

SETTLEMENT AGREEMENT

THIS AGREEMENT entered this 25th day of January, 2019, between: (1) Boxborough Town Center, LLC, a Massachusetts Limited Liability Company with an address of 25 Westford Lane, Acton, Massachusetts 01720 (the “Applicant”) and (2) the Town of Boxborough Planning Board, duly organized and appointed municipal agency of the Town of Boxborough, with its principal office in Town Hall, at 29 Middle Road, Boxborough, Massachusetts 01719, by its members (the “Board”), for the purpose of resolving, settling and otherwise disposing of any and all claims relating to the pending appeal pursuant to G.L. c. 40A, § 17 and Section 5.3 of the Planning Board Site Plan Approval Rules and Regulations filed in the Land Court as 18 PS 000253.

WITNESSETH

WHEREAS the Applicant is the owner of several contiguous parcels of land located at 700, 750 and 800 Massachusetts Avenue (the “Subject Property”);

WHEREAS the Board denied the Applicant’s application for site plan approval and stone walls permit to construct a 100-unit elderly occupancy residential development on the Subject Property in a decision filed with the Boxborough Town Clerk on May 2, 2018 (the “Decision”);

WHEREAS the Applicant filed a complaint appealing the Decision pursuant to G.L. c. 40A, § 17 and Section 5.3 of the Planning Board Site Plan Approval Rules and Regulations with the Massachusetts Land Court Permit Session on May 18, 2018 commencing *Boxborough Town Center, LLC v. Town of Boxborough Planning Board, et al.* 18 PS 000253;

WHEREAS, the Parties wish to resolve this matter without further litigation in the event that a Site Plan Approval and stone walls permit is issued at an agreed remand hearing on the terms set forth below;

WHEREAS, the Parties desire to remand the Applicant’s application for Site Plan Approval and stone walls permit and issue a decision granting the Applicant Site Plan Approval and any other zoning relief necessary to develop the Subject Property, pursuant to certain conditions and modifications;

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Applicant’s Application for Site Plan Approval and stone walls permit will be remanded to the Board to consider a modified plan for development of the Subject Property, according to the terms of which are part of this Agreement.
2. The Applicant will construct 50 units of senior housing (55 years of age and over) in 25 duplex buildings.

3. Building designs for the senior housing would reflect the alternative duplex townhome designs, with front porches, as submitted to the Town of Boxborough on October 31, 2018.
4. The homeowner and public access to the senior housing units would be from Stow Road through the Sheriff's Meadow/Tisbury Meadow roadway.
5. No type of access (emergency or otherwise) would be built to Priest Lane for the 50 units of senior housing.
6. Only a total of 52 residential dwelling units shall be located at the rear portion of the 700, 750, & 800 Massachusetts Avenue project site, south of the wetlands on the subject property. All remaining undeveloped area on the subject property which is not already being used towards compliance with the Zoning Bylaw for existing development, may be used towards the dwelling unit per acre density calculation for further development to the north of the wetland area along Massachusetts Avenue/Route 111.
7. All construction traffic for the senior housing project would come from Massachusetts Avenue/Route 111 via a temporary roadway (to be removed or downgraded for only utility access at the completion of construction of the 50 senior housing units), except for the installation of utilities for the project and necessary improvements to the roadway to and from Stow Road.
8. The affordable dwelling unit requirement to access the rear/southern portion of the project site through the Sheriff's Meadow/Tisbury Meadow roadway would need to be voided.
9. The Applicant will construct a sidewalk on Stow Road between the Sheriff's Meadow/Tisbury Meadow roadway and Massachusetts Avenue/Route 111. The Town will work with the developers on the permitting of the sidewalk and represent the application before any Town boards, committees, or commissions. The Applicant will be responsible for the design of the sidewalk, preparation of all application materials for any permitting, and the construction of the sidewalk, as well as for all costs associated with the permitting and construction of the sidewalk.
10. The 50 units of senior housing will all be sprinklered buildings.
11. For only the senior housing units, when calculating Gross Floor Area for the buildings, the calculation will not include basements and garages.
12. The Town and developers will work to implement a zoning change from the Town Center Zoning District to the Agricultural-Residential Zoning District in the area of the subject property nearest to Priest Lane in order to allow for the construction of two (2) single-family dwellings. If the zoning change is approved by Town Meeting, the developers shall only construct two (2) single-family dwellings in this rezoned area.

13. The Applicant will work with the Town on the visioning for zoning changes for the Town Center Zoning District.
14. Upon the execution of this Agreement, the Parties agree to file a Joint Request for Remand in the matter currently pending in the Land Court as 18 Permit Session 000253.
15. The Board reserves the right to add additional conditions to any Site Plan Approval/stone wall permit beyond those specified in paragraphs 2-13 above, as the Board has not yet been able to conduct a full site plan review process for an updated plan set which must be submitted to the Board as part of the agreed remand hearing, and has also not yet had the chance to publicly vet the revised project which will also be part of the agreed remand process. Both parties enter into this Agreement without waiver of their right to return to litigation if despite good faith efforts a satisfactory resolution cannot be reached as a result of the agreed remand hearing.
16. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter hereof, and no modification of this Agreement shall be binding unless signed by all Parties hereto. No representation, promise or inducement not included in this Agreement shall be binding upon any of the Parties.
17. The Parties acknowledge that they have each been afforded an opportunity to consider and negotiate this Agreement and the terms and conditions set forth herein, that they have read and fully understand the terms of the Agreement and that they have been given an opportunity to consult with legal counsel of their choice prior to executing this Agreement.
18. The Parties acknowledge that they all have participated in the drafting and preparation of this Agreement; as such, in any construction made of this Agreement, the same shall not be construed strictly for or against any Party.
19. All notices, demands and other communications to be given under or by reason of this Agreement shall be in writing and shall be deemed delivered: (a) when delivered in hand to the recipient, by the sender, prepaid courier service or other comparable means; (b) upon transmittal if sent by facsimile, but only during normal business hours with printed confirmation from sender's fax machine; (c) the next business day, if sent by a reputable overnight delivery service; or (d) three (3) days later, if sent by first-class mail, postage prepaid. Notices, demands and other communications shall be sent to the parties as follows:

If to the Applicant or the Plaintiff:

Paul J. Haverty, Esq.
Blatman, Bobrowski & Haverty, LLC
9 Damonmill Square, Suite 4A4
Concord, Massachusetts 01742
Fax (978) 371-2296

paul@bbhlaw.net

If to the Board or the Defendants:

George X. Pucci (BBO# 555346)
KP Law, P.C.
Town Counsel
101 Arch Street
12th Floor
Boston, MA 02110-1109
(617) 556-0007
gpucci@k-plaw.com

20. Any amendments to this Agreement shall only be made in writing and upon agreement by all parties to this Agreement.
21. This Agreement may be signed in multiple counterparts.
22. This agreement is subject to a mutually satisfactory Order from the Land Court to remand the matter to the Board.

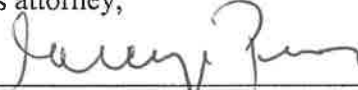
IN WITNESS WHEREOF, we have hereunto set our hands and seals this 25th day of January, 2019.

Plaintiff,
The Applicant,
Boxborough Town Center, LLC,
By its attorneys,



Paul Haverty, BBO No. 652359
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Defendant,
The Board,
Boxborough Planning Board,
By its attorney,



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