

**Zoning Board of Appeals  
Lakeville, Massachusetts  
Minutes of Meeting  
August 18, 2022**

On August 18, 2022, the Zoning Board held a meeting at the Lakeville Public Library. The meeting was called to order by Chairman Olivieri at 7:03 p.m. He asked if anyone present was recording the meeting. There was no response. LakeCam was making a video recording. Mr. Olivieri said that he would be taking items from the agenda out of order this evening.

**Members present:**

John Olivieri, Jr., Chair; Jeffrey Youngquist, Vice-Chair; Gerald Noble, Clerk; Chris Carmichael, Vice-Clerk; Christopher Campeau, Member; Christopher Sheedy, Associate

**Others present:**

Attorney Amy Kwezell, Town Counsel; Marc Resnick, Town Planner

**Solana - 29 Pilgrim Road**

Mr. Olivieri said in regards to this, the Board was looking for an updated set of plans which was one of the conditions of the decision. Mrs. Solana then submitted the plan to the Board. Mr. Youngquist said the garage has been pulled back even to the house, and it has now been reduced to 13' x 20'. They have done everything they have been asked to do. Mr. Resnick noted after reviewing the decision conditions that in order to maintain the 25% coverage of the lot, the garage size had been reduced. The Solana's said that was correct.

Ms. Leigh Brienzo of 25 Pilgrim Road stated that she had written another letter and submitted it to the Board. She asked if anything else could be done at the house, such as adding a fence, gazebo area, or pavement. Mr. Olivieri said she could confirm this with the Building Inspector, but he believed a fence would not impact the impervious area. A gazebo or anything that would not allow rainwater to absorb into the ground would constitute changing the impervious area.

Mr. Olivieri noted that this had been approved with the condition that an accurate updated plan had to be submitted to the Board. This has now been done. Mr. Youngquist made a motion, seconded by Mr. Campeau, to accept the plan as submitted. The **vote** was **unanimous for**.

**Dixon hearing, continued – 36 Main Street**

As the applicant was not present, Mr. Olivieri suggested continuing the Dixon hearing. Mr. Youngquist then made a motion, seconded by Mr. Campeau, to continue the Dixon hearing until September 15, 2022. The **vote** was **unanimous for**.

Mr. Youngquist recused himself and left the meeting. Mr. Carmichael joined the meeting at this time.

### **Meeting minutes**

Mr. Noble made a motion, seconded by Mr. Youngquist, to approve the meeting minutes from the July 28, 2022 meeting.

Mr. Youngquist, Mr. Noble, Mr. Carmichael, Mr. Campeau, Mr. Olivieri – **Aye**; Mr. Sheedy – **Abstain**

### **The Residences at LeBaron Hills, LLC hearing**

Mr. Olivieri opened The Residences at LeBaron Hills, LLC hearing at 7:12 and read the legal ad into the record. Mr. Resnick then went through a history of the permitting of the project from 2004 up to the present. Mr. Olivieri then asked Town Counsel to give those present an overview of what abilities the Board has, what the Board's role is, and how it incorporates into the 40B process.

Atty. Kwesell advised this is a 40B project which means it can seek waivers from the zoning bylaw to create a project that is 25% affordable. This project was granted in phases, so they have had to return to the Board numerous times. Sometimes these phases have changed, so modifications have been sought. When reviewing a modification request, that is the only thing the Board can consider. With a 40B project, they want to try to work with the applicant to get the best project for the Town. If they deny the project, the applicant goes to the Housing Appeals Committee (HAC), which has an approximate 97% rate of overturning cities and towns. The normal course is to go over what the applicant is proposing and ask for items to be changed, in order to make the project more desirable. Lakeville is currently at about 6% for affordable housing, and would need to be at 10% for Safe Harbor or to be able to say no to a project.

Mr. Mohamad Itani, the developer was present. He advised this project was approved for 386 dwellings. They have built approximately 218 units and have been approved for 279. This consists of Phase One through Five. For this Phase, they are asking the Board to allow them to expand Phase Five to add buildings that are similar, but slightly less in size and volume, and place them between the multi-family building and the condos that are under construction. They would also like to add Phase Six, which would be three 36-unit buildings. This requires the elimination of three single family homes from Phase Three. This will give them 419 total units or 33 more than the original approved.

Mr. Jason Youngquist from Outback Engineering then gave a brief presentation. He indicated on the plan where the expansion of Phase Five would be located. This would be three ten-unit buildings and one five-unit building. These have been designed in a courtyard configuration. They will tie into the sewer system that already exists and will be expanded. Drainage will be below grade, with a small infiltration basin located by the wetlands. He advised that Phase Six is more off of Fern Avenue on the southern edge of the project. It consists of a three-story building and two four-story buildings with the associated parking required. The drainage will be below grade. Infiltration systems will recharge any runoff and will be sent back into the ground water. This will

also be tied into the existing sewer treatment plant. He noted that was built for what is there now and a whole other treatment train gets added as the units increase.

Mr. Itani added for the Phase Five expansion they would like to tie into the existing treatment plant, and they have the capacity. They currently have 66,000 gallons per day capacity, and the two new trains that were added to the community. They have an 18,000 gallon per day train that is sitting idle that can be activated. However, for the buildings on Fern Avenue, they can put septic systems there. He advised that the 200 occupied units are currently using 14,000 gallons per day. They have to go in front of DEP who will then determine what they can do. He noted that if they are able to tie those new buildings into the treatment plant, the cost of maintenance will drop with the addition of more units.

Mr. Olivieri asked what would be in place so the Fern Avenue access would not become a cut through. Mr. Itani replied at one time they had said they would put a gate there and give remote controls to the residents. They could put speed bumps or private property signage not allowing cut throughs. He said one problem with the gate is GPS sends users to the Fern Avenue location. He would like to get feedback from the community for their preference.

Mr. Carmichael asked how many units were affordable. Mr. Itani replied going forward 25% of the units would be affordable. He said typically the market rate and affordables are mixed in at the same time and they happen at the same time. Mr. Carmichael asked if impact statements had been received from other Town Departments. Mr. Olivieri then read the August 1, 2022, letter from the Fire Department into the record. They had no opinion on the overall request, but asked the ZBA to require that Fern Avenue be improved to meet the fire code requirements of a fire department access road.

Mr. Carmichael asked if they had sufficient water. Mr. Itani replied the community was approved to use up to 70,000 gallons a day. They are only using on average 14,000 gallons per day. In regards to a stormwater question, Mr. Youngquist advised they had done a preliminary analysis of the drainage running the calculations to ensure they can accommodate any stormwater runoff. As the plans are finalized, they will create a full drainage report for all the drainage systems. Mr. Carmichael noted that if there was to be rooftop a/c units, he would want them to be screened so as to not disturb the neighbors.

Mr. Noble asked how many of the current units were affordable. Mr. Itani replied it is 25%. Right now there are 70 units that are affordable. If they go to 419, they will need to add an additional 35 units. Mr. Olivieri then asked Atty. Kwesell to clarify what was meant by an affordable unit. Atty. Kwesell explained under the statute and regulations an affordable unit is anything that is less than 80% of the area median income. It is not subsidized or section 8 housing. She then referred to a document that had been provided that the 80% income for a family of four is \$89,350 for the Town of Lakeville. Mr. Itani added that people whose incomes qualify still have to have good credit, jobs, and qualify for a mortgage.

Mr. Noble asked if any traffic impact studies had been done. Mr. Itani said they had not. Usually the Board would request that, and they would then authorize it. There was a traffic study done in 2004, and he said it wouldn't change much. He noted that because there will be a road widening on Route 79, there might be an existing study they can look at from the Town. However, they

would be fine with having the traffic engineer who did the original study to update it to reflect what they were asking the Board for.

Mr. Noble asked what the timeline was for the various Phases. Mr. Itani said it is usually market dependent. The expansion of Phase Five would be one or two buildings at a time. They would probably start with one building for Phase Six and then look at the market conditions. As they sell 50% of a building, they then would start building the other building. Mr. Carmichael said that he would like to see an updated traffic study as well as seeing some specification in regards to Fern Avenue from the Fire Department and DPW. He would also like to see a dark sky lighting study. Mr. Itani said most lighting available is the dark sky.

Mr. Resnick asked if the Board could have a brief presentation on the architectural of the project. The proposed plans were then displayed, and Mr. Itani discussed the two Phases. Mr. Campeau asked how Mr. Itani would characterize the look and feel of the proposed three buildings in Phase Six compared to the neighborhood that is there now. Mr. Itani replied in the original design, the taller buildings were in the middle of the community so they moved them to the side. They did two level multi-families as opposed to the larger buildings. They don't have enough land to fit the 107 units, which is why they tore down the house on Fern Avenue and are proposing to put the building there. They also took out three other single-family house lots to accommodate those buildings. He stated they were proposing 6 one-bedroom units, 6 one-bedroom units with a den, 20 two-bedroom units and 4 three-bedroom units.

Mr. Noble asked for an explanation for the additional units. Mr. Itani replied the idea is they added five and a half acres to this site so they are asking the Board for this 9% more. Atty. Kwesell said that she would first recommend that the Fire Department take a look at both phases for turning radii for the largest fire truck. She asked if any of the units would be rental. Mr. Itani said they are all for sale units. Mr. Olivieri then opened the hearing to public comment and questions.

Mr. Richard LaCamera of the Select Board stated that if Fern Avenue gets used, the road should be brought up to Town standards including drainage. The other thing to take into consideration is the waterline currently in the existing development. That line should be extended down Fern Avenue to tie it in so they have a loop. He would also like to see some 55+ units, Mr. Itani responded most likely they are going to ask Taunton Water to allow them to tie into Fern Avenue. They would have to add another meter that will improve water quality. As far as providing some age restricted units, it would depend on the final approval. If they are only allowed two buildings then he would prefer not to improve Fern Avenue and not do 55+ because that would be an additional cost to incur. However, if they were doing all three buildings, he would think they would be willing to do what Selectmen LaCamera had mentioned. They would still have to look at the final approval for the full picture, but he was not opposed to it.

Mr. Leonard Solana of 29 Pilgrim Road asked what the percentage was of the affordables going to residents of Lakeville. Atty. Kwesell said the Commonwealth does not allow local preference, but they can try to do that through the monitoring agency. Mr. Itani added that they will hire an independent third party who will have some educational sessions in Town. They then have a lottery, which is how the process works. Typically, they then end up with more than half of the applicants either employed or living in the local community.

Mr. Chad Smith of 8 Bunker Lane first received a clarification of the number of units in the project. He then asked if the three buildings could ever be changed from for sale units to rental properties. Mr. Olivieri replied that would be considered a substantial change, and they would have to return to the Board to request approval. Mr. Smith asked if garbage disposals would be allowed in the new buildings. Mr. Itani said their new engineer for the treatment plant prefers that they do not add disposals to the new units. Atty. Kwesell noted that in the past three projects she has done with wastewater treatment plants, pursuant to the regulations, garbage disposals are not allowed. Mr. Smith added that in regards to Fern Avenue, as a firefighter, driving ambulances or fire trucks over speed bumps is not something he would recommend. Signage also does not stop people from cutting through.

Mr. Olivieri recommended the HOA reach out to Mr. Itani or his representatives to see what they can come up with in regards to Fern Avenue. The Board can then re-address those suggestions, as they know it's an issue that needs to be resolved. Mr. Smith said regarding Phase Five and the way it is designed, it looks like it would be hard to get apparatus in there depending on the width. Mr. Itani said a simulation has been done based on the largest truck in Town. Mr. Smith also asked how much water usage increases in the summer. Mr. Olivieri said they could get those numbers for their next session. Mr. Smith asked if there could be a comprehensive study for the wastewater treatment plant based on the number of new units that are going in to see how much water usage would increase. Mr. Olivieri said that will be reviewed by DEP.

Mr. Carmichael asked if they could do a peer review on water and sewerage. Mr. Resnick said he had talked to their consulting engineers about that, but they felt they needed some additional information rather than spending time reviewing these preliminary drawings. They should continue tonight and find out what the issues are and then have Mr. Itani provide the additional information. The Board can then forward it to the engineer.

Mr. Bob Bethune of 24 LeBaron Boulevard asked how a modification could even be requested. Mr. Resnick replied the purpose of these hearings is to review the modification. It is not automatic. They review the drawings and plans, have them adjusted, and request additional information. Mr. Olivieri said the original permit was approved but if the petitioner wants to change it, they can come back and request that. Mr. Behune was concerned that additional Phases would continue to be added to the project.

Mr. Olivieri replied that the developer can come back and ask for additional modifications and increases in the number of units. However, depending on the amount of increase of units, at some point they would have the authority to say no and require a new permit. Atty. Kwesell additionally clarified that the expansion is for 33 units within the area of the development, and the Board has determined it is a substantial modification. That means they are looking at this as if it was brand new. They can go out to peer review and do reviews of architectural, civil, traffic, etc. As far as additional phases, that is not in front of the Board presently. Mr. Behune then asked how these new units would impact the schools. Mr. Olivieri replied that they didn't know who would move into those units, and they could not take that into consideration.

Mr. Behune noted that the roads are in disrepair from the new construction, and it wasn't in the contract that they be repaired. Will they have to pay to repair the roads? Mr. Resnick added that will be part of the review process and conditions that will be attached to the permit. They will

evaluate the existing conditions of what is there, and what was approved in the past. A roadway might still need a top coat which can't be done until construction is complete.

Mr. Christopher Walsh of 2 Putter Way first spoke about the proposed new water connection. He then said the wastewater treatment plant is a bone of contention with a lot of them. With the proposed four-story buildings, it could be a tremendous financial liability to the residents if something were to happen to that plant. Those buildings don't belong there. They are too high and out of character with what is there. Mr. Carmichael asked Mr. Itani if they were concerned with the aesthetics would he be willing to add landscape buffers, strips, screening, fencing, etc. He replied absolutely, and it was usually typical.

Mr. Sheedy then asked what the need was to create the four-story building. Mr. Itani replied, they were going to put an elevator in those building to make the economics work. Usually, when you have over 100 units you can have a resident manager or a handy man. It is more economical to have services on the ground as opposed to hired hands. In regards to Mr. Sheedy's question about adding phases to increase the number of affordable units, Atty. Kwesell replied that for the original permit the 386 units, there needed to be 97 units. For the four phases, there are only 62 units. He is adding phases to make up for the three and four modifications where there were no affordable units. She stated that even if the 33 units are not added, he can still make up those numbers with what he is providing, he just has to provide more affordables. Mr. Itani said they are already at 25% and going forward they would still be at 25%. Atty. Kwesell noted that by providing 33 additional units, the Town would get an extra eight affordable units.

Ms. Karen MacFarland of 36 LeBaron Boulevard felt there was plenty of room left to accommodate those 97 units without doing this additional phase and adding additional land. Ms. MacFarland then discussed the waste water treatment plant. She advised the last upgrade did not go well. Stonebridge continued to add homes to it until it failed requiring it to be pumped two or three times a week, with residents having to pay 50% of that cost. There is also an odor problem with the existing plant. She had taken a tour of the plant with NSU. The operator told her that they were doing about 20,000 gallons per day with the maximum at 66,000, but the optimum is 57,000. The odor problem could be corrected but it would cost approximately \$40,000+ for a filter. Stonebridge has still not rectified that issue. The operator said they are masking the problem but not solving the problem.

Ms. MacFarland also noted that LeBaron Boulevard is a private road. Traffic has increased with large trucks going up and down that street every day. Who is responsible to fix and maintain that after it has been abused by all that heavy machinery? Would Mr. Itani put money into their road reserve fund? Is the Town willing to take them on as public roads? Regarding the buildings, no one likes the look of them. They are too high, and there is nothing like them in Town except by the Train Station. Mr. Olivieri advised that the waste water treatment plant would be reviewed by their peer engineer, and it would be determined if it could handle the additional phases. Atty. Kwesell added that DEP will have the ultimate decision

Mr. Campeau asked who bears the financial responsibility for that system. Mr. Itani replied they have Homeowners Associations and residents are billed based on their water usage. Then they are billed for sewer. The sewer rate is calculated on the expense the plant has for that month. Part of that money goes to a separate account to allow for any failure in the plant. He thought there was

approximately \$500,000 in that account for any emergency or failure. That account is controlled by DEP and cannot be used for regular maintenance.

Mr. David Lodge of 21 Sandy Circle asked if the Board could have the Police enforce no through traffic on Fern Avenue? Mr. Olivieri replied they can ask for an impact statement from the Police Department to see if they have any suggestions on what to do. Mr. Lodge asked if Fern Avenue was extended, would it be built to standards. Mr. Resnick replied drawings would be submitted for the upgrade which would include drainage, as the condition is substandard today. Mr. Lodge also noted that in Phase Five one of the backs of the buildings faces LeBaron Boulevard. It would be nice if there was something design wise that could be done. He agreed that the buildings in Phase Six did not belong there with that design. Could there be four buildings instead of three in order to reduce the size of those buildings.

Ms. Lisa Phillips, realtor for PJ Keating, said her client understands the litigation that went on at the plant, and why the use was abandoned. Her client, who also owns two lots on Fern Avenue, thinks the Town should consider that he is going to have great difficulty selling, and that it will have a negative impact on his property. Mr. Gary Campbell of 14 Hybrid Drive asked if there was a setback dimension from LeBaron Boulevard to the proposed front building on Phase Five. He would like the Board to consider the impact on their properties for the line of sight for those units facing into their backyard, and whatever configuration setback they could impose to minimize that.

Ms. Kathryn Walker of 2 Ironwood Lane asked for a clarification on the 2018 modification, points eight and nine which reference mitigation measures. The developer agreed to provide a sidewalk from Fern Avenue to the Senior Center, but the Town decided they didn't want to do that. What new mitigation agreement has been made, if any? Mr. Itani replied they had received two proposals for the sidewalks, with an average cost of \$240,000. They agreed to make a \$300,000 payment to the Town, but that agreement has not yet been formalized. Ms. Walker asked the Board to consider how they are going to make sure these things that are being promised actually happen. Mr. Olivieri replied if it is in the Comprehensive Permit the Town can make sure it is done, and follow up with the Building Commissioner. He would suggest that whatever she thinks that is in the Comprehensive Permit that is not happening, let the Town know.

Atty. Tom Gay, who was representing Eric and Rebecca Jankins of 84 Precinct Street, asked that the Board consider the following items that had been brought up. If a septic system has to be designed for those buildings, the proximity of a system for that many units to the public water source should be considered. There should be groundwater studies done by the Town's peer review engineer, as well as Board of Health. There should be screening on the property with details on landscaping, fencing, and other things that can try to mitigate this development for an abutter and reduce the visual impact. Atty. Gay stated that Fern Avenue has always been considered to be an emergency access roadway through the Comprehensive Permit history. It was never intended to be a primary access for this site. If there is a way of not committing Fern Avenue to be another primary access point, that would be beneficial to anyone that lives on Precinct Street. If not, a traffic study needs to be done.

Mr. W. Lee Blackburn of 23 Loon Pond Road then read a letter that he had written into the record. Other properties he and his wife owned were 9, 11, 15, 19, and 21 Loon Pond Road. Ms. Lillian Rocher of 18 LeBaron Boulevard said they had been told that school buses would never go down their road. They are now, but she said that the Board has to consider if they are going to use Fern

Avenue that the road is a proper width so there will be no problems. Mr. William O'Connor of 10 Bunker Lane asked what the ordinance was for building height. It was 35 feet. Mr. Itani said their buildings would be about 40 feet. Atty. Kwesell explained that under 40B the developer is allowed to ask for waivers from the Zoning By-law. That height waiver would be included in what they are asking for. Mr. O'Connor asked what the threshold was for the Board to be able to say no. Atty. Kwesell replied there has to be a valid local concern, and it has to be for health or safety reasons.

Mr. Michael Danahy of 8 Bogey Way asked why Fern Avenue had to be annexed to this community. Mr. Olivieri said it was a request, but they had not made a determination. Mr. Danahy said they represent one of the HOA's, and they are questioning the use of Fern Avenue as a means to justify additional buildings. Atty. Kwesell reviewed that the applicant has agreed to provide an updated traffic study which will be peer reviewed by a traffic engineer. A civil review is needed for snow storage, screening, turning radius, architectural, etc. They will also need someone to look at the wastewater treatment plant. Mr. Resnick said that he would have to meet with Mr. Itani and his engineer to provide the additional information so they can have a more comprehensive package to be peer reviewed. They also need to discuss many of the items that have been brought up and how to address them.

Atty. Kwesell suggested at their next regular meeting to accept the proposals from the peer review engineers. They could accept them during the administrative portion of their meeting. Once the applicant funds the peer review account, the review can begin. After they have comments back, they can meet with the applicant again at either the end of September or the beginning of October.

After further discussion, Mr. Carmichael made a motion, seconded by Mr. Noble, to continue The Residences at LeBaron Hills, LLC hearing until October 20, 2022 and receive a peer review update from Mr. Resnick at their September 15, 2022, meeting. The **vote** was **unanimous for**.

The hearing closed at 9:36.

**Documents distributed for the hearing:**

- Legal ad
- Atty. Robert Mather correspondence of July 25, 2022
- Fire Department correspondence of August 1, 2022
- Phase 5 and Phase 6 proposed plans

**Next meeting**

The next meeting is scheduled for September 15, 2022, at 7:00 p.m.

**Adjourn**

Mr. Noble made a motion, seconded by Mr. Carmichael, to adjourn the meeting. The **vote** was **unanimous for**.

Meeting adjourned at 9:37.