



Town Of Newbury

Office of
THE PLANNING BOARD
12 Kent Way
Byfield, MA 01922
978-465-0862, ext. 312

June 21, 2017

Zoning Board of Appeals
Town of Newbury
12 Kent Way
Byfield, MA 01922

Re: Comprehensive Permit Application
Byfield Estates, Newbury, MA

Dear Members of the Zoning Board of Appeals:

On May 1, 2017 we received a copy of the Comprehensive Permit Application for the Byfield Estates residential homeownership development project submitted to the Zoning Board of Appeals under the provisions of MGL Chapter 40B, Sections 20-23. We are herewith submitting our comments on the proposed project to you, as requested in the email from Susan Noyes dated May 31, 2017.

Our comments fall broadly into two categories – general concerns about the Development Team and about the overall design of the project and specific concerns about inconsistencies and inaccuracies in the Application itself.

1. **The Applicant:** The Comprehensive Permit Application provides minimal information regarding Byfield Estates, LLC, and the Applicant's experience, and raises more questions than it answers. We in fact question whether this Application is properly before the Zoning Board of Appeals. We note specifically:
 - a. The Byfield Estates Site Approval Application that was submitted to the Town on May 11, 2016, listed two "Applicant Entities" for the project, Haralambos Katsikis and Kevin Goodwin. MassHousing's letter of Project Eligibility, dated October 26, 2016, was addressed solely to Mr. Katsikis and according to the "Business Entity Summary" for Byfield Estates, LLC, on the Massachusetts Secretary of State's web site, Mr. Katsikis, 2 Dearborn Way, Middleton, MA 01949 is identified as the Manager of Byfield Estates, LLC. However, Mr. Katsikis is not listed in Section 5 of the Comprehensive Permit Application as a member of the Development Team, nor is he mentioned anywhere in the Application, except as the "Buyer" on the Purchase & Sale Agreement for the property. Rather, Kevin Goodwin, 105 Church Street, Merrimac, MA 01860, is identified as both the Applicant and the Manager of Byfield Estates, LLC. We question Mr. Goodwin's authority to submit this Comprehensive Permit Application and suggest that the ZBA request clarification of the Applicant's status.

Assessing the structure, composition and qualifications of the applicant is a responsibility handled by the subsidizing agency, in this case Masshousing. A review of the Applicant and their extended development team was performed by Masshousing as part of the Site Approval application process. For Clarification purposes, Mr. Katsikis established the Byfield Estates LLC entity. He is a member of the development team and is providing the necessary capital for the project. Kevin Goodwin is also a member of the development team and is serving in a project management capacity during the public hearing process. He and Mr. Katsikis are both empowered to make decisions on behalf of the Applicant/LLC.

- b. We know from the previously submitted Site Approval Application that the Developer has no experience developing 40B projects. In the Comprehensive Permit Application, the Applicant lists 17 residential properties and three commercial properties as representative examples of construction projects. However, there is no evidence from the information provided in the Application that the Applicant has experience developing a subdivision of any size, especially one of the magnitude that is proposed, or has been responsible for installation of infrastructure such as roadways and drainage systems. In its July 12, 2016 comment letter to MassHousing regarding the Site Approval Application for this project, the Town expressed a very high level of concern about the Applicant's technical ability and financial capacity to undertake and successfully complete a project of this size and complexity. MassHousing's October 26, 2016, Project Eligibility Letter to Mr. Katsikis notes the Town's concerns about the Applicant's experience and states that "The Applicant should be prepared to respond to Municipal concerns regarding the experience of your development team to construct a project of this size during the public hearing." In our opinion, the Comprehensive Permit Application does not provide sufficient information regarding the Development Team's experience and the Applicant did not adequately address this concern during the first session of the public hearing. Information is needed on what role the Applicant played in the development of the residential and commercial projects that are referenced and on whether the Applicant has any experience developing a subdivision.

Assessing the qualifications and capabilities of the applicant is a responsibility handled by the subsidizing agency, in this case Masshousing. A review of the Applicant and their extended development team was performed by Masshousing as part of the Site Approval application process. Masshousing determined the Applicant had the necessary capabilities to undertake this project and MassHousing has the sole responsibility for making this determination as stipulated in 760 CMR 56.07A(h)(1), paraphrasing: "The following matters shall be within the sole province of the Subsidizing Agency....Matters relating to Project Eligibility, including....the Applicant's ability to finance, construct, or manage the Project."

2. **The Architect:** We note that the "3D Architectural Renderings" of the two proposed house designs have been prepared, signed, and stamped by Ronald Henri Albert, AIA, of Lunenburg, MA; Mr. Henri is identified as the Architect for the project in the list of Development Team members. However, the floor plans for the units were prepared by KDK Design of Wilmington, MA, which, according to its website, is a "residential design business serving homeowners, builders and realtors." These plans are not signed and stamped by a registered architect as required. Clarification is needed on the relationship between Mr. Albert and KDK Design and on who is responsible for the architectural design for the project. In addition, we note that the architectural component of the submission is incomplete – the drawings do not include typical elevations and

sections or identify construction type and exterior finish as required by the Town's Comprehensive Permit Rules and Regulations.

Ronald Henri Albert is and will be the architect of record. The interior floor plans were in fact prepared by KDK design and represent what the Applicant intends to construct. We will submit an updated plan set prepared in its entirety by Mr. Albert inclusive of the floor plans.

3. **The Project:**

- a. We are very concerned about the Applicant's proposal to construct an 845 foot long cul-de-sac, with 24 single family houses, at the end of a non-through road which is itself over 3,000 feet long from Orchard Street to its farthest point. The effective length of this cul-de-sac far exceeds the 500' allowed under the Town's Subdivision Rules and Regulations. We see this extension of Pearson Drive as a significant safety issue for both traffic and emergency response.

As part of any 40B process, there are commonly deviations from local zoning by-laws. For this particular application, the Applicant has asked for a waiver from the cul-de-sac length bylaw. The 40B statute presumes the need for affordable housing overrides local zoning requirements. The Fire Chief has provided comments on this application which we have responded to further along in this memo.

In addition, the submitted traffic study indicates that Pearson Drive will provide safe and adequate access for the project during construction and following the completion of the project.

- b. The Town's Subdivision Rules and Regulations have been revised to require a minimum roadway width of 22' feet, at the request of the Fire Department, to allow two fire trucks or other large emergency vehicles going in opposite directions to pass each other. The proposed 20' wide roadway will not provide this clearance. This is of particular concern given the density of the proposed development and the length of travel from Orchard Street along Pearson Drive to the new homes. We recommend that the Board of Appeals seek the input of the Fire Department regarding this issue.

The revised plans feature a roadway revised to a width of 22 feet. Additionally, a turn out at the entrance to the development has been provided for a fire truck to access the first hydrant on the proposed road with the vehicle remaining outside of the travel way. The current plan now proposes three hydrants to service the development which results in a spacing of no greater than 325 feet in the developed portion of the site which is much less than the 500 foot spacing generally required.

- c. We also have serious concerns about the ability of fire apparatus to go between the buildings to access the rear of the units if needed, since the dwelling units are, on average, only 15' apart. Due to the design of the stormwater management system, the dwellings will not be accessible directly from the rear. We recommend that the Board of Appeals seek the input of the Fire Department regarding this issue.

The Massachusetts State Building Code allows a separation distance of 15 feet between dwelling units; the proposed design meets those requirements.

- d. While we have had significant rainfall this spring, Newbury, like many of the surrounding communities, experienced a long period of drier than normal weather conditions last year and the Byfield Water District instituted mandatory water restrictions. During the review process for the Site Approval Application, residents of Pearson Drive commented on periods of low water pressure, especially at times of heavy use. The Board is concerned about having sufficient water pressure at the fire hydrants on the new cul-de-sac for fire-fighting and about the capacity of the existing system to accommodate twenty-four (24) additional single-family homes, with a total of 81 bedrooms. At a minimum, pressure tests should be done on the water system at various times of day to determine the capacity of the system to support the new development.

A fire flow test is being scheduled for the week of November 12. The results will be provided when it is complete

- e. The pavement on Pearson Drive is in poor condition. According to the Site Approval Application submitted in May 2016, the developer proposes to provide four parking spaces per dwelling unit, for a total of 96 parking spaces for the development. The associated traffic will put additional strain on the roadway and degrade it further. We recommend that the Board of Appeals have a peer review traffic engineer address the volume of traffic generated and the impact that increased traffic will have on the already poor roadway condition.

40B regulations and case law clearly indicate that a 40B applicant is not required to mitigate existing off-site conditions (e.g. pavement condition, infrastructure, traffic, etc) but the applicant needs to mitigate any increases in these conditions created by the development itself which would be detrimental to the health and safety of the occupants of the development and/or residents or the neighborhood. The Applicant's Peer Review Traffic Consultant has reviewed the preliminary traffic study. And while additional data and information was requested, no mention was made of the current condition of the pavement.

- f. There are currently no sidewalks on Pearson Drive – all pedestrians and bicyclists must share the roadway with vehicular traffic. The addition of up to 96 cars traveling the entire length of Pearson Drive to reach the new development will exacerbate existing safety concerns. This issue also should be addressed as part of the traffic peer review.

The Town's Peer Review Consultant addressed this issue in their review. As anticipated, based on the anticipated number of vehicle trips, there will be no change in the level of service to nearby intersections nor will there be a negative impact to pedestrian safety.

- g. The sight lines for cars exiting Pearson Drive on to Orchard Street are very poor, especially to the left (east). The addition of up to 96 cars will increase the potential for accidents at that intersection. In addition, signage at the island at the entry to Pearson Drive will need to be improved to ensure that the entry and exit lanes are clearly marked. Again, this issue should be addressed as part of the traffic peer review.

Please refer to answers for "e" & "f"

- h. While we commend the development team's intention to provide housing that is similar in size and scale to the existing homes on Pearson Drive, we find that the proposed

design does not, in fact, accomplish this goal. The project is significantly denser than the Pearson Drive development, and currently provides only two house design options, one for a three-bedroom unit and one for a four-bedroom unit. This will result in a uniformity of design which is inconsistent with the surrounding neighborhood. We recommend that the Board of Appeals request the Applicant to provide additional design options.

A third housing design (1st floor master bedroom) has been introduced since the original application. The Applicant does not believe there is a bylaw or requirement in the subdivision rules and regulations that requires a minimum number of housing styles. Moreover, the Town cannot impose requirements on a 40B development that are not required of other ANR or Special Permit applications.

- i. The purchase price of the land is \$675,000 or \$28,125 per unit. This is an extremely low price for the land. Since land price and interest rates are key elements in making this project feasible, we believe that there is more than enough ability to reduce the number of units and still make the project economically viable. The decreased density will allow the proposed project to fit better with the existing homes on Pearson Drive and, as a result, make it much more successful.

The Land Acquisition price, no matter how high or how low, is not something under the purview of the Zoning Board of Appeals according to the 40B regulations. A Masshousing commissioned appraisal is provided as part of the Site Approval Application process and that appraised land value is the land value included in any development budgets on a go-forward basis, regardless of the actual acquisition price. The financial feasibility of the project and the economic implications of any density reduction can only be discussed after all peer review information and other requested information has been reviewed by the ZBA.

4. **The Application:** We note a significant number of inaccuracies, inconsistencies, and discrepancies in the Comprehensive Permit Application itself, including the following:

- a. We question whether the subject property, identified as “55 Rear Pearson Drive” in the Comprehensive Permit Application, is in fact buildable. The “Application for a Comprehensive Permit under General Law Chapter 40B, Sections 20-23” states that the “premises affected” consists of a 15.08 acre parcel of land at 55 Rear Pearson Drive. However, referencing an ANR Plan that was endorsed by the Planning Board on December 21, 2005, and recorded at the Southern Essex District Registry of Deeds on February 21, 2006 (Plan Book 396, Plan 5), the “affected” parcel is not a standalone parcel, but was created and merged with 55 Pearson Drive through that ANR Plan. What the Applicant calls 55 Rear Pearson Drive is identified on this Plan as Parcel B, and is described thus: “Parcel B is not a buildable parcel by itself, but is to be combined with Map R-20, Lot 75, to form one continuous parcel containing 16.36 +/- acres.” Our Assessors database contains only 55 Pearson Drive, with an area of 16.36 acres. It does not contain any parcel identified as 55 Rear Pearson Drive.

Please refer to the recently submitted memo submitted by attorney Peter Freeman addressing this issue.

- b. Project Data Summary:

- i. The description of the project in the first paragraph calls this an “apartment community in Newbury.” However, the following sentence states that the project will consists of 24 “homeownership style units.”

The reference to an “apartment community” was in error. This application is in fact for 24 home-ownership units.

- ii. The description of the development states that the project will offer a variety of house designs. However, as noted above, only two designs are shown on the architectural drawings.

See “h” above

- iii. The description also notes that the development will be 0.4 to 0.8 miles from a variety of services and amenities. This is not correct – the entry to the development is 1.56 miles on-road from Pearson Plaza, which is the nearest shopping area. Other amenities, such as a gas station and the Library, are even farther.

www.walkscore.com was used to provide the original information. This information was not accurate and we acknowledge the incorrect distances. We can provide updated distances if the Board chooses.

- c. Rider to Purchase and Sale Agreement: This Rider references the need for approval from the Planning Board “to subdivide the Premises into at least twenty-four (24) buildable lots suitable for single-family residential development pursuant to a so-called 40B design plan to be submitted by Buyer at his sole expense without the need for a variance or special permit from the ZBA.” This is not consistent with the 40B process or the Applicant’s proposal to build 24 units on one lot. Further, 24 lots could not be developed by-right on the lot. The Applicant should resolve this confusion by submitting a revised Purchase and Sale Agreement clarifying the relief required before the Buyer is obligated to purchase the Property.

This issue has already been addressed to the satisfaction of Special Counsel to the ZBA

- d. The Traffic Assessment prepared by TEPP is minimal and does not reflect the actual proposed parking capacity of 96 cars associated with the dwellings. We recommend a peer review of this Assessment.

The Town has retained a peer review consultant to assess traffic considerations. The traffic analysis performed by the Peer Review consultant considers all vehicle trips estimated for this project based on the size, type, number of bedrooms and number of parking spaces proposed.

- e. Site Development Drawings:
 - i. No stormwater calculations or stormwater report have been submitted to support the stormwater management design. We recommend that the Board of Appeals require the Applicant to submit stormwater calculations and/or a stormwater report so that it may be reviewed by the Board of Appeals’ peer review engineer.

The Applicant has submitted all relevant stormwater calculations and associated reports.

- ii. No soil logs or test pit information have been provided; the septic system drawings are referenced, but have not been included in the submission.
Soil information has been recently submitted. The information submitted includes soil testing data that was witnessed by the Newbury Board of Health Representative as well as soil sieve analysis's which were completed by the University of Massachusetts Plant and Soil Testing Laboratory for samples taken by Ranger Engineering within the location of the proposed drainage ponds.

f. Narrative to Accompany Documentation Regarding Site Characteristics/Constraints:

- i. As noted above, the site actually consists of 16.36 acres, not 15.08 acres, and 55 Rear Pearson Drive does not exist as a separate parcel.

Please refer to the recently submitted memo submitted by attorney Peter Freeman addressing this issue.

- ii. The narrative describes the site as characterized by “well drained soils consisting of a mixture of sandy loam.” However, the existing conditions plan shows a significant number of rocky outcroppings, indicating the presence of ledge and boulders on the site. As noted above, soil logs are needed to confirm existing conditions.

Soil testing data has been recently submitted. The sieve analysis results indicate that the soil is a drainage class B soil, sandy loam, which is a well draining soil.

Town of Newbury Fire Department - Chief Douglas Janvrin, Jr. letter dated June 22, 2017

- At least a 22 foot wide roadway with hard shoulders to accommodate fire apparatus
The roadway width has been revised to 22 feet.
- A paved pull off for the first fire hydrant coming into the subdivision which is capable and large enough to support fire apparatus, and marked for no parking
A fire department pull off at the first hydrant has been provided.
- Parking be restricted to one side of the street at all times
No parking signs have been proposed on the left side of the roadway.
- The circle at the end of the subdivision be a hard surface underneath and that it be kept clear of snow at all times
The center of the circle has been proposed as being flat with a vegetated surface above a sub-surface stormwater management system.
- A minimum of twenty (20) feet of space between buildings due to exposure issues in the event of a fire
Massachusetts State Building Code allows for a separation distance as low as a 5' between buildings when a non-combustible siding is used. The proposed siding is cement fiberboard which is considered a non-combustible material so the 15' proposed minimum building separation of 15' is in compliance with the building code.

- A water flow test be conducted at the expense of the contractor
A water flow test was performed November 15, 2017 at 8:00 AM at the hydrant closest to the proposed entrance to the development. The static pressure was 75 PSI and the flow is 1062 GPM at a residual pressure of 42 PSI which is more than adequate to provide fire protection for the proposed development.

WSP Memo dated June 23, 2017

1. Traffic Impact Studies typically include an assessment of the existing conditions of the study area including description of intersection geometry, existing pedestrian facilities, existing traffic volumes and crash data. Traffic volumes should be collected at a minimum of the intersection of Orchard Street at Pearson Drive during the weekday AM (7:00 AM to 9:00 AM) and weekday PM (4:00 PM to 6:00 PM) peak hours, the peak times for a residential development to provide context for the traffic increases anticipated with the project. Seasonal traffic patterns near the study area should be researched to determine the appropriate seasonal adjustment. Raw traffic count data should be adjusted seasonally to represent the existing conditions. Crash data for the intersection of Orchard Street at Pearson Drive should be reviewed.

Please refer to the revised and more comprehensive traffic impact study

2. Because the project is relatively small, an assessment of the future condition without the project may not be required. However, an analysis of the impact of the project related traffic on the intersection of Orchard Street at Pearson Drive is appropriate. The anticipated trip generation should be distributed through the study area to determine the future conditions with the proposed development.

Please refer to the revised and more comprehensive traffic impact study

3. The operation of the study area intersection should be analyzed to determine the impacts of the project related traffic. Deficiencies should be identified and improvements proposed.

Please refer to the revised and more comprehensive traffic impact study

Engineering Peer Reviewer: Robert Blanchette, Jr., P.E. letter dated July 17th, 2017

The following have been request of the applicant:

1. A stormwater report, supporting calculations, and documentation prepared in accordance with MA DEP Stormwater Management Standards as applicable
The stormwater report has been submitted
2. The sanitary system (onsite wastewater treatment and disposal) design
The sanitary system design has been submitted
3. The results of onsite soil testing activities supporting the stormwater management system and wastewater treatment and disposal system;
The soil testing information has been submitted.
4. Emergency vehicle and passenger vehicle geomatics (results of applying local fire department turning templates and passenger vehicle turning templates to the proposed roadway)
The roadway has been designed to the Newbury Subdivision Control Regulations standards for alignment and width. An Auto Turn plan will be provided.

5. The location of foundation drains
Foundation drain locations have been added to the plans.
6. A parking plan identifying the locations(s) for visitor parking and no parking signs along one side of the proposed roadway, as applicable
Parking signs have been provided along the left side of the roadway. Visitors can park along the right side of the road and in the driveways.
7. A snow storage location plan
Snow storage will be provided along the roadway and between the driveways as shown on the plans.

Immediate concerns:

- The proposed roadway easement may cause the existing lot at 55 Pearson to become non-conforming.
Please refer to the recently submitted memo prepared by Attorney Peter Freeman
- The proposed pavement width may not allow for vehicles to pass when emergency equipment is staged in roadway.
The roadway pavement width has been increased to 22' which is the town standard. Parking will be prohibited on the left side of the roadway.
- The plans do not identify reserve area(s) for the repair of the leach fields (when and if the time arises).
The septic system design plans shows pipe in stone leach trenches with reserve areas between the trenches.
- The locations of the foundation drains may not satisfy the minimum distance requirements of Title 5, The State Environmental Code
All of the proposed foundations are a minimum of 20' from the leach field which is the minimum required under Title 5. Two of the proposed units are located as close as 10' to the proposed leach trenches; however those two units will be built on a slab which does not require a foundation drain and can be as close as 10' to the edge of the leach system. Thus, the system as proposed conforms to all Title 5 regulations.

Thank you for your consideration of our comments. Should you have any questions, please don't hesitate to contact me or Martha Taylor.

Sincerely,

John Weis, Chair
Newbury Planning Board

cc: Ginny Kremer, Kremer Law
Paul Haverty, Blatman, Bobrowski, & Haverty, LLC
Geoffrey H. Walker, Chair, Board of Selectmen