

**Zoning Board of Appeals Minutes
March 28, 2018**

Attendees:

Present: Anthony Aveni, Chairman; Gerry Chipman, Member; Brian Heath, Member;
Michael Mainvielle, Member; and Anna Klimas, Associate Member

Jasmine 40B – Appeal of Building Inspector's Decision

Mr. Anthony Aveni, Chairman, opened the continued hearing and recapped the hearing discussions from the February 28, 2018 meeting. At that time, Mr. Sheehan reviewed what had been done within the three year period. In particular that, at that time, the Board was not privy to the communications made to the applicant from the Town of Bridgewater Town Counsel. Mr. Aveni, Chairman, read a letter dated December 15, 2017 to William H. Sheehan, III, 8 Essex Center Drive, Peabody, MA 01960 from Jason M. Rawlins, Esquire, Town of Bridgewater Town Counsel into the record. It stated the following:

"In addition to my review of your previously submitted materials, I have also reviewed your November 21, 2017 letter, a copy of the Complaint regarding A.P. Whitaker & Sons, Inc. v. Scotland Meadows, LLC, As-Built Plans re: waterline, cases you have cited in your letter, the applicable deeds of record and the Right-of-Way Easement Agreement. After completing same, I find as follows:

1. *The Lot in question is Lot 3B Jasmine Way, Bridgewater, MA 02324;*
2. *In December of 2006, that property was owned by Bridge-JAS, LLC;*
3. *At that time, Bridge-JAS, LLC entered into a perpetual nonexclusive right-of-way and utility easement agreement with Cumberland Farms. Said easement is recorded with the Plymouth County Registry of Deeds at Book 33790, Page 246-261;*
4. *That easement is granted to Bridge-JAS, LLC's successors and assigns;*
5. *Upon my review of said easement it appears that the successors, assigns of Bridge-JAS, LLC are the dominant estate;*
6. *Said Easement Agreement also states that Cumberland Farms successors and assigns remain obligated to said Agreement and expressly reserves that said successors and assigns, maintain a fee ownership in the Easement Area;*
7. *As part of said Easement agreement, Cumberland Farms was required to construct the roadway within 50 ft. right of way, commencing at Pleasant Street and running in a northerly direction a distance of 257 ft. more or less....and install utility lines, mains, connections, and/or facilities for water, sewer, gas, electric, telephone, cable or other utility...Bridge-JAS, LLC (and its successors and assigns) was to pay Cumberland \$263,300.00 in consideration for same. Additionally, Bridge-JAS LLC (and its successors and assigns) was to construct the roadway and utilities in the northerly portion of the Easement Area... at its sole costs and expense;*
8. *On September 1, 2010, all Bridge-JAS, LLC.'s rights, title and interests in Lot 3B were conveyed to New England Heritage Property Corp. (Plymouth County Registry of Deeds, Book 38926, Page 189);*
9. *Thereafter, on September 29, 2011, all of New England Heritage Property Corp.'s rights, title and interests in Lot 3B were conveyed to Scotland Meadows, LLC. (Deed Recorded at the Plymouth County Registry of Deeds, Book 40378, Page 227;*
10. *Scotland Meadows, LLC. is the current owner, successor and assign of said Lot 3B and as such remains subject to the Right of Way Easement Agreement;*
11. *On October 20, 2014, all of Cumberland Farms rights, title and interests in 1029 Pleasant Street, Bridgewater, MA together with the land known as "Proposed 3A" on a plan of land entitled "Plan of Land Jasmine Way, Bridgewater, Massachusetts prepared for Bridge-JAS LLC" were transferred to BPRC, LLC. (Deed Recorded at Plymouth County Registry of Deeds, Book 44856, Page 214);*
12. *BPRC, LLC. is the current owner, successor and assign of said 1029 Pleasant Street, Bridgewater, MA together with the land known as "Proposed 3A" on a plan of land entitled "Plan of Land Jasmine Way, Bridgewater, Massachusetts prepared for Bridge-JAS LLC" and as such remains subject to the Right of Way Easement Agreement;*
13. *Upon information and belief, sometime in or around the Fall of 2015, BPRC, LLC. was completing construction on their project and required the installation of underground utilities and a paved driveway in order to obtain their Certificate of Occupancy;*
14. *Said construction was to be completed in the Right of Way Easement Area and not on Scotland Meadows, LLC.'s property;*
15. *Upon information and belief, Scotland Meadows was to either pay for, or complete said work as part of the Right of Way Easement Agreement it was obligated to as a successor or assign of Bridge-JAS LLC;*
16. *Based upon same, Scotland Meadows contracted the services of A.P. Whitaker & Sons to complete said work within the Easement area;*

17. Upon information and belief, said work was completed within the Easement area pursuant to Scotland Meadows obligations under their Right of Way Easement Agreement;
18. Upon information and belief, Scotland Meadows then failed to pay A.P. Whitaker & Sons for said work;
19. That failure to pay led to Civil Action No. 1683CV00450 in the Plymouth County Superior Court entitled A.P. Whitaker & Sons, Inc. v. Scotland Meadows, LLC;
20. In or around February of 2017, Scotland Meadows, LLC. resolved that matter and paid A.P. Whitaker & Sons, Inc. a total of \$44,725.00 for the work they completed relative to the Right of Way Easement; and
21. The Town has not been provided with any other information pertaining to any work completed or paid for by Scotland Meadows, LLC and specifically to any work completed or paid for by Scotland Meadows, LLC on the property subject to the Comprehensive Permit; and
22. Upon information and belief, Scotland Meadows, LLC did not apply to the Town of Bridgewater's Zoning Board of Appeals for an extension of its Comprehensive Permit within three years of the date of its issuance.

As you are aware, the Town of Bridgewater's Zoning Board of Appeals rendered its decision in this matter on December 20, 2013. Within same, and in accordance with 760 CMR 56.05 (12) (c), Scotland Meadows, LLC.'s Comprehensive Permit was to "expire three years from the date" of the issuance of that permit "unless construction on the Project has commenced within such period". Accordingly, construction would have needed to begin on this project by December 20, 2016 to avoid the lapse of the Comprehensive Permit.

After doing our due diligence, the Town of Bridgewater ascertained the above findings. Based upon same and upon information and belief, the only construction completed in the area near the Comprehensive Permit site, was that which was associated and presumably required under an Easement Agreement that was entered into in 2006, approximately five years prior to the issuance of said Comprehensive Permit. What is more, it appears that none of said work was completed upon the area in which the project was to be constructed and that payment was only rendered by Scotland Meadows after the initiation of suit.

Additionally, in your letter dated September 28, 2017, your client relies upon *Bernstein v. Chief building Inspector and Building Commissioner of Falmouth, et. al.* 52 Mass.App.Ct. 422 (2001) to show that by paying for the above cited utilities within the Right of Way Easement area they have begun construction on the project. In response to same, the Town distinguishes this matter from that, as that case involved a five-phase development in which four of the five phases (twenty original residential units) had been constructed and a septic system was installed on the property to serve the fifth phase at the time it was contended that the permit had lapsed. Here, there has not been any construction on the property and the construction that has commenced appears to be part of a pre-existing easement agreement.

As promised, the Town has worked diligently to investigate this matter. After completing said investigation, I again believe that our Building Inspector's previously stated opinion was properly founded under the law. Finally, it has been brought to my attention that your Clients filed an application for a building permit on December 12, 2017. Please note, that if they had previously filed an application for a building permit that had been denied, any additional denial of that building permit will simply be a restatement of the previous denial and will relate nunc pro tunc to that date. Thank you for your continued cooperation in this matter."

Mr. William Sheehan, representative for the applicant, made a presentation to the Board. Mr. Sheehan stated that in order to answer the question "has construction commenced on the project?" you would have to look at what the project entailed. Mr. Sheehan stated that the project specifically talks about the obligation on the part of Scotland Meadows to bring to the site pavement a paved way and utilities, including a water line. And so to say that we haven't commenced construction on the project is incorrect. Scotland Meadows, and not Bridgewater Pediatrics, did the pavement and laid the water line, and had the water line inspected and pass. Scotland Meadows did those things, and paid for the work. Mr. Sheehan stated that was Scotland Meadows required by easement and the terms of the Comprehensive Permit. Mr. Sheehan directed the Board's attention to finding 11 and 17, condition number 41, and finding 31 of the comprehensive permit decision letter which incorporates by reference the requisite regulatory agreement with Mass Housing, and that regulatory agreement that talks about and contemplates the requirement to build an affordable project with plans and specifications in accordance with on-site and off-site construction, design, and land use conditions of the comprehensive permit. Mr. Sheehan asserted that Mass Housing recognizes that there is requisite off-site work; the Board recognizes that there is requisite off-site work, and it cannot be separated from the project, therefore the applicant has commenced construction.

Mr. Solari informed the Board that he had received a call from a contractor looking for house numbers for Jasmine Way 40B. Upon searching the Building Department's records, Mr. Solari realized that there was no permit in the system, or any site plans on file in relation to the Jasmine Way 40B project. Mr. Solari then followed up with the Zoning Board of Appeals to refer to the decision letter, as well as with Lisa Sullivan, Housing Coordinator and Andrew Delonno, Director of

Community and Economic Development, and determined that the 40B permit had expired without any substantial construction being initiated. It was also noted that the decision letter was filed with the Town Clerk's office on December 20, 2013, and the appeal period ended on January 9, 2014. The permit was valid for a three year period, which expired on January 9, 2017. No permits and no extension for the project were ever submitted during this time period.

Attorney Sheehan countered stating that the work to initiate the project occurred off-site with the paving and water lines. Mr. Gerald Chipman, Member, asked the Building Inspector if the utilities have been stubbed to the site. Mr. Solari stated that the design there is suppose to be a cul-de-sac at the start of this development, and the cul-de-sac is not there. Mr. Sheehan stated that the water and sewer line had been brought to the underside of what will be the cul-de-sac, it had been brought forward 200' feet towards the site.

Mr. Anthony Aveni, Chair, stated that the project was well received by the Board; it was a nice project that we were excited about the design and the house styles. Mr. Aveni stated that it is unfortunate that more work wasn't started before the end of the three year window, or at least an extension requested. Mr. Aveni stated that he would have to side with the Building Inspector and Town Counsel, I don't see how I can overturn his decision. Mr. Aveni informed the applicant that it would require a new filing, and the project was well received the last time, and the Board would assist to stream line the process as much as possible.

Mr. Brian Heath, Member, agreed, stating the permit had lapsed.

Mr. Brian Heath, Member, made a motion to uphold the building inspector's decision that the Comprehensive Permit for the Jasmine Way 40B project had expired and as such would require a new filing. Mr. Gerald Chipman, Member, seconded the motion. All in favor, none opposed.

Burrill Place Apartments 40B

Mr. Anthony Aveni, Chairman, opened the continued public hearing for Burrill Place Apartments 40B from February 14, 2018. Mr. Anthony Aveni reviewed and read in to the record a memorandum dated February 13, 2018 from Patrick Driscoll, Chairman of the Planning Board to the Zoning Board of Appeals. It stated the following:

"The Bridgewater Planning Board (BPB) and its staff have performed a preliminary review of the plans and the application documents submitted with the comprehensive permit application for the above referenced location. The application seeks to develop a 5-story apartment complex that would house sixty (60) rental units on approximately 2 acres of land in the residential D (RD) zoning district. Based on our initial review of the application, the BPB wishes to submit the following preliminary comments for your consideration: 1) Multi-family dwelling(s) is not an allowed use in the RD zoning district. The proposed use is inconsistent with the character of the neighborhood. 2) The minimum lot area required for a single-family dwelling is 18,500 S.F., and a minimum of 10,000 S.F. per dwelling unit is required for a 2-family use. Assuming the project site is two acres (87,120 S.F.), the proposed 60-unit development would yield a density of 1,452 S.F. per dwelling unit, nearly 700 percent increase in the allowed density for a 2-family development, or nearly 1300 percent increase in the allowed density for a single-family development. We recognize the Zoning Board of Appeals has the regulatory authority under Ch. 40B to grant use and dimensional variances/waivers; however, we believe the instant application for a 60-unit development on a 2-acre parcel of land is too extreme and defies logic. 3) The maximum allowed building height is three stories; a five-story building is proposed. 4) 105 parking spaces are proposed, but no parking computation or other basis for the proposed number of spaces has been provided. We believe the proposed on-site parking is inadequate, which could engender on-street parking, thereby exacerbating the existing difficult and challenging parking and traffic circulation problems in the area. 5) The plan(s) does not show the existing pedestrian crosswalks near the railroad crossing on Plymouth Street which is in a proximity of the site's proposed driveway on Plymouth Street. Pedestrian flow and safety impact has not been adequately addressed, this is a major concern. 6) The impact of the two 2-way driveways on Burrill Avenue has not been fully addressed, especially considering the high-volume traffic flow on Burrill Avenue associated with the College. 7) No computations or data have been provided on the site plan to demonstrate compliance with the maximum building coverage and the minimum open space requirements or show the amount of the variation from the required minimum open space and/or the allowed maximum building coverage. 8) Site lighting plan has not been provided to demonstrate that glare on abutting lands would not result from the proposed development. 9) Impact on the town's water supply and the sanitary sewer systems have not been adequately addressed. 10) No stormwater management design analysis has been provided, and the impact of the proposed connection to the town's drainage system has not been evaluated; and any existing system inadequacies have not been assessed. 11) The

proposed landscaping plan has not been prepared by a Registered Landscape architect. 12) Construction impact of the project has not been adequately addressed.

The foregoing numbered items represent our initial review comments. We hope to provide your Board additional review comments during public hearing process. It is true that Ch. 40B projects are reviewed under different standards and the Board of Appeals have the flexibility to allow increased density for Ch. 40B residential uses, we urge the Board to carefully consider and weigh the impact of this extensive project and its incompatibility with the neighborhood in granting any approvals. Adequate and considerable mitigation should be provided. Bridgewater has seen its share of Ch. 40B projects and we believe the town's housing production plan and the existing Ch. 40B projects in the town should afford the Board of Appeals to limit the size and scope of the instant application."

The Board, Steve Ventresca, Engineer from Nitsch Engineering, along with Geoff Engler representative from Scollay Development, LLC discussed and reviewed the findings of the traffic study peer review, as outlined in Nitsch Engineering's March 21, 2018 memorandum to the Zoning Board of Appeals of the October 2017 transportation Impact Assessment prepared by Vanasse and Associates, Inc., along with the response to Nitsch Engineering's Transportation Peer review by Vanasse and Associates, Inc. in a letter dated March 28, 2018. Mr. Aveni noted that based on the traffic findings at this point, the only change will be a right in and right out for the traffic flow to the project.

Mr. Robert Lad, 30 Plymouth Street, expressed his concerns regarding the traffic impacts.

Mr. Jay Brogan, 51 Burrill Avenue, noted for the recording that the plans indicated that Burrill Avenue was identified as a two way and it is in fact a one way.

Mr. Anthony Aveni, Chair, informed Mr. Geoff Engler that he agreed with the Planning Board's stance that the height and wasn't sure if he would support a waiver for the height.

Mr. Geoff Engler respectfully stated that under 40B laws, the height is measured by impact and not just how tall it is, so unless there was an overwhelming reason that the height is an issue, other than people don't like it, it's not going to hold up, and we are going to have a serious problem. Mr. Engler stated that if the Board tried to reduce the height or the density of the project they would appeal it. Mr. Engler noted that there would have to be a valid reason in relation to health and safety in order to not grant a height waiver and believed that the Board would be hard pressed to demonstrate that hardship. Mr. Engler also noted for the record that they were working diligently to address traffic and the stormwater and civil engineering aspects to the project and would be filing a Notice of Intent, as well as addressing the right-of-way with the neighbor. Mr. Engler stated that if the Board tries to reduce the height of the building or the density then we are going to have a lot to talk about. Mr. Aveni responded, let's start the conversation tonight because he wasn't going to budge on that issue, and he might as well start reducing the density, at least the height of the building, and if he wasn't willing to do that he could appeal to HAC and we can go from there. Mr. Engler asked, "is it the height or the density?" Mr. Aveni responded, "The height of the building." Mr. Engler suggested that they could spread the building out more, and Mr. Aveni stated that as long as the parking can handle the number of units and you keep it within the current zoning of three stories that that could possibly work. Mr. Engler stated, "It's not going to be three stories, I can tell you that." Mr. Aveni responded, "Then we are going to have a problem." To which Mr. Engler responded, "So noted."

Mr. Ed Marchant informed Mr. Engler the Board's concern is to make an informed decision and if they have concerned about design and they are willing to go to bat with it, that's their right. Mr. Marchant stated, based on what was talked about thus far, he heard that the density itself is not an issue; it is not an issue of reducing the height to reduce the density, and told Mr. Engler that if he could find an alternative site plan, or building configuration and maintain the same number of units, and satisfy the Board in terms of traffic and parking, that it's his guess that's what the Board is trying to achieve. Mr. Marchant stated that the Board didn't feel that the height is not appropriate for that location.

Mr. Engler responded to Mr. Marchant stating that he understands the Board's position, but as their consultant, do you have the responsibility to tell them what the likely outcome would be if they pushed the issue on appeal? Mr. Marchant stated that this isn't the Board's first rodeo, they have done a number of projects and have approved five story buildings in other locates, but they are very different locations. Mr. Engler disagreed stating that the location is exactly the type of location where you would want this kind of housing and it creates economic development. Mr. Aveni reminded Mr. Engler at the last hearing he stated that this is going to be student housing, so how is this economic development? Mr. Engler stated that not all of it would be student housing. Mr. Aveni stated that he wasn't buying it.

APPROVED: June 27, 2018

Mr. Engler stated that they will roll up their sleeves and see what they can do with the proposed design of the project. We will put our best foot forward.

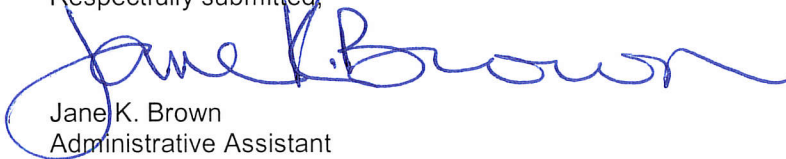
Mr. Gerald Chipman, Member, made a motion to accept the applicant's request to continue the hearing to June 27, 2018 at 7:30pm on the second floor of the Municipal Office Building located at 66 Central Square, Bridgewater, MA. Mr. Brian Heath, Member, seconded the motion. VOTE: All in favor, none opposed.

Zoning Board of Appeals Business

There was no board business for discussion.

Mr. Brian Heath, Member, made a motion to adjourn the regular meeting at 9:10pm. Mr. Gerald Chipman, Member, seconded the motion. VOTE: All in favor, none opposed. Chairman Anthony Aveni closed the meeting. Next Zoning Board of Appeals meeting will be held on April 11, 2018 at 7:00pm in the Council Chambers located on the second floor of the Municipal Office Building, 66 Central Square, Bridgewater.

Respectfully submitted,



Jane K. Brown
Administrative Assistant