduth recused herself from the vote as she was not present at the January 8, 2024, meeting.

Correspondence

David Hartnagel acknowledged that the Board has received correspondence. He noted that correspondence relates to the Public Hearings scheduled for later in the meeting.

Discussion: Review Draft Annual Report

The Board reviewed the draft Annual Report for CY2023. Andrew DeMore asked for the two Special Permits for Lot 3 Packard Road to be differentiated from one another to avoid the permits appearing as a duplicate; the Board agreed.

Ernest Dodd moved to approve the CY2023 Annual Report as amended. The motion was seconded by Andrew Crosby and carried by a vote of five in favor (David Hartnagel, Andrew Crosby, Andrew DeMore, Ernest Dodd, Ruth Kennedy Sudduth).

Public Hearing: 110 Adams Drive – Special Permit

Members Participating: David Hartnagel, Andrew Crosby, Andrew DeMore, Ernest Dodd, and Ruth Kennedy Sudduth

Present: Jeffrey Petrowicz (Applicant)

David Hartnagel opened the Public Hearing for an application for Special Permit at 110 Adams Drive.

Ernest Dodd moved to waive the reading of the Public Hearing Notice. The motion was seconded by Andrew Crosby and carried by a vote of five in favor (David Hartnagel, Andrew Crosby, Andrew DeMore, Ernest Dodd, Ruth Kennedy Sudduth).

David Hartnagel provided an overview of the Public Hearing protocol for the applicant and members of the public attending the meeting. He then invited the applicant to present to the Board.

Jeffrey Petrowicz presented his application to the Board. He explained that he is seeking a Special Permit to allow for the construction of a storage shed within the side yard setbacks of his property. He stated that he had met with the abutter who is closest to the proposed location of the shed; he stated that the abutter was supportive of the shed.

Andrew Crosby asked if the shed could be located elsewhere on the site instead of within the side yard setbacks. Jeffrey Petrowicz stated that the shed could be placed in the center of the rear yard (outside the setbacks), but the placement would not be ideal for use of the rear yard.

David Hartnagel asked how tall the shed is proposed to be. Jeffrey Petrowicz stated that the shed will be approximately 12 feet tall, but the final shed design has not yet been selected.

Jeffrey Petrowicz noted that the area around the shed will be landscaped with shrubs to provide privacy for his property and the abutting property. The shed will also provide screening between the two properties.

David Hartnagel asked how the shed will be fixed to the ground. Jeffrey Petrowicz stated that the shed will likely be placed on a crushed stone foundation.

David Hartnagel opened the public hearing to public comment. There were no public comments.

Ernest Dodd moved to close the Public Hearing. The motion was seconded by Andrew Crosby and carried by a vote of five in favor (David Hartnagel, Andrew Crosby, Andrew DeMore, Ernest Dodd, and Ruth Kennedy Sudduth).

The Board deliberated the application and the information heard during the Public Hearing.

Ernest Dodd moved to GRANT Special Permit for 110 Adams Drive. The motion was seconded by Ruth Kennedy Sudduth and carried by a vote of five in favor (David Hartnagel, Andrew Crosby, Andrew DeMore, Ernest Dodd, and Ruth Kennedy Sudduth).

The Board deliberated a draft Decision for 110 Adams Drive.

Ernest Dodd moved to APPROVE Special Permit Decision for 110 Adams Drive as amended. The motion was seconded by Andrew Crosby and carried by a vote of five in favor (David Hartnagel, Andrew Crosby, Andrew DeMore, Ernest Dodd, and Ruth Kennedy Sudduth).

Public Hearing: 58 Randall Road – Special Permit; *continued from January 8, 2024*

*Members participating in the Public Hearing: David Hartnagel, Andrew Crosby, Andrew DeMore, Ernest Dodd, and Associate Member Leonard Golder
Present: Peter Brown (Applicant)*

David Hartnagel reopened the Public Hearing for an application for Special Permit at 58 Randall Road. He reminded the members of the public attending that the Public Hearing is for the driving range proposal at Stow Acres South Course, **not** the Comprehensive Permit application at Stow Acres North Course.

David Hartnagel invited the applicant to present to the Board.

Peter Brown began his presentation by sharing new information with the Board. The new information included:

- A rendering of the southeast elevation of the proposed driving range and snack bar building.
- A Plan showing the distances abutting dwellings are from the proposed restaurant¹.
- Proposed hours of operation.
- Exterior lighting.

For the exterior lighting, Peter Brown stated that exterior lighting is being requested to provide data to patrons using the driving range, such as how far the golf ball traveled. The exterior lights have two options:

1. Mounting 4 exterior lights 35 feet high and having the lights shine downwards.
2. Mounting 4 lights 2 feet off the ground and having the lights shine upwards.

He noted that the area 150 feet from the driving range bays will be illuminated; the entire range will not be illuminated. He shared a footcandle plan with the Board.

Andrew DeMore asked Peter Brown what the preferred mounting options are for the exterior lights. Peter Brown stated that he does not have a preference.

Andrew Crosby asked what the brightness of lighting would be at the driving range. Peter Brown responded that the lights would have a lumen output that is compliant with the Zoning Bylaw. He stated that the lights will be for the use of the technology that will gather the data on the golf balls projected into the driving range, not for the full illumination of the range.

David Hartnagel asked if the poles used for the driving range netting will be used for mounting the lights if they are mounted at 35 feet high. Peter Brown stated that 2 lights would be mounted to the poles, and two lights would get mounted on separate poles.

David Hartnagel asked if the golf ball picker (modified golf cart used for retrieving golf balls) will be used at night, citing the impact of its headlights. Peter Brown stated that the picker is not used at night and is not intended to be used then.

Andrew Crosby and Andrew DeMore stated that the Zoning Bylaw does not allow for exterior lighting 30 after sunset to 30 minutes before sunrise. Andrew DeMore stated that he finds compliance with the Bylaw to be reasonable.

Michael Slagle asked if the Board would like to see the two lighting options displayed in a plan to understand the impacts of both options. Board did not provide an opinion on this question.

David Hartnagel asked where other lighting on the proposed building will be. Peter Brown stated that additional lighting on the building will be done according to building code.

¹ 1 The term “restaurant” and was used during the meeting, and the term “snack bar” was used in the application. For the intent of the minutes, the term “restaurant” is used to refer to the dining portion of the proposed building.

The Board asked for clarification on technical components within the application. David Hartnagel requested additional information from the applicant regarding the two lighting options.

David Hartnagel opened the Public Hearing to public input.

Bob McDonald, 387 Gleasondale Road, provided suggestions for the orientation of the exterior lights to avoid impacting abutting properties. He advocated for a solution with the least impact.

Jim Wheeler, 151 Wheeler Road, opposed exterior lighting at the driving range. He stated that previous members of the Board in the 1990s rejected an application of the exterior lighting at the present Stow Acres Driving Range. He stated that he finds that exterior lights and allowing the business to operate from 6am to 10pm to be detrimental to the Town.

Janet Wheeler, 151 Wheeler Road, opposed exterior lighting at the driving range. She stated that the ZBA should not allow waivers from the Zoning Bylaw. She expressed concern with the use of TopGolf technology on the site. She expressed concern that allowing a driving range could set a precedent for allowing other use in the Residential Zoning District.

John Wendler, 22 Cross Street, expressed concern that the color temperature of the exterior lights will disrupt the melatonin production/sleep cycle in people at neighboring properties.

Gay Gison McDonald, 387 Gleasondale Road, expressed concern that allowing exterior lighting would set a precedent.

Helen Ham, 21 Cross Street, asked the Board to visit other driving ranges; she believes that a visit will show the Board that driving ranges are not for residential areas.

Alison Doucette, 30 Cross Street, opposed to having a bar located within the proposed restaurant.

Rick Lent, 154 Taylor Road, opposed exterior lighting because of the impacts to insects.

Public input concluded for the Public Hearing session. Following this, Michael Slagle requested that the applicant provide lighting specifications, a lighting plan (showing lighting impacts) for both presented options, and mitigation measures for exterior lighting. Andrew DeMore asked for a lighting plan that shows the driving range illuminated from lights mounted to the driving range building.

Peter Brown asked if the Board was inclined to grant a waiver to allow exterior lighting on the site. The Board did not provide an opinion.

Ernest Dodd moved to continue the Public Hearing until March 11, 2024, at 7:00pm. The motion was seconded by Andrew DeMore and carried by a vote of five in favor (David Hartnagel, Andrew Crosby, Andrew DeMore, Ernest Dodd, and Associate Member Leonard Golder).

Discussion: Information Session with MHP Consultant for Comprehensive Permits
Present: Ezra Glenn (Massachusetts Housing Partnership 40B Consultant)

Ezra Glenn hosted an information session for the Board and members of the public who would like to learn more about M.G.L. Chapter 40B. This session is in response to the opening of a

Public Hearing for the consideration of a Comprehensive Permit application. The session is not about the application and associated Public Hearing; instead, it is designed to improve the understanding of the Chapter 40B process.

Ezra Glenn began with a presentation with a brief overview of the history of Chapter 40B. He stated that the law was adopted in 1969 and has had its regulations amended since then. He stated that the law was designed to be Commonwealth-wide, require municipalities to produce affordable housing, and develop a tool (Comprehensive Permit) that can be used to create affordable housing if the local regulations are incompatible. He added that Chapter 40B has been the most successful tool in creating affordable housing in Massachusetts.

Ezra Glenn stated that the most important information about Chapter 40B is that it is:

- **Comprehensive** – Zoning Board of Appeals permits the project even if other Boards/Committees would typically issue separate permits.
- **Expedited** – there are deadlines for the public hearing
- **Flexible** – The applicant can seek waivers from local requirements.

Ezra Glenn presented the statutory minima for Chapter 40B. He stated that all municipalities must have 10% of year-round housing units on its Subsidized Housing Inventory (SHI). If a municipality has 10% of year-round housing units on its SHI, the municipality has local control over development, and does not need to consider a Comprehensive Permit application. He stated that there are other ways to maintain local control, such as having a certified Housing Production Plan and making progress towards developing affordable housing.

Prior to submitting a Comprehensive Permit Application, Ezra Glenn stated that the applicant must be a public agency, nonprofit, or limited dividend organization. The applicant must have site control and approval from the Commonwealth. When submitting an application, the applicant is required to provide preliminary plans and a list of waivers from local requirements.

Ezra Glenn shared the timeline for applications. He stated that the timeline is expedited, but extensions to the timeline can be granted under mutual agreement between the applicant and Board.

Ezra Glenn encouraged site visits for all Comprehensive Permit applications and noted that site visits must comply with Open Meeting Law.

Ezra Glenn stated that the Board can hire a peer review consultant; the peer review fees can be charged to the applicant. He noted that the Board cannot require the applicant to pay for independent studies.

Ezra Glenn reminded the Board that they can ask for more information from the applicant, especially if it is to reduce real issues. He stated that boards often may disagree with parts of the proposal, such as density, but the boards must be mindful that personal disagreement is not a real issue. Instead, impacts to traffic is a real issue that the Board can pursue mitigation measures for.

Ezra Glenn stated that the Board can negotiate with applicants. Negotiations and conditions must be consistent with Chapter 40B regulations. Conditions must not make the project uneconomic.

Ezra Glenn stated that the decision the Board makes can be appealed by an applicant (through the Housing Appeals Committee) or by any other party (through the Commonwealth Supreme Court or Land Court).

Ezra Glenn reminded the Board that the Commonwealth does have things within its purview in the process that the Board does not have control over, such as Fair Housing Law.

Ezra Glenn concluded the presentation with a summary of what he presented. He reminded the Board that the 40B process is comprehensive, expedited, and flexible. He encouraged the Board to identify the real issues in an application and develop mitigation measures with the applicant. He asked the Board members if they had any questions.

Ernest Dodd stated that he has seen Comprehensive Permit applications that have income limits that are on the high end of the eligibility range, and that most of the applications in Stow have not included rental opportunities. He expressed concern that other income levels and rental opportunities are not being proposed. Ezra Glenn responded that the concerns are an issue in several communities, and that overcoming them would require state level policy change.

Ruth Kennedy Sudduth asked what major components of 40B that are within the control of the Board. Ezra Glenn responded that the Board can ask for more information and demand that real issues within the application can be solved. He stated that each application is different, but changes to the site plan/engineering/hardscape can be effective in gaining local control. He stated that one area that other boards in the Commonwealth face is requesting fewer units without reason. He added that understanding the underlying concern about the number of units is important, like the fear that a fire could not be put out by the fire department.

Ernest Dodd stated that 40B does not address broader transportation needs of the future project residents; he asked if there are ways to incorporate transportation into the decision. Ezra Glenn stated that requests, like adding a school bus stop, could be made; however, the Board cannot request large modifications like adding a new MBTA train station.

David Hartnagel asked about the scale of local needs; he stated that there could be town wide impacts, and there could be neighborhood impacts that are felt differently. Ezra Glenn stated that conditions could be placed on the decision to help with an adjacent project that would benefit the residents of proposed dwellings, but it cannot be used to solve long-standing issues in a town.

Ernest Dodd asked if the Board could review Homeowners' Association documents as part of the application. Ezra Glenn responded that the Board has the ability to review them but does not have complete control over all components within the documents.

David Hartnagel asked if there are requirements that the Board can make for other boards, committees, and departments for providing comments and input. Ezra Glenn responded that there is no obligation for others to provide comment, as the Board is the deciding body; instead comments should be encouraged to help make a better informed decision.

David Hartnagel stated that other questions from Board members can be directed to Michael Slagle.

Discussion: Review and Comment on Green Advisory Committee's Draft Climate Action Plan

Michael Slagle presented a comment letter from the Planning Department that will be sent to the Green Advisory Committee regarding the Climate Action Plan. He stated that comments from the Board will be added to the comment letter in a section following the Department's comments. He asked the Board to share any comments.

Ernest Dodd stated that he would like the Climate Action Plan to discuss the capacity of Hudson Light and Power to provide more electricity to the Town as the plan calls for electrification. The Board agreed.

The Board did not provide any additional comments. Michael Slagle stated that if members have additional comments, they can submit comments directly to the Green Advisory Committee as a resident.

Adjournment

Andrew DeMore moved to adjourn. The motion was seconded by Ernest Dodd and carried by a vote of five in favor (David Hartnagel, Andrew Crosby, Andrew DeMore, Ernest Dodd, and Ruth Kennedy Sudduth).

Respectfully submitted,

Michael Slagle
Land Use Planner/GIS Administrator