

Call to Order:

The meeting was called to order at 7:36 p.m. Present were Chair Zachary Bergeron, members, Vincent Chiozzi, Jay Doherty, Ann Knowles, and Associate Member Steven Pouliot; also present was Paul Materazzo, Director of Planning.

254 Lowell Street Deliberations:

Mr. Bergeron opened the continued deliberations for 254 Lowell Street, a Special Permit for Elderly Housing. Heather Lauten of 243 Lowell Street asked to address the Board. Mr. Bergeron stated that it is a deliberative session for the Board and closed to public comment. Ms. Lauten submitted a letter for the public record.

Mr. Materazzo reviewed the previous deliberative session. He noted that the Board had asked for a condition which would tie both Phases together. In consulting with Town Counsel, the Board may consider reasonable conditions on the project. This may be precedent setting because the Board has never required building permits for all buildings that are part of an application at one time. Ms. Knowles asked for an example of that. Mr. Materazzo stated that Andover Country Club has more than 80 homes that were part of a master development approved in the early 1990s. This Board has facilitated multiple modification requests where uses have been altered, and as of today the project is not completely built out and not all building permits have been issued. He added that Minuteman Park was granted a permit for multiple buildings as part of a master plan, and not all of the buildings have been built. Ms. Knowles asked if they could condition with proviso for the project to have a certain percentage of low income housing even if Phase II is not built. Mr. Materazzo stated she was correct and it would be a very hard test for someone who wanted to modify the project.

Mr. Bergeron stated that the affordability and the Phase II building are a want and desire of the Board. He noted that master plans are approved all the time with contingencies. He noted that any conditions have to be kept as reasonable as possible, and the tying together of permits may not be reasonable. The benchmark of affordability makes it almost impossible to alter the project.

Mr. Doherty asked what happens if Phase II doesn't go forward. Mr. Chiozzi answered that if construction does not start in 24 months for both phases they would lose their permit. Mr. Materazzo noted that it states "except for good cause", and he added that it would have to be a very good reason as to why they have not started construction. He added that Phase II is contingent on financing which is decided on a yearly basis. Mr. Bergeron asked who would be reviewing whether it was good cause. Mr. Materazzo stated that in the past it has been reviewed by the Board. He added that as an example, 5 Campanelli Drive was permitted in the early 2000s and they have been granted extensions throughout.

Ms. Knowles stated that if Phase II does not work out the Board is looking for a project as a whole with 57% affordability. Mr. Chiozzi agreed that the additional building would have to be 100% affordable. Mr. Doherty stated that he has no problem with Phase I but Phase II may have problems over the years that make it open ended. Mr. Chiozzi stated that he was assuming that the Board would grant them an extension on the permit, and they lose their permit unless they have a good reason. He added that if the goal is to get the building built, this puts pressure on to

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get it done. Mr. Doherty stated that he wants the financing tied in to avoid this because he doesn't like that it is open ended. B'Nai B'Rith could move on and there would be no affordable housing. Mr. Materazzo stated that as an example, one of the mill buildings at Atria Marland Place was not part of the initial building phase and sat vacant for about 20 years. Mr. Bergeron pointed out that this would sit as an untouched piece of the parcel. Mr. Materazzo added the developer has a construction and stabilization plan. Ms. Knowles asked how it would be stabilized and Mr. Materazzo stated that they would probably leave it as is with some mowing, and walking paths would be completed per their phasing plan. Mr. Chiozzi stated that he sees this as a way of getting the whole project done. Mr. Doherty reiterated that he still feels it is open ended. Mr. Chiozzi pointed out that any modification would have to include 100% affordable units in Phase II. Mr. Doherty stated that he does not want Phase I to happen until Phase II is confirmed.

Mr. Pouliot asked if there is an equal need for both phases. Mr. Chiozzi stated that there is a need for both and he wouldn't measure the need between them. Mr. Bergeron agreed that there is a need for both. Mr. Doherty stated that from what he heard, there is more of a need for the affordable housing than the memory care. Mr. Bergeron stated that he did not think one would build a memory care facility if there was no need.

Mr. Pouliot stated that he has not seen any hard numbers showing a need for Andover residents. Mr. Bergeron noted that it is not just Andover residents, but family of Andover residents and former residents that this development can serve. Mr. Materazzo added that in the information provided, today there is a need for 79 units in a 7 miles radius of the site. In the year 2019 the number of units needed grows to 143. Mr. Pouliot stated that unless all of those people live in Andover, there is not a need. He feels both phases should be tied together if there is to be an approval. Mr. Chiozzi asked if he doesn't think the deadline is enough of an incentive to build Phase II. Mr. Pouliot stated that the financial benefit the Town would receive if Phase II wasn't built is now gone. Mr. Chiozzi stated that the applicant is now providing affordability in memory care, and that is why the additional financial contribution is gone. Mr. Materazzo stated the applicant revised their application to provide affordable memory care in Phase I and to give \$75,000.00 to the Andover Housing Trust Fund independent of Phase II. Phase I will now comply with the Bylaw independent of Phase II being built. Ms. Knowles stated the Board should consider that B'Nai B'Rith has an excellent track record and has pretty much always built projects for which they have received funding. Mr. Doherty replied that there is a first time for everything.

Mr. Bergeron discussed tying the financing of Phase II to the building permit for Phase I. Mr. Chiozzi noted that he is assuming that if they get financing they will build. He added that he sees this as if they don't build it; they lose the right to build it, which is harsher. Mr. Bergeron noted that such a condition would allow for an extension for "good cause", so the financing could be considered such.

Mr. Pouliot stated that the Board should decide if they want to disapprove the project. Mr. Materazzo suggested a straw vote and reminded the Board that if they choose to disapprove the project they will need to list specific reasons for disapproval.

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Mr. Chiozzi stated that he is comfortable with voting for the project if the proposed conditions are added on for Phase II. He feels it is enough of a penalty if you lose the right to build if you don't start within two years. Ms. Knowles stated that she agreed with Mr. Chiozzi. Mr. Doherty stated that he has a problem with the whole thing and would probably be voting no. Mr. Bergeron asked if there were specific things that the Board should be airing out and considering. Mr. Doherty stated that if the extra conditions were in the decision he would accept that. Mr. Bergeron stated that he would not consider voting for the project without the three conditions either, and added that the project is not unreasonably detrimental if built as discussed. Mr. Pouliot stated that he believes for a lot of factors the project is unreasonably detrimental to the neighborhood and the Town and no conditions would change his vote. Mr. Doherty stated that it is unreasonable for the character of the neighborhood and no conditions would change his vote.

Ms. Knowles felt that the Board should discuss the ramifications of a no vote. She asked Mr. Materazzo to outline what would happen if the project gets voted down. She added that material reasons have to be able to stand on their own. She asked the other members if they are voting no only because they feel the project is detrimental to the Town and the neighborhood, because if there are other reasons she would like to know what they are. Mr. Pouliot stated that throughout the process he has taken issue with the traffic, study, the need and the drainage. He doesn't like the aesthetic of the project for the neighborhood or the Town. The look of Phase II is not in character with the neighborhood. The traffic in the area is bad. He reason for voting no is that it is unreasonably detrimental to the character of the neighborhood.

Ms. Knowles stated that his denial could only be on aesthetics because there is no proof of a traffic issue. Mr. Pouliot agreed that his legal denial is solely based on aesthetics. Mr. Bergeron stated there is no subjectivity except for the aesthetics. He added that that Town has other tools in place such as review by the Design Review Board. Mr. Pouliot stated he has issues with drainage based on new knowledge gained from another project currently before the Board. He saw a conflict of opinion between two different professional engineers on two separate sites in Town in regards to lateral drainage under a road.

Ms. Knowles noted that if the Board disapproved the project, all recommended conditions would disappear if an appeal is granted. Mr. Pouliot stated he didn't follow and asked what she meant by an appeal. Mr. Bergeron stated that the Board shouldn't be threatened about the possibility of any appeal but asked Mr. Materazzo to explain the process. Mr. Materazzo stated that if an applicant appeals the disapproval of a project, and wins the appeal, the applicant may not have to follow any of the conditions recommended by the Board. Mr. Pouliot asked how many votes are needed for an approval. Mr. Bergeron answered 4 votes. Mr. Pouliot asked who presides over an appeal. Mr. Materazzo stated that all appeals are taken to Land Court, and added that an approval can also be appealed.

Mr. Chiozzi stated that he felt it is a good thing to incorporate a review by the Design Review Board into the conditions. He noted that the height and setbacks comply with the Zoning Bylaw and he stated he had a hard time agreeing that it is unreasonably detrimental based on appearance. Mr. Bergeron added that it also complies with density. Mr. Pouliot asked them about the aesthetics. Mr. Chiozzi stated that the Zoning Bylaw does not talk about the aesthetics

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and the aesthetics can be worked out with the Design Review Board. He questioned how other members could say it is unreasonably detrimental. Mr. Doherty stated that they have the right to say it is unreasonably detrimental. Mr. Chiozzi stated that through the entire process they have done a good job evaluating the project. He added that detrimental is one thing, but you have to prove that it is unreasonably detrimental and the Town Attorney has to be able to defend that.

Mr. Doherty stated that Section 7.4.4 of the Bylaw requires 15% affordability, and they are only providing 10%. Ms. Chiozzi corrected him that they are providing 57% affordability. He added that the memory care building was originally 0% affordable and they got the developer to reconsider and give the Town 10% affordable units in that building plus \$75,000.00 for the additional units to make up the difference between 10% and 15%. The original \$250,000.00 was in lieu of any affordability in memory care. The developer has now been able to provide 10% affordability in memory care which is unprecedented. Mr. Chiozzi added that all you hear in Town is how people who have lived here all of their lives can't afford to stay here on fixed incomes. To provide affordable units in Town, as well as affordable units in memory care which is a dire need, is a great benefit to the Town, not unreasonably detrimental.

Mr. Pouliot questioned if the Board can discuss the other subjects of traffic and drainage or if they should bow down to the Peer Reviewer and Town Engineer. Mr. Chiozzi asked if Mr. Pouliot feels that he needs more information. Mr. Bergeron asked Mr. Pouliot if he would like to add a condition about the drainage to prevent lateral dissipation. Mr. Materazzo cautioned the Board that what works for one site in Town may not work for another. Mr. Pouliot stated that he has an engineering degree but did not pass his professional engineer test, and he has a little bit of knowledge on how water travels, soil modeling and where you find water tables. There have been a couple of instances where engineers disagreed so he went back to his books to see if he could understand it, and what makes sense to him. He is not saying that the Peer Reviewer or Town Engineer is wrong, but since there is a difference of opinion it raises a flag for him. He added that in regards to traffic, there is traffic in that area when he goes to work in the morning. He asked if the Police Safety Officer has considered that a senior may be pulling out of that drive way when a bus is stopped. He stated if someone can tell him he is wrong with all of the concerns he has brought up, all of his questions have been answered and he does not have a legal reason, then he will say he has no leg to stand on, and will look at ways to approve it with conditions. He added he came to this decision by finding all of these things and the aesthetics unreasonably detrimental to the Town and the neighborhood, and if he is wrong, maybe he does not belong on the Board.

Mr. Bergeron noted that there are other systems that could be put in place to manage any traffic. Mr. Pouliot stated that the only thing he would want to manage the traffic is a traffic light, and he does not want a traffic light. Mr. Bergeron noted that he has a concern with the level of subjectivity on those items and the precedent it would set. He reiterated that the Design Review Board could help with the aesthetics. Ms. Knowles asked if a peer review was performed on the traffic report. Mr. Materazzo stated that a peer review was not performed on the traffic report because both the Town Engineer and the Police Safety Officer deemed the use a low intensive use that is not a traffic issue. Mr. Doherty stated that he doesn't agree with that with there being people 55 and over coming and going.

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Mr. Bergeron asked Mr. Doherty and Mr. Pouliot if there were no conditions that could make the project approvable. Mr. Pouliot stated that he would want a condition for a new traffic study to be performed with additional hours, and for a new drainage peer review to be performed. Mr. Materazzo stated that the time to question all of these things was during the public hearing process. The Town's Peer Reviewer has stated that the project complies with all state and local regulations. Mr. Chiozzi added that the Town's Peer Reviewer has worked with the Town for over fifteen years, is very bright and takes engineers to the task. He added that with the hearing closed, those conditions could maybe be placed if the new reports were sent to the Town Engineer or Planning staff for review.

Mr. Pouliot asked if everyone else on the Board is happy with everything. Mr. Chiozzi stated that he is satisfied that everything has been addressed. Mr. Materazzo pointed out that any deficiencies to the public utilities would have been addressed by Town staff during the review process. Mr. Pouliot asked if the Town Engineer is satisfied that the infrastructure can handle the development. Mr. Materazzo stated that he was correct.

Mr. Doherty stated that he is voting no because of the affect on the neighborhood, and the financial hardship on the people. It will affect their lives on a daily basis with noise pollution, air and light pollution. Ms. Pouliot asked Mr. Doherty if he felt a denial is more detrimental to the Town than an approval with conditions. Mr. Doherty and Mr. Pouliot agreed that they were comfortable with a denial.

On a motion by Mr. Chiozzi seconded by Ms. Knowles the Board moved to approve the Special Permit for Elderly Housing for 254 Lowell Street with Conditions 1 through 46 as amended per Paul Materazzo's memo dated February 19, 2015. **Vote:** (3-2) with Ms. Knowles, Mr. Chiozzi and Mr. Bergeron and voting yes; Mr. Pouliot and Mr. Doherty voting no. The motion did not pass.

Mr. Materazzo informed Mr. Doherty and Mr. Pouliot that they will have to provide specific reasons for the denial for the written decision to be clocked in with the Town Clerk's office. Mr. Doherty and Mr. Pouliot noted that they stated their reasons for denial in the deliberation process. Mr. Materazzo stated that their reasons for denial voiced during deliberations will be transcribed and filed with the Town Clerk.

Other Business:

Mr. Materazzo informed the Board that the Board of Selectmen has requested that the Planning Board post and advertise all of their public hearings for Zoning Articles for Town Meeting now, as the Board has set a schedule. Mr. Materazzo noted that this would include advertising mid-April hearings in February, and would be deviate from what the Board has done historically. He added that in speaking with Town Counsel, he has been informed that it may have legal ramifications. The Board agreed to post and advertise their Zoning Article hearings following the staff's normal procedure which is per State regulations.

Adjournment: The meeting was adjourned at 8:47 p.m.