

ANDERSON KREIGER

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September 13, 2018

Court Clerk
Massachusetts Land Court
Three Pemberton Square, 5th Floor
Boston, MA 02108

**Re: *Boxborough Town Center, LLC v. Town of Boxborough Planning Board,
Docket No. 18 PS 000253 MDV***

Dear Sir/Madam:

Enclosed for filing please find the Motion to Intervene on behalf of the Priest Lane Neighbors in the above-captioned matter.

Thank you.

Sincerely,



Austin P. Anderson

Encl.

cc. George X. Pucci
Paul Haverty

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss.

Land Court Department
Case No. 18 PS 000253 (MDV)

BOXBOROUGH TOWN CENTER, LLC,
Plaintiff,

v.

TOWN OF BOXBOROUGH PLANNING
BOARD, JOHN MARKIEWICZ, EDUARDO
PONTORIERO, ABBY REIP, HONGBING
TANG, and NANCY FILLMORE as they are
members of the TOWN OF BOXBOROUGH
PLANNING BOARD,
Defendants.

NEIGHBORS' MOTION TO INTERVENE AS DEFENDANTS

Pursuant to Massachusetts Rule of Civil Procedure 24(b), the following seven homeowners (the "Priest Lane Neighbors") seek to intervene as defendants in this zoning appeal by Boxborough Town Center, LLC (the "Developer"):

- Subhojit Banerjee, 14 Priest Lane, Boxborough, MA 01719
- Prakash Manden, 15 Priest Lane, Boxborough, MA, 01719
- Karrie Conley, 36 Priest Lane, Boxborough, MA, 01719
- Rod Shima, 53 Priest Lane, Boxborough, MA, 01719
- Shrenik Shah, 71 Priest Lane, Boxborough, MA, 01719
- Prasad Kothapalli, 72 Priest Lane, Boxborough, MA, 01719
- Robert Karess, 82 Priest Lane, Boxborough, MA, 01719.

The Priest Lane subdivision abuts the parcels at 700, 750, and 800 Massachusetts Avenue that are the subject of this appeal (the "Site").

The Project and its Impact on the Priest Lane Neighbors

The Developer applied for Site Plan Approval and a Stone Wall Removal Permit to build 50 two-family dwellings for elderly occupancy, along with a clubhouse, signage, driveways,

parking, public water supply, wastewater treatment, drainage and site grading (the “Project”) at the Site. On May 2, 2018, the Boxborough Planning Board denied that application, and the Developer appealed.

The Project would involve extensive construction over approximately 57 acres. The 50 two-family buildings would be located across the southern half of the Site. Seven of the buildings (comprising 14 housing units) would be located along a proposed road connecting with Priest Lane (an existing cul de sac) to create emergency access and egress. Because these units would be located far from the main access to the Site on Massachusetts Avenue (Route 111), the likely access for construction vehicles for at least that side of the Project would be through Priest Lane. To show the anticipated change to the neighborhood and the location of these 14 units in relation to the neighborhood, a Google Maps satellite image from of the area and the plan submitted by the Developer – with Priest Lane and the Priest Lane Neighbors’ houses highlighted – are attached as Exhibit A.

Priest Lane is currently a narrow, winding and steep cul de sac without any sidewalks. Any use of the road for emergency or construction vehicles would pose a significant safety hazard to the residents, especially small children. For example, Karrie Conley and her husband John have two small children at home, ages 6 and 8. Their children often walk down to the bottom of Priest Lane, including around a blind corner, every morning to catch the school bus. *See Affidavit of Karrie Conley, attached as Exhibit B.*

The Project also would remove many mature trees from the area abutting the Priest Lane neighborhood. The area behind the subdivision would be clear-cut for the construction of the 14 housing units adjacent to Priest Lane and another 18 units (nine buildings) nearby. This clearing, together with the transformation of the cul de sac, will radically degrade the character of the

Priest Lane neighborhood. If the Project were to go forward as proposed, what is today a secluded, quiet and private neighborhood surrounded by woodland would effectively be subsumed into a 100-unit residential development, significantly decreasing property values. The new buildings would be very close to the Priest Lane subdivision, with one of them only 40 feet from Robert and Jaclyn Karess' property line. *See* Affidavit of Robert Karess, attached as Exhibit C. The increase in noise, light and traffic and the attendant decrease in privacy would substantially injure the Priest Lane Neighbors.

In addition, because the area surrounding Priest Lane consists of a large amount of ledge, the construction of the project would involve extensive blasting. That blasting would risk damaging the Priest Lane Neighbors' properties and compromising their drinking water wells. Because the Project is intended to serve residents aged 55 and over, the grades on the Site would need to be significantly leveled, resulting in more blasting than might otherwise be required. The noise, debris, and risk of damage would seriously interfere with the neighboring properties.

Argument

The Priest Lane Neighbors seek permissive intervention under Mass. R. Civ. P. 24(b), which authorizes intervention "when an applicant's claim or defense and the main action have a question of law or fact in common." Mass. R. Civ. P. 24(b)(2). Courts have "broad discretion" when deciding whether to permit intervention. *See Cruz Mgmt. Co. v. Thomas*, 417 Mass. 782, 785 (1994). In exercising that discretion, they "shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Mass. R. Civ. P. 24(b). Courts also consider a party's delay in seeking intervention, the number of intervention requests or likely intervention requests, and the adequacy of representation of the intervening party's interest. *See Com. v. Fremont Inv. & Loan*, 459 Mass. 209, 219 (2011).

All but one of the Priest Lane Neighbors are parties in interest under G.L. c. 40A, § 11 because they are either direct abutters to, or abutters to the abutters within 300 feet of, the Site.¹ They are entitled to a rebuttable presumption of aggrievement. *See Indianhead Realty, Inc. v. Conner*, 23 LCR 267 (2015) (Scheier, J.) (granting permissive intervention to abutters). Intervention will not unduly delay disposition of the action or prejudice the existing parties' rights. The underlying legal issues will remain the same: as reflected in the proposed Answer attached as Exhibit D, the Priest Lane Neighbors intend to argue that the Planning Board's decision was correct for substantially the same reasons set forth in the Board's written decision. *See City of Revere v. Massachusetts Gaming Comm'n*, 476 Mass. 591, 599 (2017) (finding that intervention would not prejudice existing party where claims in original pleadings and intervenor's proposed pleadings were "very similar").

This intervention request is timely. The case was initially filed on May 18, 2018, and the Case Management Conference was held on June 25. The parties have not yet begun discovery, and no motions have been filed by either side. On July 24, after the existing parties stated their willingness to engage in mediation, the case was stayed by the Court. Mediation has been scheduled for September 28. Intervention at this early stage would not prejudice either of the existing parties. *See Indianhead Realty* (allowing intervention as timely when case had been pending approximately eight months and a motion to dismiss had been filed); *Winchester Boat Club v. Zoning Bd. of Appeals of Winchester*, Nos. 17 MISC 204, 272, and 366 (Land Court, July 26, 2017) (Foster, J.) (allowing permissive intervention as timely when case had been pending approximately 3½ months and a hearing on partial motion for summary judgment had already been held) (decision attached as Exhibit E). In fact, allowing intervention before the anticipated

¹ Subhojit Banerjee lives at 14 Priest Lane, more than 300 feet from the Site. However, "in a multiple party appeal it is only necessary to determine whether any one [party] is aggrieved in order to determine the standing issue." *81 Spooner Rd., LLC v. Zoning Bd. of Appeals of Brookline*, 461 Mass. 692, 698 (2012) (citation omitted).

mediation would allow the Priest Lane Neighbors to participate in the mediation, which they would do in good faith on the existing parties' schedule and with the mediator they choose. That participation will increase the likelihood of a comprehensive resolution regarding all permitting of the Project. It also would decrease the likelihood that any agreement between the Developer and the Board is appealed.

Finally, the Priest Lane Neighbors' interests are not adequately represented by the Board because their interests are not identical. The Board's interest is general, focused on upholding its decision. While the Neighbors share that general goal, they have specific interests related to the effect of the Project on their properties, as described above. They will seek to defend those specific rights and interests, whereas the Board may focus on broad-based density concerns and the effect on the Town Center District generally. The large Project area makes it even more unlikely that the Neighbors' specific concerns, which involve a small part of the proposed development, will be prioritized or addressed by the Board during mediation or litigation. That non-overlap of interests justifies intervention. *See Winchester Boat Club*, p. 3 (the intervenors' and town's interests were different because the town's interest "is general and focused on upholding its decisions, while the Proposed Interveners' interests are specific to how [the project] will affect their properties.")

Conclusion

This Motion to Intervene under Mass. R. Civ. P. 24(b) should be granted.

**SUBHOJIT BANERJEE, PRAKASH
MANDEN, KARRIE CONLEY, ROD SHIMA,
SHRENIK SHAH, PRASAD KOTHPALLI,
AND ROBERT KARESS**

By their attorneys,



Arthur P. Kreiger (BBO #279870)
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Austin P. Anderson (BBO #696414)
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617-621-6500

Dated: September 13, 2018

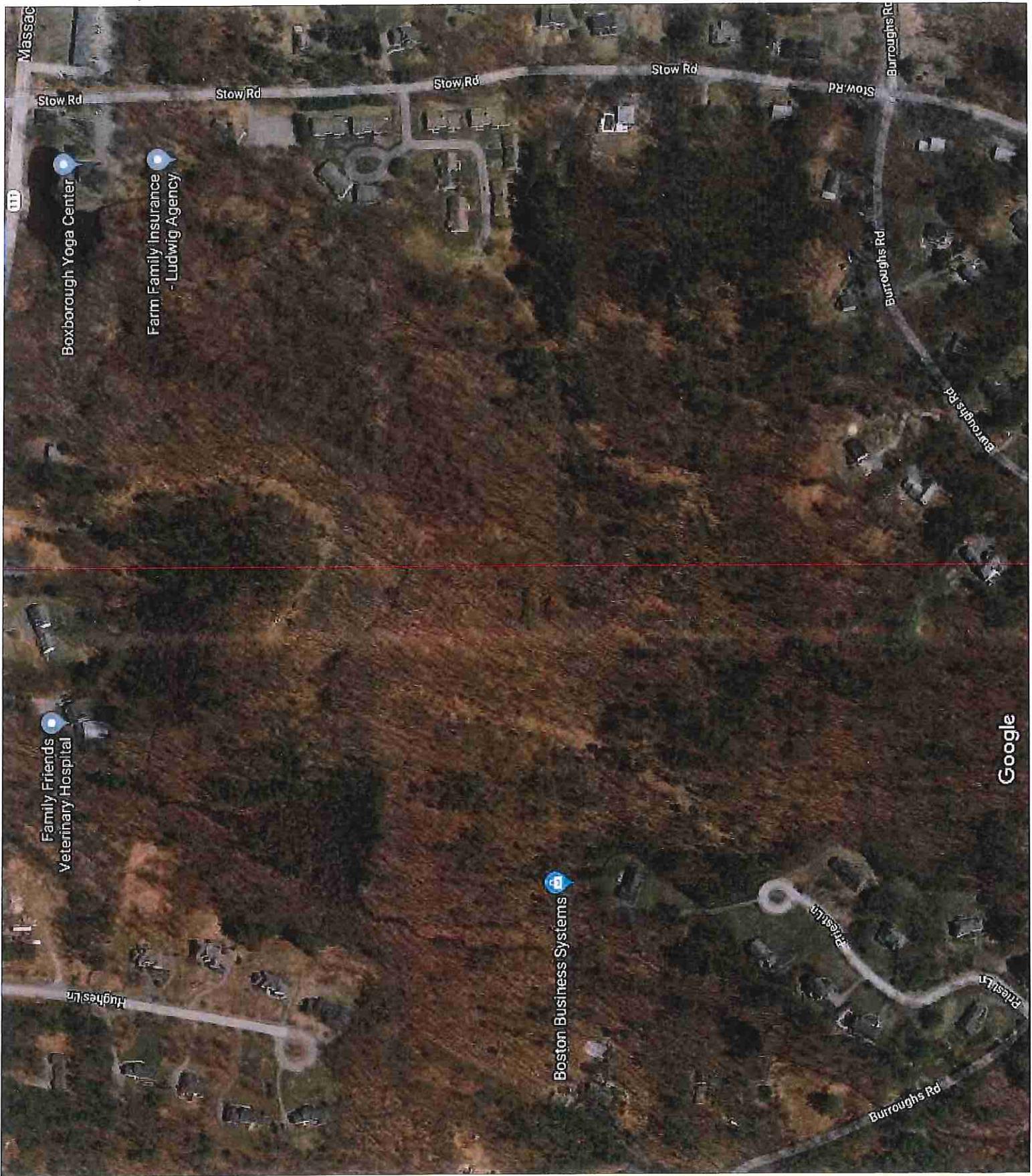
CERTIFICATE OF SERVICE

I certify that I served this document on each other party by first class mail to its attorney(s) of record on this 13th day of September, 2018.



Austin P. Anderson

EXHIBIT A



Massac

Stow Rd

Stow Rd

Stow Rd

Stow Rd

Stow Rd

Burroughs Rd

Burroughs Rd

Burroughs Rd

Pines Ln

Burroughs Rd

111

Boxborough Yoga Center

Farm Family Insurance
- Ludwig Agency

Family Friends
Veterinary Hospital

Boston Business Systems

Google

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss.

Land Court Department
Case No. 18 PS 000253 (MDV)

BOXBOROUGH TOWN CENTER, LLC,
Plaintiff,

v.

TOWN OF BOXBOROUGH PLANNING
BOARD, JOHN MARKIEWICZ, EDUARDO
PONTORIERO, ABBY REIP, HONGBING
TANG, and NANCY FILLMORE, members of
the TOWN OF BOXBOROUGH PLANNING
BOARD,

Defendants.

AFFIDAVIT OF Karrie Conley IN SUPPORT OF MOTION TO INTERVENE

I, Karrie Conley, state under oath as follows:

1. I live at 36 Priest Lane, Boxborough with my husband John Conley and 3 children. I have personal knowledge of the matters stated in this Affidavit.
2. The statements regarding the character of the neighborhood and the use of Priest Lane by my children in the Motion to Intervene are true and accurate.

Signed under the penalties of perjury on this 8th day of September, 2018.


Karrie Conley

CERTIFICATE OF SERVICE

I certify that I served this document on each other party by first class mail to its attorney(s) of record on this 13th day of September, 2018.


Austin P. Anderson

EXHIBIT C

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss.

Land Court Department
Case No. 18 PS 000253 (MDV)

BOXBOROUGH TOWN CENTER, LLC,
Plaintiff,

v.

TOWN OF BOXBOROUGH PLANNING
BOARD, JOHN MARKIEWICZ, EDUARDO
PONTORIERO, ABBY REIP, HONGBING
TANG, and NANCY FILLMORE, members of
the TOWN OF BOXBOROUGH PLANNING
BOARD,

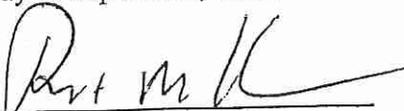
Defendants.

AFFIDAVIT OF ROBERT KARESS IN SUPPORT OF MOTION TO INTERVENE

I, Robert Karess, state under oath as follows:

1. I live at 82 Priest Lane, Boxborough with my wife Jaclyn Karess and our two children. I have personal knowledge of the matters stated in this Affidavit.
2. The statements regarding the current condition of Priest Lane, the character of the neighborhood, and the proximity of the proposed development in the Motion to Intervene are true and accurate.

Signed under the penalties of perjury on this 13 day of September, 2018.



Robb Karess

CERTIFICATE OF SERVICE

I certify that I served this document on each other party by first class mail to its attorney(s) of record on this 13 day of September, 2018.



Austin P. Anderson

EXHIBIT D

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss.

Land Court Department
Case No. 18 PS 000253 (MDV)

BOXBOROUGH TOWN CENTER, LLC,
Plaintiff,

v.

TOWN OF BOXBOROUGH PLANNING BOARD,
JOHN MARKIEWICZ, EDUARDO PONTORIERO,
ABBY REIP, HONGBING TANG, and NANCY
FILLMORE, members of the TOWN OF
BOXBOROUGH PLANNING BOARD,
Defendants,

and

SUBHOJIT BANERJEE, PRAKASH MANDEN,
KARRIE CONLEY, ROD SHIMA, SHRENIK
SHAH, PRASAD KOTHAPALLI, and ROBERT
KARESS,

Intervenor-Defendants.

ANSWER OF INTERVENOR-DEFENDANTS

The Intervenor-Defendants listed above (the "Priest Lane Neighbors") respond to the numbered paragraphs of the Plaintiff's Complaint as follows:

Nature of the Action

1. Admit.
2. Admit.
3. Deny that this action states a valid claim under G.L. c. 231A, § 1.

Jurisdiction

4. Admit regarding G.L. c. 40A; deny regarding G.L. c. 231A.
5. Admit.
6. Admit.

Parties

7. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding Boxborough Town Center, LLC's status or address; admit that the LLC was the applicant.

8. Admit.

9. Admit.

10. Admit.

11. Admit.

12. Admit.

13. Admit.

Statement of the Facts

14. Admit.

15. Admit.

16. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of these allegations.

17. Admit.

18. Admit.

19. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

20. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of these allegations.

16. [*sic*] Admit.

17. Admit.

18. Admit.

19. Admit that the easement is so proposed; deny that its use will be so limited.

20. Deny.

21. Admit.

22. Admit.

23. Admit.

24. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

25. Admit.

26. Admit.

27. Admit.

28. Admit.

29. Admit.

30. Admit that Plaintiff presented expert testimony on the topics listed; deny that it was competent.

31. Admit.

32. Admit.

33. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

34. Admit.

35. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of these allegations.

36. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of these allegations.

37. Admit with respect to the hearing dates. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of the allegation that the Design Review Board did not commence a hearing for almost a year.

38. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

39. Deny.

40. Admit.

41. Admit, except that the meetings took place in 2018, not 2019.

42. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

43. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

44. Deny.

45. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

46. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

47. Admit.

48. Admit.

49. Admit that the project satisfies the density requirement; otherwise, deny.

50. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

51. Admit.

52. Admit.

53. Admit.

54. Admit that the Design Standards include the criteria listed; they also include Route 111 view protection.

55. Admit.

56. Admit.

57. Admit, except that it is Section 8007, not Section 8700.

58. Admit.

59. Admit.

60. Admit with respect to the Board's conclusions; deny with respect to the Bylaw.

61. Admit.

62. Deny.

63. Deny.

64. Deny.

65. Deny.

66. Admit with respect to the Board's findings; otherwise, deny.

67. Admit.

68. Admit.

69. Admit.

70. Deny.

71. Deny.

72. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

73. Deny.

74. Deny.

75. Admit that the Board reached that conclusion, among others.

76. Admit.

77. Deny.

78. Deny.

79. Admit.

80. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

81. Deny.

82. Admit that the Board reached that conclusion, among others.

83. Admit.

84. Deny.

85. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

86. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

87. Admit.

88. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.

89. Deny.
90. Admit.
91. Deny.
92. Admit.
93. Admit.
94. Admit.
95. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.
96. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.
97. Admit.
98. Deny.
99. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.
100. Deny.
101. Admit.
102. Admit.
103. Deny.
104. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.
105. Deny. Admit that G.L. c. 89, §7 so states.
106. Admit.
107. Deny.

108. Admit.
109. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.
110. Deny.
111. Admit.
112. Admit.
113. Admit.
114. Deny.
115. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.
116. Deny.
117. Admit.
118. Admit.
119. Admit.
120. Deny.
121. The Priest Lane Neighbors are without knowledge or information sufficient to form a belief as to the truth of this allegation.
122. Deny.

Count I

123. The Priest Lane Neighbors restate their responses to the above paragraphs.
124. Admit.
125. Admit.
126. Admit.

127. Deny.

128. Deny.

Count II

129. The Priest Lane Neighbors restate their responses to the above paragraphs.

130. Admit.

131. Admit.

132. Admit.

133. Deny.

134. Deny.

Count III

135. The Priest Lane Neighbors restate their responses to the above paragraphs.

136. Admit.

137. Admit.

138. Deny. The Board found that the absence of a mixed-use component was *not* consistent with intended Town Center development.

139. Deny.

140. Deny.

141. Deny.

Count IV

142. The Priest Lane Neighbors restate their responses to the above paragraphs.

143. Admit.

144. Deny.

145. Deny.

Count V

146. The Priest Lane Neighbors restate their responses to the above paragraphs.

147. Admit.

148. Deny.

149. Admit.

150. Deny.

151. Deny.

Count VI

152. The Priest Lane Neighbors restate their responses to the above paragraphs.

153. Admit as to the Board's finding. Deny that the finding was not based on evidence.

154. Deny.

155. Deny.

Count VII

156. The Priest Lane Neighbors restate their responses to the above paragraphs.

157. Admit.

158. Admit.

159. Deny.

160. Deny.

Count VIII

161. The Priest Lane Neighbors restate their responses to the above paragraphs.

162. Admit.

- 163. Deny.
- 164. Deny.
- 165. Admit.
- 166. Admit.
- 167. Deny.
- 168. Deny.

Count IV [sic]

- 169. The Priest Lane Neighbors restate their responses to the above paragraphs.
- 170. Deny.
- 171. Deny.
- 172. Admit.
- 173. Deny.
- 174. Deny.

Count V [sic]

- 175. The Priest Lane Neighbors restate their responses to the above paragraphs.
- 176. Admit.
- 177. Deny.
- 178. Deny.

Count VI [sic]

- 179. The Priest Lane Neighbors restate their responses to the above paragraphs.
- 180. Deny.
- 181. Deny.
- 182. Deny.

183. Deny.

184. Deny.

First Affirmative Defense

The Complaint should be dismissed for failure to state a claim upon which relief can be granted.

Prayer for Relief

WHEREFORE, the Priest Lane Neighbors request that the Court:

1. Uphold the Planning Board's decision,
2. Dismiss the Complaint with prejudice,
3. Award them their costs and attorney's fees, and
4. Grant them such other relief as may be just and equitable.

By their attorneys,



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617-621-6500

September __, 2018

CERTIFICATE OF SERVICE

I certify that I served this document on each other party by first class mail to its attorney(s) of record on this 15th day of September, 2018.



Austin P. Anderson

EXHIBIT E

(SEAL)

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, ss.

MISCELLANEOUS CASE
NO. 17 MISC 000204 (RBF)
NO. 17 MISC 000272 (RBF)

WINCHESTER BOAT CLUB,

Plaintiff,

v.

ZONING BOARD OF APPEALS OF
WINCHESTER, and LAWRENCE BEALS,
DONNA JALBERT PATALANO, RICHARD L.
SAMPSON, JR., DOROTHY R. SIMBOLI,
JONATHAN GYORY, and KEVIN SARNEY,
members of the Zoning Board of Appeals of
Winchester,

Defendants.

MISCELLANEOUS CASE
NO. 17 MISC 000366 (RBF)

WINCHESTER BOAT CLUB,

Plaintiff,

v.

ZONING BOARD OF APPEALS OF
WINCHESTER, and LAWRENCE BEALS,
DONNA JALBERT PATALANO, RICHARD L.
SAMPSON, JR., DOROTHY R. SIMBOLI,
JONATHAN GYORY, and KEVIN SARNEY,
members of the Zoning Board of Appeals of
Winchester,

Defendants.

MEMORANDUM AND ORDER ALLOWING MOTION TO INTERVENE

On July 13, 2017, Cheryl and Richard Norsworthy, Kathleen Ho and Timothy O'Donnell, and Stephanie and Kevin Sarney (the Proposed Interveners) filed, in each of the above-captioned actions, the Motion of Abutters Cheryl and Richard Norsworthy, Kathleen Ho and Timothy O'Donnell, and Stephanie and Kevin Sarney to Intervene as Party Defendants in Winchester Boat Club, Inc. Appeals of Rulings of Winchester Zoning Board (Motion to Intervene), with attached proposed Answers. A hearing on the Motion to Intervene was held on July 20, 2017, and was taken under advisement. For reasons set forth more fully in this memorandum, the Motion to Intervene is allowed.

Intervention of Right

The Proposed Interveners seek intervention of right under Mass. R. Civ. P. 24(a). Intervention of right is allowed in relevant part "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Mass. R. Civ. P. 24(a)(2). The Proposed Interveners, are all "parties in interest" under G. L. c. 40A, § 11, as direct abutters, owners of land directly opposite on a public or private street or way, or abutters to the abutters within three hundred feet of the property line of plaintiff Winchester Boat Club's (WBC) property. In addition, Proposed Interveners Ho and O'Donnell have an easement over the Lot B portion of WBC's property.

Whether the interests of the prospective intervener are adequately represented by existing parties requires a comparison of the interests asserted by the applicant and the existing party. *Mayflower Dev. Corp. v. Dennis*, 11 Mass. App. Ct. 630, 636 (1981).

When the applicant for intervention and an existing party have the same interests or ultimate objectives in the litigation, the application should be denied unless a showing of inadequate representation is made. 6 Moore's Federal Practice ¶ 24.03[4][ii] (3d ed. 2017). The burden of showing the inadequacy of the representation is on the applicant. See *Attorney Gen. v. Brockton Agricultural Soc.*, 390 Mass. 431 (1983).

The ZBA's and Proposed Intervener's interests in the property are somewhat different because the ZBA's interest is general and focused on upholding its decisions, while the Proposed Interveners' interests are specific to how WBC's landscaping and construction efforts will affect their properties. Nevertheless, the objectives of the defendant ZBA and the Proposed Interveners are ultimately identical because both parties seek to uphold the ZBA rulings that WBC is challenging. Here, because the ZBA fully supports its decisions under review and is represented by capable and diligent counsel, it cannot be shown the ZBA's representation is or will be inadequate.

Moreover, the Proposed Interveners are not entitled to intervene as a matter of right because the ZBA's decisions were not adverse to their rights. See *CJ&B Constr. Corp. v. Matthews*, 11 LCR 225, 225 (2003), *aff'd sub nom. Alfano v. Planning Bd. Of Middleton*, 65 Mass. App. Ct. 1106 (2005) (abutters were properly denied intervention where board decision under review was favorable to them). Ho and O'Donnell are not entitled to intervene as a matter of right because the portion of Lot B is subject to the right of way is not the subject of the ZBA decision on appeal.

Permissive Intervention

In the alternative, the Proposed Interveners seek permissive intervention under Mass. R. Civ. P. 24(b), which allows for intervention "when an applicant's claim or

defense and the main action have a question of law or fact in common.” Mass. R. Civ. P. 24(b)(2). The court enjoys “broad discretion in deciding whether to permit intervention.” *Cruz Mgmt. Co. v. Thomas*, 417 Mass. 782, 785 (1994).

Abutters, as “parties in interest” under G. L. c. 40A, § 11, benefit from a rebuttable presumption that they are “aggrieved persons” with standing to appeal a decision of a zoning board of appeals. The Proposed Interveners own and reside on properties located in the same zoning district as the WBC property. Each property directly abuts or lies within three hundred feet of the WBC property subject to the appeal of a special permit to construct a seasonal pavilion or subject to the appeal of the ZBA’s affirmance of enforcement orders of the Building Commissioner relating to the landscape plan.

In exercising its discretion with respect to rule 24(b), the court considers whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. Mass. R. Civ. P. 24(b)(2); see *Brockton Agricultural Soc.*, 390 Mass. at 435-436. Intervention may be denied when it would unduly expand the nature and scope of the action at bar. *Cambridge Hous. Auth. v. Burney*, 1998 Mass. App. Div. 163 (Dist. Ct. 1998). The Proposed Interveners have filed a timely motion for intervention. The defendant ZBA does not oppose the Motion to Intervene. The consolidated cases, 17 MISC 000204 and 17 MISC 000272, have been pending only since April 13, 2017. In 17 MISC 000366, no significant court events have taken place other than the partial Motion for Summary Judgment just heard by the court. Proposed Interveners the Norsworthys may or may not inject a new issue that is not the subject of any order of the Building

Commissioner at issue, depending on how their concerns relate to the landscape plan at issue.

Considering all these factors, the Proposed Interveners have a sufficient interest in the outcome of these actions that they should be allowed to intervene in the present actions. The Motion to Intervene shall be allowed pursuant to Mass. R. Civ. P. 24(b)(2).

Conclusion

For the foregoing reasons, the Motion to Intervene is **ALLOWED**. The Proposed Interveners are entitled to intervene as party defendants in consolidated cases 17 MISC 000204 and 17 MISC 000272 by filing their answer to the complaint. The Proposed Interveners are entitled to intervene as party defendants in case 17 MISC 000366 by filing their answer to the complaint; they are also entitled in that case to file a memorandum of law in opposition to WBC's motion for summary judgment no later than August 4, 2017. Such a memorandum of law shall rely on the factual record already submitted with the motion for summary judgment and the ZBA's opposition; the Proposed Interveners shall not submit any new facts or raise any new factual disputes as part of their memorandum of law. WBC shall be entitled to file a memorandum of law in reply no later than August 14, 2017.

SO ORDERED.

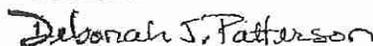
 By the Court (Foster, J.)

Attest:

Deborah J. Patterson, Recorder

Dated: July 26, 2017

**A TRUE COPY
ATTEST:**


RECORDER