

# TOWN OF SOUTHBOROUGH



## PLANNING BOARD

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December 4, 2023

Mr. David Williams, Chair  
Zoning Board of Appeals  
9 Cordaville Road  
Southborough, MA 01772

### RE: Proposed 40B Development - 120 Turnpike Road

Comprehensive Permit Application & Special Permit Application to Modify the 2005 Special Permit  
**Planning Board Comments**

Dear Zoning Board Members:

This letter is in regard to the ZBA applications of FD 120 Turnpike, LLC, located at 120 Turnpike Road (Map 37, Lot 120-4), seeking a Comprehensive Permit under MGL Chapter 40B, Sections 20-23 and 760 CMR 56 to construct a 60-unit apartment building on an undeveloped portion of the 120 Turnpike Road lot; and also seeking a Special Permit to modify the 2005 Special Permit decision due to the proposed use of the shared driveway to serve M.G.L. c. 40B comprehensive permit project on the southern portion of the subject parcel. The property is located in the Business Highway and Residential A districts.

The Southborough Planning Board has reviewed the subject comprehensive permit and special permit applications submitted to the ZBA for the proposed 40B development at 120 Turnpike Road by the Ferris Development Group, LLC and its affiliate FD 120 Turnpike, LLC (property owner). We offer the following comments:

1. Legal questions on the buildability of the site need to be addressed:
  - A. A separate lot for the site of the 40B proposed housing needs to be created. The two office buildings that currently exist on the lot would be the dominant use as opposed to an ancillary use of the lot if the 40B were to be added to the current lot which violates the 40B statute.
  - B. The existing Special Permit approved for the site which allows the two existing office buildings prohibits a third building on the lot.
  - C. The site for the proposed 40B cannot be endorsed as an ANR because it does not have the 20 feet of frontage required by state statute. Therefore, a subdivision would be required. Only a portion of the subdivision would be subject to 40B waivers from local zoning so it should be understood how local regulations can be applied to a portion of the subdivision, specifically the requirement for 10% of the lot set aside as open space.
  - D. The Special Permit that allows the current use of the site needs to be modified if the lot that the Special Permit was issued on changes.
  - E. **Per Southborough Zoning Code 174-14** - No lot shall be reduced in size, altered or subdivided

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and no part thereof conveyed or transferred if said lot or the buildings or structures thereon and the uses thereof already are or will be caused thereby to be not in compliance with the provisions of this chapter.

- F. A variance doesn't render the structure legally non-conforming thus the use or structure cannot be altered by findings set forth in MGL c40A section 6.
  - i. 118-120 Turnpike Rd does not have the 200 ft frontage required in the Business Highway zoning district 174-8.5 E (2) or the required side setback 174-8.5 E 3. (c) and received a variance that allowed the buildings on the site. Therefore, it does not appear that the site can be split into 2 lots as the lot that is not within the 40B locus will not be in compliance with the Town's zoning code.
- G. **MGL c41 s81L** – "Subdivision" shall mean the division of a tract of land into two or more lots and shall include re-subdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least twenty feet. ...
  - i. If the 118-120 lot were to be divided into two lots it must be done via subdivision as the residential lot does not have any frontage on a way as described MGL chapter 41 section 81L.
  - ii. If subdivided, the lot in the Business Highway District, as it is not within the 40B locus, would be required to comply with the Town of Southborough's Chapter 244, Subdivision of land
  - iii. It appears the proponent is attempting to subdivide the lot through the Special Permit modification process which does not comply with MGL.
- H. **CMR 760 56.05 (2)** - (items that shall be included in the application) **(e)**-where subdivision of land is involved a preliminary subdivision plan
  - i. The application is incomplete while the cover letter refers to subdividing the lot but the application does not include a subdivision plan
- I. One of the conditions for site plan approval for the parking garage (which was not built) and a patio between the buildings (which was built) was to give the residential portion of the lot to the Southborough Conservation Commission. As the site plan was utilized to construct the patio are they obligated to comply with the conditions of the site plan?

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2. The applicant should ensure there is a legal pathway for 120 Turnpike Road's proposed 40B site and adhere to the conditions of prior Southborough permitting boards. These conditions are legally binding agreements on file with the Worcester Registry of Deeds and may include variances, special permits, order of conditions, deeds, easements, etc. This should involve working with boards and committees (ZBA and Conservation Commission), abutters, and Town Counsel in advance of any determination by Mass Housing to avoid cost, complications and possible future litigation at the expense of Southborough taxpayers.
3. Access to and from Route 9 should be approved by MassDOT prior to Mass Housing determination.
4. The proposed site of the proposed 40B housing abuts one of the most significant open space parcels in the Town and the site was intended to be donated to the Town as open space. A condition of a 2019 Major Site Plan Approval, Condition #22, states "Prior to the initial expiration date of this Major Site Plan Approval, the southern 6.2± acres of the southern parcel Assessor Map 37 Parcel 120-4 contiguous to Breakneck Hill Conservation land is to be donated to the Town of Southborough Conservation Commission in a deed transfer arrangement pursuant to M.G.L. c.40 Section 8C..." Although all the site improvements permitted by the Major Site Plan have not been completed, the site plan has been acted on to complete some of the site improvements. Therefore, there is a question of whether the conditions are required to be complied with.
5. There is a stream running through the middle of where the proposed building is to be sited that should be investigated.



6. At the site walk on 07.25.23 the proponent was amenable to placing a conservation restriction on the southern portion of the lot where no development is proposed, this should be a condition of approval.
7. As many trees as possible should be preserved and additional screenings should be provided to limit the damage to the view scape from the abutting property which is one of the most

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substantial open space parcels in Town. New plantings should be straight native species.

8. The historic stonewall along the eastern property line of the proposed 40B site should be preserved and special care should be taken to protect it during the construction of the proposed retaining wall. The border of the Breakneck Hill Conservation Land is marked by this historic stonewall, in part owned by the Town as part of the Conservation Land. We recommend that the development preserve and protect the stone wall. The stone wall is a visible and historic feature of the property and should be preserved so it can be enjoyed into the future.
9. As expressed in the Stewardship Committee's comments, the Planning Board is also concerned with the environmental impacts of the project considering the Town's most significant Conservation Land open space area abutting the project. Concerns include **Wetlands Protection** and compliance with local wetland bylaws, existing wetlands and wetland buffers support habitat at Breakneck Hill and are important to biodiversity; **potential stream impacts** and the nature of that water flow and its implications for the construction and Conservation Land; **parking lots** should be proposed further from the boundary to Breakneck Hill Conservation Land; maximize **tree preservation**; **prohibit hybrid plants and cultivars** and that landscaping plants be restricted to **plants native to the ecoregion** which tend to be easy to grow, low maintenance, and drought resistant; and invasive species prevention.
10. As proposed, a four (4) story building taller than any building in the Town does not fit with the character of the Town. Building height should be no more than 3 stories to fit with the character of the Town. A four (4) story building is unprecedented in Southborough for residential housing in any zone.
11. A public demonstration should be staged by floating balloons to signify the height of the proposed building to give visual cues of its visibility and impact to the view from the abutting open space parcel and neighborhoods.
12. The applicant should ensure they comply with all applicable laws and regulations for safety welfare of humans and protection of the wetlands and more broadly the environment, including dark sky lighting, screening and noise mitigation.
13. Regarding Outdoor Lighting, to protect the ecology and wildlife on the abutting open space parcels all lighting should be dark sky compliant and no lighting should trespass onto abutting open space property. Southborough recently updated its Outdoor Illumination Zoning Bylaw with consideration to Dark Skies initiatives. Light sources at night cause harm to wildlife and habitat. Southborough's Breakneck Hill Conservation Land, the largest town-owned conservation land, abuts the proposed development. Given the development's significant potential to adversely affect the wildlife and habitat, we recommend that if the proposal proceeds, it be required to:
  - A. At a minimum, abide the town's lighting bylaws. This should be a minimum expectation for the development.
  - B. Utilize dark sky lighting. Dark sky lighting directs light to the ground and not the sky, minimizing any light pollution.
  - C. Utilize motion detectors for lighting after 10pm. This would further limit the adverse effects of outdoor lighting.

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- D. Consult with local expert on light pollution, Dr. Destin Heilman. Southborough is lucky to have a subject matter expert locally in Dr. Heilman and we urge that he be consulted.
- 14. Elevators should be installed in the proposed building to increase accessibility. There should be adherence with all applicable state and federal regulations, including ADA compliance, elevator, ramps, and wheelchair accessible apartments.
- 15. Electrified vehicle (EV) parking spaces should be included in the parking lot.

The list above reflects the Planning Board's current concerns and recommendations. Additional project information may lend to additional concerns and requests. The Planning Board looks forward to working with the Zoning Board of Appeals and offering future comments as the hearing process proceeds. On behalf of the Southborough Planning Board, thank you for your consideration.

Sincerely,



Meme Luttrell  
Chair, Southborough Planning Board

cc: Planning Board  
Mark Purple, Town Administrator  
Andrew Dennington, Select Board Chair