

**Town of Southborough**  
**BOARD OF APPEALS**

James Hegarty  
Town Clerk  
Town House  
Southborough, MA 01772

SOUTHBOROUGH, MASSACHUSETTS 01772

17 COMMON STREET  
SOUTHBOROUGH, MASSACHUSETTS 01772-1662  
508-485-0717 ext. 1

RECEIVED  
TOWN CLERK'S OFFICE  
2017 MAY 31 P 3:15  
SOUTHBOROUGH, MA

May 31, 2017

**Notice of Decision on Appeal Of Planning Board's Denial of Site Plan Review**

Property Address: 4 Park Central Drive

Appellant(s): Park Central, LLC; Capital Group Properties, LLC; William A. Depietri  
(hereinafter, collectively the "Appellant")

Appeal Filed: October 28, 2016

The Board advertised the public hearing on December 14, 2016 at 8:00pm in the Public Meeting Room of Southborough Town Hall with regard to the following appeal:

Appeal: Planning Board Rejection of Park Central Site Plan Approval on September 29, 2016

Sitting as a Board: Andrew R. Dennington, Chairperson  
Deborah DeMuria  
Paul N. Drepanos  
Craig Nicholson  
David Williams

For the Appellant(s): Angelo P. Catanzaro, Esq.  
100 Waverly Street  
Ashland, MA 01721

William A. Depietri  
Developer/Owner  
Capital Group Properties  
259 Turnpike Road, Suite 100  
Southborough, MA 01772

Daniel Ruiz  
Project Manager  
Capital Group Properties  
259 Turnpike Road, Suite 100  
Southborough, MA 01772

Procedural History:

1. On or about February 12, 2014, the Appellant filed an application with the ZBA for a Comprehensive Permit pursuant to Mass. Gen. Laws c. 40B for the construction of 180 “for sale” condominium units on the subject property.
2. On or about April 13, 2015, the Appellant filed an application with the ZBA for a use variance pursuant to Mass. Gen. Laws c 40A seeking the right to develop 158 unrestricted “for sale” townhouse style condominium units on a portion of the subject property.
3. On or about May 27, 2015, the ZBA granted the Appellant a use variance for the construction of 158 townhouse style condominium units on a portion of the subject property, subject to certain conditions (hereinafter, the “Use Variance”). Those conditions included the following.
  - a. Condition No. 2: “The Variance shall be effective only following final Board approval of Applicant’s c. 40B Comprehensive Permit Application for a 180 unit *rental* affordable housing project with buildings and infrastructure located in substantial compliance with the April 8, 2015 concept Plan and which approval shall be final with all appeals have expired. Applicant shall amend and modify its pending Comprehensive Permit Application to reflect this change.”
  - b. Condition No. 13: “Variance is subject to Residual Site Plan Approval by Planning Board pursuant to Section 174-10 (2) (Major Plan Review) for all categories not covered by Board Site Plan approval under the Use Variance Site Plan Approval namely, lighting, landscaping, parking and sidewalks, and any other applicable categories per the above-referenced section.”
4. On or about May 13, 2016, the Appellant filed an Application for Major Site Plan Approval with the Planning Board.
5. The Planning Board opened the public hearing on June 20, 2016, and held continued public hearings on July 18, 2016 and August 15, 2016. At the August 15, 2016 meeting, the Appellant presented the Planning Board with a revised set of plans. The Planning Board voted to continue the public hearing on Appellant’s Application for Major Site Plan Approval until September 19, 2016.
6. On August 24, 2016, the ZBA granted the Appellant a Comprehensive Permit pursuant to Mass. Gen. Laws c. 40B for the construction of 180 rental apartment units on a portion of the subject property, subject to conditions.
7. On September 2, 2016, September 12, 2016, and September 13, 2016, the Planning Board met in executive session.

8. On September 14, 2016, the Planning Board, acting *pro se*, filed a lawsuit in the Worcester Superior Court against the ZBA and the Appellants, alleging that the ZBA's August 24, 2016 decision to grant the Comprehensive Permit was improper.
9. On September 19, 2016, the Planning Board held a continued public hearing to consider Appellant's Application for Major Site Plan Approval. At that hearing, the Applicant and the Planning Board executed a "Request for Continuation/Extension of A Public Hearing" form stating that "The time that the [Planning] Board shall have to reach a decision on the matter(s) shall be extended under Sept. 30, 2016."
10. The Planning Board held continued hearings on September 26, 2016 and September 29, 2016. At the September 29, 2016 hearing, the Planning Board indicated that it believed that Capital Group failed to present its applications and plans pursuant to the Town's Zoning By-Law and requested additional time to review the final project and draft conditions. Mr. Depietri, on behalf of the Appellant indicated that he was not agreeable to granting the Planning Board any further extensions of time on this matter. At that meeting, Planning Board voted to reject site plan approval. Appellant's attorney was present at the September 29, 2016 hearing at which that vote was taken, and was aware of the vote to reject.
11. On October 28, 2016, the Appellant filed with the ZBA the instant appeal, pursuant to Sec. 174-10.G of the Town's Zoning By-Law, indicating that the decision being appealed was: "Planning Board Rejection of Park Central Site Plan Approval on September 29, 2016."
12. The ZBA duly noticed and advertised the public hearing to consider Appellants' appeal from the Planning Board's rejection of site plan approval. The public hearing commenced on December 14, 2016, and was continued to January 18, 2017, February 15, 2017 (continuance), April 12, 2017 (continuance), and May 17, 2017, at which time the ZBA closed the public hearing.

Plans/ Documents:

1. Appellant's Appeal Application Form dated October 28, 2016
2. Appellant's Hearing Presentation Outline dated January 18, 2017
3. Applicant's Memorandum dated Dec 22, 2016, In RE: Park Central LLC, Appeal of Planning Board Site Plan Approval Rejection (exhibits nos. A-F)
4. Letter from Attorney Angelo P. Catanzaro to Andrew R. Dennington, Chairman dated April 3, 2017 (attachments nos. 1 thru 13)
5. Letter from Attorney Gary Brackett to Andrew R. Dennington, Chairman dated April 10, 2017
6. Memorandum from Conservation Commission to ZBA dated April 11, 2017
7. Forwarded email from Don Morris, Planning Board Chairman, dated April 10, 2017

Findings:

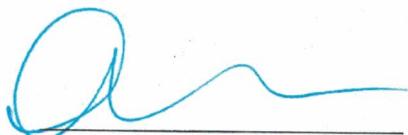
1. The ZBA voted 4-1 (Drepanos opposed) to find that the Appellant's site plan had not been constructively approved pursuant to Section 174-10.F of the Town's Zoning By-Law, as Appellant had argued.
  - a. Section 174-10.F states in relevant part: "The Planning Board shall act on an application for site plan approval and shall notify, in writing, the applicant, the Board of Selectmen and the Building Inspector of its action within 60 days of the receipt of the application. Failure of the Planning Board to so act and to notify the applicant within said 60 days shall constitute approval of the site plan."
  - b. Here, the deadline for the Planning Board to "act" within 60 days of the receipt of the application (i.e. by some date in mid-July, 2016) was extended by the Appellant. The extended deadline for the Planning Board to "act" was September 30, 2016. The Planning Board did "act" on September 29, 2016 by taking a vote to reject site plan review.
  - c. The ZBA could not identify any extended deadline that the parties agreed upon for the issuance of a written decision after such action was taken.
2. Planning Board Chair Don Morris spoke at the ZBA's January 18, 2017 and May 17, 2017 hearings in this matter, and indicated that Planning Board had voted to reject site plan approval because the Appellant had provided insufficient detail concerning its project, and had not permitted sufficient time for the Planning Board to consider the Appellant's plans. In particular, Mr. Morris noted that there were outstanding issues being considered by the Conservation Commission that would need to be addressed before the Planning Board was prepared to approve the site plan with conditions.
3. Section 174-10.B(3) of the Town's Zoning By-Law provides that, if the Planning Board believes that an applicant for site plan review has submitted an incomplete application, it shall not be accepted by the Planning Board and notice shall be provided to the applicant within three business days. Here, the Planning Board did not provide the Applicant notice that it considered its plans incomplete.
4. With respect to proceedings at the Conservation Commission regarding this project, the Appellant informed the ZBA that it is anticipating a vote to deny approval on May 25, 2017, which it then intends to appeal to the Department of Environmental Protection ("DEP").
5. The Board acknowledged that there could be future appeals beyond the DEP; the dates for which are uncertain and unavailable at this time.
6. The Board found that, under the circumstances, the Planning Board, rather than the ZBA, should handle any further proceedings on the Appellant's application for site plan review.

Decision and Vote of the Board:

At its meeting on May 17, 2017, and after review of all evidence and facts presented at this hearing, and after deliberations on the same, on a motion by Mr. Nicholson and seconded by Mr. Williams, the Zoning Board of Appeals voted 4-1 (DeMuria opposed) to **REVERSE** the Planning Board's rejection of Applicant's Application for Major Site Plan Approval, and **REMAND** to the Planning Board for further proceedings subject to the following conditions.

Conditions

1. Within 90 days of the final adjudication of the Southborough Conservation Commission proceedings, Appellant's appeal to DEP (if any), and any further administrative or judicial appeals therefrom (if any), the Appellant shall re-file an Application for Major Site Plan Approval with the Planning Board.
2. The Planning Board shall conduct its site plan review pursuant to Condition No. 13 of the Use Variance, stating that: "Variance is subject to Residual Site Plan Approval by Planning Board pursuant to Section 174-10 (2) (Major Plan Review) for all categories not covered by Board Site Plan approval under the Use Variance Site Plan Approval namely, lighting, landscaping, parking and sidewalks, and any other applicable categories per the above-referenced section."



Andrew R. Dennington, Chairperson  
Signing on behalf of the Zoning Board of Appeals

\*\*NOT VALID FOR RECORDING UNTIL CERTIFIED BY THE TOWN CLERK OF  
SOUTHBOROUGH\*\*

In accordance with Sec. 11 of Ch. 40A of Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Southborough Town Clerk, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Attest: \_\_\_\_\_

James F. Hegarty, Town Clerk

Date

1573316.1