



FERRIS DEVELOPMENT GROUP, LLC

February 8, 2024

**VIA VIEWPOINT**

Hon. David C. Williams, Chair  
Southborough Zoning Boards of Appeals  
9 Cordaville Road  
Southborough, MA 01772

**Re: 120 Turnpike Road – comprehensive permit application  
Planning Board Comment Letter to ZBA of 12.4.2023**

Dear Chair Williams,

Please allow this letter to serve as a response to Planning Board Chair Luttrell's letter dated December 4, 2023, regarding FD 120 Turnpike Road, LLC's ("Applicant") housing proposal at 120 Turnpike Road. Chair Luttrell raises many important issues and reiterates some of those highlighted by the Stewardship Committee regarding the Breakneck Hill Conservation Land. Please see below for responses to the issues raised by Chair Luttrell.

1. The Applicant's responses to legal questions about buildability on the site.
  - A. In a meeting between the Applicant and Town Counsel, which was held in October of last year, Town Counsel opined on the issue of subdivision, concluding that M.G.L. 40B gives the Zoning Board of Appeals ("ZBA") authority to subdivide lots as part of issuing a comprehensive permit, notwithstanding any potential zoning violations. The ZBA has the authority to grant relief where needed in the context subdivision.
  - B. To be clear, the 2005 Special Permit does not prohibit a third building, it simply states that the 2005 decision did not go so far as to *permit* a third building, which is not the same as saying a third building is prohibited. This is the exact language from the decision: "The Board also finds that although the May 2, 1984 decision by the Southborough Board of Appeals authorized a third building, the variance was never exercised and a third building is not permitted by this decision."
  - C. Please see response 1(A).
  - D. The Applicant has applied to the ZBA for modification of the 2005 Special Permit, at Town Counsel's suggestion, in conjunction with the ZBA considering the pending comprehensive permit.
  - E. The Applicant intends to ask the Planning Board to modify the existing site plan in order to address the office-buildings parcel after the 40B lot is created. It is the Applicant's position that the office-buildings lot at 120 Turnpike Road would comply with the Zoning Bylaw after the 40B lot is created. The Planning Board has not explained to the ZBA how the office-buildings lot would be caused to be not in compliance with the Zoning Bylaw as a result of the 40B lot being created.

- F. The Applicant has discussed this issue with Town Counsel, and he is of the opinion that the subdivision of lots will not create any zoning noncompliance regarding the lots not within the 40B locus. The 2005 variance will continue to render the office-buildings parcel compliant with the Zoning Bylaw.
- G. Please see response to 1(A).
- H. Please see response to 1(A).
- I. The Applicant had asked Town Counsel and, through him, the Planning Board, for a meeting to discuss the 2019 Special Permit. The Applicant looks forward to that discussion. The Applicant's position is that the Applicant cannot be held to the land donation offered by the previous owner of 120 Turnpike Road in exchange for a Special Permit. The 2019 Special Permit approved the construction of a parking garage that was never built, therefore it is FD 120 Turnpike's position that that approval, along with any conditions to that approval, have been abandoned and are of no further force or effect. The patio work that was performed by the applicant's predecessor owner does not require a Special Permit and did not bind any land donation.
- 2. The Applicant will continue to routinely work with Town Counsel and all other town departments, boards, and committees to adhere to applicable ordinances and regulations.
- 3. The Applicant will comply with all MassDOT regulations.
- 4. Please see response to 1(I).
- 5. The Applicant will file a Notice of Intent for the project with the Southborough Conservation Commission.
- 6. The Applicant is happy to continue exploring this idea with the Planning Board and Conservation Commission as permitting continues.
- 7. The Applicant will preserve as many trees as possible and plant only straight native species for any new plantings in conjunction with constructing the 40B building.
- 8. The Applicant has had the stonewall surveyed and it will be added to future plans for presentation.
- 9. Please see responses 5 and 7.
- 10. The building's height will be addressed at the 40B public hearing with the ZBA.
- 11. The Applicant is not opposed to balloons being floated to show height, but it should be noted that there are no residential abutters within 500' of the proposed building.
- 12. To the extent possible, the Applicant will comply with all applicable laws and regulations for safety, welfare of humans, and protection of the wetlands.
- 13. The Applicant looks forward to complying with the Outdoor Illumination Zoning Bylaw to the extent possible.
  - A. To the extent possible, the Applicant will comply with the Southborough Lighting Bylaws.
  - B. To the extent possible, the Applicant will utilize dark sky lighting.
  - C. The Applicant is hesitant to use motion detectors for light after 10:00 PM as it must consider residents' safety.
  - D. The Applicant is happy to consult with local experts on light pollution.
- 14. The Applicant will install elevators in the proposed buildings.
- 15. Electrified vehicle (EV) parking spaces will be included in the parking lot.

Sincerely,

A handwritten signature in blue ink that reads "George T. Bahnan".

George T. Bahnan, Esq.  
Assistant General Counsel

cc: Hon. Meme Luttrell, Chair, Southborough Planning Board (via email)