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PLANNING BOARD
TOWN OF BOXBOROUGH

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TOWN CLERK
TOWN OF BOXBOROUGH

2018 MAY 21 10:55
TOWN CLERK

NOTICE PURSUANT TO G.L. c. 40A, § 17

I, Christopher J. Alphen, attorney for Plaintiff Boxborough Town Center, LLC, hereby provide notice that said Plaintiff has appealed a decision of Defendant Town of Boxborough Planning Board and its Members denying the Plaintiff's application for site plan approval and stone walls permit for the construction of 100-unit elderly occupancy residential development on several contiguous parcels of land located at 700, 750 and 800 Massachusetts Avenue. Said decision of the Board was filed with the Town Clerk on May 2, 2018.

A copy of the Complaint is attached hereto, as filed with the Massachusetts Land Court.

Date: May 18, 2018



Christopher J. Alphen, BBO No. 691813

BLATMAN, BOBROWSKI & HAVERTY, LLC

ATTORNEYS AT LAW

9 DAMONMILL SQUARE, SUITE 4A4
CONCORD, MA 01742
PHONE 978.371.2226
FAX 978.371.2296

CHRISTOPHER J. ALPHEN, ESQ.
Chris@bbhlaw.net

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PLANNING BOARD
TOWN OF BOXBOROUGH

May 18, 2018

Clerk's Office
Land Court
Three Pemberton Square
Boston, MA 02108

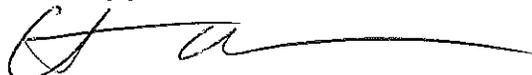
RE: Boxborough Town Center, LLC v. Town of Boxborough Planning Board, et al
Case No. 18 MISC

Dear Clerk:

Enclosed for filing in connection with the above-captioned matter please find enclosed the Plaintiff's Complaint.

Please do not hesitate to contact me with any questions.

Very truly yours,



Christopher J. Alphen, Esq.

Enclosures

Cc:

Boxborough Town Clerk's Office
Boxborough Planning Board

2018 MAY 18 PM 5:05
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MAY 21 2018

MAINTAINED BY THE
COURT OF RECORDS

Commonwealth of Massachusetts
Land Court
Department of the Trial Court

Case No. _____

PERMIT SESSION
Civil Cover Sheet

FILED
MAY 21 2018
COURT OF RECORDS

First Plaintiff Boxborough Town Center, LLC

First Defendant Town of Boxborough Planning

Locus Address/Description 700, 750 and 800 Mass. Ave

City/Town Boxborough

Part I - Threshold Requirements for Permit Session:

This action is based on a claim or claims set forth in G. L. c. 185, § 3A (a) to (d), inclusive

and

the underlying project or development involves 25 or more dwelling units; or the construction or alteration of 25,000 square feet or more of gross floor area. (Check one or both boxes that apply.)

Part II - Uniform Counsel Certificate:

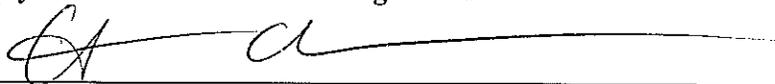
To be filled out by Plaintiff(s)' Counsel at the time of initial filing. All other counsel shall file an SJC Rule 5 certificate within ten (10) days of their initial entry into the case, whether by answer, motion, appearance or other pleading.

I am attorney-of-record for: Boxborough Town Center, LLC, plaintiff(s) in the above-entitled matter.

- A. In accordance with the Supreme Judicial Uniform Rules on Dispute Resolution (Rule 1:18, Rule 5), which states in part: "Attorneys shall: provide their clients with...this information about court-connected dispute resolution; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent . . ."
- B. In accordance with Land Court Standing Order 1-12, I certify that I am aware of the requirement to, "...serve a copy of the "Limited Assistance Representation (LAR) Information Sheet" upon all defendants at the same time as service of the summons, complaint, and civil cover sheet is made", and I will comply with this requirement.

I hereby certify that this action meets the threshold requirements for the Permit Session, that I have complied with SJC Rule 5, and will comply with Land Court Standing Order 1-12.

BBO# 691813



Signature of Plaintiff(s) Attorney or Plaintiff, if self-represented

Date: 05/18/2018

Christopher J. Alphen, Esq.
(Please Print Name)

(Filling out both pages of this form is mandatory.)

**Land Court Permit Session
(Must Be Completed)**

1. Using the list below, please number, with the **Number 1**, the **primary count** on which you base your complaint.
- and
2. Place an "X" next to **each other count** in your complaint.
- and
3. Is this complaint verified ? Yes No
- and
4. Are there any related cases filed in the Land Court Department ? Yes No
If yes, please provide the Case No.(s) _____
- and
5. Are there any related cases pending in any other Department or Administrative Agency?
If yes, please provide the Case No.(s): _____ Department/Agency _____
- and
6. Is there a jury claim? Yes No
- and
7. Is there preliminary injunctive relief sought ? Yes No
- and
8. Are you a nongovernmental corporate party? If yes, then this filing must be accompanied by a statement complying with SJC Rule 1:21.

X	PSZAC	G. L. c. 40A, § 17 - Appeal from Zoning/Planning Board
	PSZAD	G. L. c. 41, § 81BB - Appeal from Planning Board
	PSZJA	G. L. cc. 240, § 14A, 185, § 1 (j ½) - Validity of Zoning
	PSZEN	G. L. c. 40A, § 7 - Enforcement of Zoning
	PSAHA	G. L. c. 40B, § 21 - Affordable Housing Appeal
	PSDEM	G. L. c. 21 Department of Environmental Management
	PSEIP	G. L. c. 30 § 61-62H Environmental Impact of Projects Conducted by Agencies
	PSSAP	G. L. c. 30A State Administrative Procedure (not listed here)
	PSHAC	G. L. c 40B, § 22 Review by Housing Appeals Committee

	PSHDA	G. L. c. 40C Historic Districts Act
	PSSGZ	G. L. c. 40R Smart Growth Zoning and Housing Production
	PSEXP	G. L. c. 43D Expedited Permitting
	PSW	G. L. c. 91 Waterways
	PSIFGNR	G. L. c.131 Inland Fisheries, Game and Natural Resources
	PSMESA	G. L. c. 131A Massachusetts Endangered Species Act
	PSBZC	St. 1956, c. 665 Boston Zoning Code
X	PSOTA	Other Claims under G. L. c. 185, § 3A sec. (b), (c) and (d)
	PSCNC	G. L. c. 249, § 4 Certiorari
	PSMAN	G. L. c. 249, § 5 Mandamus

For Land Court Use Only

- Approved for filing in the Permit Session OR PSTRALC - Case Transferred from the Land Court to the Permit Session
- _____
Recorder OR PSTRANS - Case Transferred from other court to the Permit Session

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MAY 21 2018

PLANNING BOARD
TOWN OF BOXBOROUGH

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

PS 000253

MIDDLESEX, ss.

18 MISC _____

BOXBOROUGH TOWN CENTER, LLC)

Plaintiff)

v.)

COMPLAINT

TOWN OF BOXBOROUGH PLANNING)
BOARD AND JOHN MARKIEWICZ,)
EDUARDO PONTORIERO, ABBY REIP,)
HONGBING TANG AND NANCY)
FILLMORE, as they are Members of the)
TOWN OF BOXBOROUGH PLANNING)
BOARD)

Defendants)
_____)

Nature of the Action

1. This is an appeal, pursuant to G.L. c. 40A, § 17 and Section 5.3 of the Planning Board Site Plan Approval Rules and Regulations, from a decision (the "Decision") of Defendant Town of Boxborough Planning Board and its above-named Members (collectively, the "Board") filed with the Boxborough Town Clerk on May 2, 2018. A certified copy of the Decision is attached hereto as Exhibit A.

2. The Decision denied the Plaintiff's application for site plan approval and stone walls permit to construct a 100-unit elderly occupancy residential development on several contiguous parcels of land located at 700, 750 and 800 Massachusetts Avenue (the "Subject Property").

3. This is also an action for declaratory judgment, pursuant to G.L. c. 231, §1, to nullify the Decision because the Board was biased against and predisposed to deny the Plaintiff's application not on the merits thereof, but instead was based on the preconceived beliefs and notions of the Board, not supported by the evidence, all in violation of Article 29 of the Massachusetts Declaration of Rights.

Jurisdiction

4. This Court has jurisdiction over this matter pursuant to G. L. c. 40A, § 17 and Section 5.3 of the Boxborough Site Plan Approval Rules and Regulations, and pursuant to G. L. c. 231A.

5. Because the Proposed Project contains more than twenty-five dwellings and the construction or alteration of more than 25,000 square feet or more of gross floor area, this matter falls within the Court's Permit Session jurisdiction pursuant to G. L. c. 185, § 3A.

6. As the unsuccessful applicants before the Board, the Plaintiff is an aggrieved party pursuant to G. L. c. 40A, § 11, and G. L. c. 40A, § 17.

Parties

7. Plaintiff, Boxborough Town Center, LLC, is a Massachusetts Limited Liability Company with an address of 25 Westford Lane, Acton, Massachusetts 01720 (the "Applicant") and was the applicant for site plan approval and stone walls permit from the Board.

8. The Board is a 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.

9. Defendant John Markiewicz is the Chairman and a Member of the Board with a mailing address of 71 Patch Hill Road, Boxborough, Massachusetts 01719.

10. Defendant Abby Reip is the Clerk and a Member of the Board with a mailing address of 205 Old Harvard Road, Boxborough, Massachusetts 01719.

11. Defendant Eduardo Pontoriero is a Member of the Board with a mailing address of 46 Loreto Drive, Boxborough, Massachusetts 01719.

12. Defendant Nancy Fillmore is a Member of the Board with a mailing address of 869 Burroughs Road, Boxborough, Massachusetts 01719.

13. Defendant Hongbing Tang is a Member of the Board with a mailing address of 1171 Hill Road, Boxborough, Massachusetts 01719.

Statement of the Facts

14. The Subject Property consists of two parcels containing approximately 57.8 acres of land and one newly proposed parcel known as Parcel A situated in the Town Center ("TC") zoning district as established by the Zoning By-law and accompanying Zoning Map.

15. Parcel A was not included in the Applicant's Site Plan Application but was shown on the plan as the source for water supply.

16. Parcel A was not included in the calculations to determine the Project met the dimensional and density requirements.

17. The Subject Property is also located within the Wetlands and Watershed Overlay zoning district as established by the Zoning By-law and accompanying Zoning Map.

18. The Subject Property is shown on a plan dated December 20, 2016 revised

through June 22, 2017, entitled “Site Plan for Enclave at Boxborough 700-800 Massachusetts Avenue”, completed by Stamski and McNary, Inc. (the “Site Plan” or the “Subdivision Plan”).

19. The Subject Property is owned or controlled by the Applicant.

20. The Subject Property consists of the following parcels held in title by the following deed references:

a. 800 Massachusetts Avenue - Parcel 14-209-000:

i. Held by a subsidiary of the Applicant, John J. Lyons, Trustee of Mane Realty Trust by deed dated August 15, 1988, recorded with the Middlesex Registry of Deeds in Book 19267, Page 606;

b. 700 Massachusetts Avenue - Parcel 14-208-000:

i. Held by Applicant Boxborough Town Center, LLC by deed dated February 27, 1997, recorded with said Registry in Book 27102, Page 550;

c. 750 Massachusetts Avenue – Parcel 14-210-000:

i. Held by Applicant Boxborough Town Center, LLC by deed dated February 27, 1997, recorded with said Registry in Book 27102, Page 550;

d. Parcel A – A Portion of Parcel 14-045-000:

i. Held by Fal Bassett Realty Trust, Stuart H. Bleck, Trustee, a portion of the land as described in the deed recorded with said Registry of Deed in Book 32243, Page 449. The Applicant has

a duly signed Purchase and Sale Agreement to purchase Parcel

A.

16. Parcel B and Parcel C as shown on the Applicant's subdivision plan, are not part of the Proposed Project.

17. Appurtenant to and for the benefit of 700 Massachusetts Avenue is an easement right over adjoining land to Stow Road, as shown on the Site Plan as "Access Easement C".

18. Access Easement C was created by a deed reservation by the Applicant's predecessor in interest in the deed recorded with the Middlesex South Registry of Deeds in Book 25286, Page 52.

19. Access Easement C is proposed only to allow emergency vehicles to access the Project. No access is proposed for use by the residents of the Project.

20. The Site Plan proposed a secondary emergency access roadway extending southwesterly from an access road cul-de-sac through the Subject Property to its frontage on Priest Lane, a cul-de-sac roadway serving adjacent subdivision (the "Priest Lane Emergency Access"). Once again, this proposed emergency access is limited strictly to emergency vehicles and will not be utilized by the proposed residents of the Project.

21. Prior to the Applicant's formal application for site plan approval which was ultimately denied by the Decision, the Applicant came before the Planning Board with alternative development plans which were denser than the Proposed Project.

22. The Applicant presented to the Board during a February 18, 2015 pre-application conference for site plan approval a 208-unit senior housing development in 104 two-family structures.

23. During a March 9, 2015 pre-application conference for site plan approval, the Applicant presented a 212-unit development in 106 two-family structures.

24. During these pre-application conferences, the Board opined that the proposed project was too dense.

25. The Applicant's application was filed with the Planning Board on December 23, 2016.

26. The Proposed Project as formally submitted consists the construction of fifty (50) two-family dwellings (100 units of housing) reserved exclusively for elderly occupancy with an associated clubhouse with amenities, signage, private driveways, parking, public water supply, wastewater treatment, drainage and site grading on the Subject Property (the "Proposed Use" or the "Project").

27. The Planning Board opened the public hearing on the application on January 23, 2017 and held continued sessions of the public hearing on February 27, 2017, March 20, 2017, May 15, 2017, June 26, 2017, September 11, 2017, October 2, 2017, October 16, 2017, November 27, 2017, January 8, 2018, February 5, 2018, March 5, 2018, and March 19, 2018, when it was closed.

28. The Planning Board deliberated on the proceedings on April 3, 2018, April 10, 2018, April 23, 2018, and April 30, 2018.

29. Numerous exhibits addressing landscaping, architecture, wastewater, lighting, stormwater, and traffic were submitted as supplements to the Application. Such described exhibits are listed in the Decision as Exhibits A through EE.

30. The Applicant presented competent expert testimony during the public hearing, including but not limited traffic, design, stormwater, access and wastewater.

31. On January 18, 2017, the Boxborough Design Review Board held a meeting.

32. According to the minutes of the January 18, 2017 meeting, the Design Review Board made the following recommendations:

- a. Rename the proposed housing development to avoid confusion with the Boxborough Regency Hotel;
- b. More variation in the proposed primary color schemes between each of the buildings, beyond the currently proposed various shades of beige;
- c. Each building be staggered slightly, front to back, in terms of their setback from the roadway; and
- d. Additional visual breaks in the facades of the garage doors through the use of additional detailing to create the appearance of two doors.

33. According to available meeting agendas and minutes, the Design Review Board did not meet again until January 11, 2018.

34. At the January 11, 2018 hearing, the Design Review Board brought in two new members, Robert Childs of 847 Burroughs Road in Boxborough and Tim Rudolph.

35. Robert Childs spoke against the Proposed Project at several sessions of the public hearing before the Planning Board and submitted extensive correspondence to the Planning Board opposing the Proposed Project. This correspondence includes a letter dated November 30, 2017 in which Mr. Childs stated, "I strongly and adamantly believe this project should be denied on so many different levels which have been discussed over the past year."

36. Tim Rudolph allowed his name to be included in a petition to the Boxborough Board of Selectmen encouraging them to buy the Subject Property. In this correspondence, Mr. Rudolph was quoted as stating "What happened to the Design Review Board? It should have formally given a negative response to the plans[.]"

37. After not commencing a hearing for almost a year, the Design Review

Board set three additional meeting dates, on January 26, 2018, January 29, 2018 and February 2, 2018.

38. The Design Review Board subsequently submitted its report dated February 2, 2018, containing a conclusion that “the project significantly violates and is inconsistent with the attributes of the Design Guidelines.”

39. The objective suggestions contained in the Design Review Board’s February 2, 2018 report are clearly tainted by the well-established opposition to the Proposed Project of Mr. Childs and Mr. Rudolph.

40. The Board drafted conditions for site plan approval, on January 1, 2018 revised through March 30, 2018.

41. After being provided a letter by the Applicant objecting to numerous draft conditions prepared by the Board, two executive sessions were held by the Board, on March 5, 2019 and March 19, 2019.

42. In 2015, a Definitive Plan was approved by the Boxborough Planning Board subdividing 700, 750 and 800 Massachusetts Avenue (the “Approved Plan”).

43. The Approved Plan is entitled “Definitive Plan of Boxborough Center Subdivision in Boxborough, Massachusetts” dated December 4, 2013 and recorded in said Registry in Plan Book 2015, Page 294.

44. The Approved Plan constitutes a zoning freeze with respect to 700, 750 and 800 Massachusetts Avenue of the Subject Project.

45. Because 700, 750 and 800 Massachusetts Avenue benefit from a zoning freeze from the Approved Plan, the May 2012 version of the Zoning By-law was correctly used to review the Proposed Project for compliance.

46. The Proposed Use is permitted under the 2012 Boxborough Zoning By-law pursuant to Article IV as-of-right, without the need for a discretionary special permit.

47. Pursuant to Section 5004(1) the 2012 Boxborough Zoning By-law multi-family dwellings in the TC zoning district reserved exclusively for elderly occupancy density may not exceed 10 units per 80,000 sq. ft. of land area.

48. The Proposed Project provides 2,519,642 sq. ft. of land area for 100 units.

49. The Proposed Project meets the density requirements of Section 5004(1) by over three (3) times the allowed limit.

50. The Proposed Project meets all the Dimensional Requirements pursuant to Article V of the 2012 Zoning By-law.

51. The Applicant sought Site Plan Approval under the Planning Board Site Plan Approval Rules and Regulations, Section 8007 of the 2012 Zoning By-law, and a Stone Wall Removal Permit under the Stone Wall By-law.

52. The Boxborough Site Plan Approval Rules and Regulations establish the procedures and requirements for submitting site plans and to notify applicants of the review criteria for site plans. See Section 1.1 of the Boxborough Site Plan Approval Rules and Regulations.

53. Section IV of the Boxborough Planning Board Site Plan Approval Rules and Regulations establish the design standards for site plan approval (the "Section IV Design Standards").

54. Section IV Design Standards includes paving requirements, driveway and circulation and access standards, traffic and trip reduction standards, landscaping and buffers, tree protection, siting and appearance guidelines, sidewalks and walking paths,

utilities and lighting, erosion control, stormwater drainage and management, pollution and hazardous materials, ground water monitoring, storage tank vaulting and monitoring, off-site radiation, fill materials and stump burials and fire safety and protection.

55. The Decision does not allege that the Applicant did not meet the requirements of the Boxborough Planning Board Site Plan Approval Rules and Regulations.

56. In addition, Section 8007 of the 2012 Zoning By-law sets a standard for site plan approval. Section 8007 states:

Site plan approval shall be granted upon determination by the Planning Board that new buildings or other site alterations have been designed in the following manner, after considering the qualities of the specific location, the proposed land use, the proposed building form, grading, egress points, and other aspects of the development. Where the Planning Board renders a decision contrary to the recommendations of the Design Review Board, the Planning Board shall state the reasons in writing.

- (1) The proposal shall comply with the purpose and intent of the Zoning Bylaw and with existing local and regional plans.
- (2) The development shall be integrated into the existing terrain and surrounding landscape and shall be designed to protect abutting properties and community amenities. To the extent possible, building sites shall be designed to minimize the use of wetlands, steep slopes, floodplains, hilltops; minimize obstruction of scenic vistas from publicly accessible locations; preserve unique natural, scenic and historic features; minimize tree, soil and vegetation removal; and maximize open space retention.
- (3) Architectural style shall be in harmony with the prevailing character and scale of buildings in the neighborhood and the Town through the use of appropriate building materials, screening, breaks in the roof and wall lines, and other architectural techniques. Proposed buildings shall relate harmoniously to each other.
- (4) Adequate measures shall be proposed to prevent pollution of surface and ground water, to minimize erosion and sedimentation, to prevent changes in ground waterlevels, to minimize potential for flooding, and to provide for stormwater drainage consistent with the functional equivalent of the Planning Board's Subdivision Rules and Regulations.
- (5) Roadways and circulation system shall be designed to promote convenience and safety for both pedestrians and vehicles. Access roads by which the proposed development is reached shall be adequate in width,

grade and construction to carry, without danger or congestion, the additional traffic that is generated from the development.

(6) Adequate buffers shall be provided to protect abutting properties from lighting, sight, sound, dust, and vibration.

(7) Adequate facilities shall be provided for water supply and for handling and disposal of waste and other production by-products.

(8) Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment.

(9) Architectural Standards in the Town Center District Only. Materials shall be harmonious with existing buildings. In the interest of maintaining a sense of history, vertical siding shall be discouraged and synthetic siding shall imitate the character and dimensions of traditional clapboards. Masonry block buildings should be faced in an appropriate material, such as horizontal wooden siding or brick of a traditional red color. Buildings shall fit in with existing architecture in terms of height, massing, roof shapes, and window proportions.

57. The Board determined that the Proposed Project did not meet the criteria of Section 8700 of the 2012 Zoning By-law and therefore denied the Applicant's application for site plan approval.

58. The Board, in their Decision, concluded the Application for Site Plan approval did not meet Criterion one (1) of Section 8700 because the Project did not meet the intention of the Town Center Zoning District "to create a real Town Center with mixed use buildings and a park-like common area in a colonial village style setting that would bring Boxborough townspeople together." The Board further concluded that no reasonable conditions could be devised to bring the Project into compliance.

59. The Board also concluded the Proposed Project did not meet Criterion one (1) of Section 8700 because the "...price point for the units in the Project would not be readily affordable to many fixed-income seniors in the area." The Board further concluded that no reasonable conditions could be devised to bring the Project into compliance.

60. The Board, in their Decision, concluded the Proposed Project did not comply with the purpose and intent of the Zoning Bylaw and with existing local and regional plans set forth by Criterion one of Section 8700 because it proposes a dense residential development where mixed-use is desired and it is inconsistent with the scale of existing uses in the TC Zoning District. The Bylaw does not require projects to be mixed-use.

61. The Board also found that Proposed Project does meet the intentions of the By-laws because it does not provide affordable or moderately priced housing.

62. The Proposed Project meets all of the density, dimensional and use requirements of the 2012 Zoning By-law.

63. The proposed use is allowed as-of-right under the Bylaw, therefore, the Proposed Project meets Criterion one (1).

64. Affordable or moderate pricing is not a requirement pursuant Section 8700 or the use table of the 2012 Zoning By-law.

65. The Board's finding that the Proposed Project does not meet Criterion one (1) are not grounded in fact, are arbitrary and capricious, and constitute an abuse of discretion.

66. The Board found that the Proposed Project did not meet Criterion two (2), because the Proposed Project "is not integrated into the existing terrain and surrounding landscape, and will not protect the abutting properties from noise, odors, sound pollution, or light pollution." The Board cited no evidence of how the Proposed Project would not comply with applicable requirements regarding noise, odors, sound pollution, or light pollution.

67. The Board also concluded that the Proposed Project did not meet Criterion two (2), because the Proposed Project “will have a substantial negative impact on the environmental quality of the surrounding area and the Town.” The Board further concluded that no reasonable conditions could be devised to bring the Project into compliance.

68. The Board found that the Proposed Project would “require tremendous grading and massive earthwork, including significant ledge removal and blasting, which will create adverse environmental impacts and directly affect the surrounding neighborhood, especially the adjacent senior developments, for a prolonged period of time.”

69. The Board found that there will be “excessive” retaining walls in the construction of the Proposed Project.

70. The Board could have provided conditions to make the Proposed Project more integrated into the existing terrain and surrounding landscape.

71. The Proposed Project is close to a balanced site, meaning cuts and fills are essentially equal, leading to minimal truck traffic associated with grading and earth removal.

72. The blasting will meet state requirements.

73. The Board had the opportunity to impose reasonable conditions to address their concerns associated with Criterion two (2).

74. The Board findings that the Proposed Project does not meet Criterion two (2) are not grounded in fact, are arbitrary and capricious, and constitute an abuse of discretion.

75. The Board concluded that the Proposed Project does not meet Criterion three (3) or Criterion nine (9) of Section 8007 because the proposed architectural style for the Proposed Project is not in harmony with the prevailing character of the neighborhood and the town, or with the scale of the other buildings in the TC Zoning District.

76. The Board found that the absence of a mixed-use component in the Proposed Project was not “consistent with the intended Town Center development.”

77. The Board could have imposed reasonable conditions to meet the town’s architectural standards.

78. The Board findings that the Proposed Project does not meet Criterion three (3) or Criterion nine (9) are not grounded in fact, are arbitrary and capricious, and constitute an abuse of discretion.

79. The Board found that the Proposed Project did not meet Criterion four (4) of the Zoning By-law because the “stormwater system is inadequate as designed.”

80. A report entitled “Stormwater Management Report” by Stamski and McNary, Inc., dated June 22, 2017, which was presented to the Board, concluded that “[t]here will be no increase in runoff leaving the site for the 2 year, 10 year, 25 year, and 100 year storm event” in pre-development to post development.

81. The Board findings that the Proposed Project does not meet Criterion four (4) are not grounded in fact, are arbitrary and capricious, and constitute an abuse of discretion.

82. The Board concluded that the Proposed Project does not provide access or egress to the Subject Property from Massachusetts Avenue, and therefore does not meet the Criterion five (5). The Board further concluded that no reasonable conditions could be

devised to bring the Project into compliance.

83. The Board found that the Proposed Project will not have adequate safe stopping distance.

84. The Board imposed a safe stopping distance greater than the requirements of MassDOT (and the American Association of State Highway Transportation Engineers “AASHTO”) in making this finding.

85. A traffic impact and access study, dated December 12, 2016 was prepared by Bayside Engineering, which was presented to the Board, concluded “safe and efficient access can be provided to the patrons of the proposed project and to the motoring public in the area.”

86. A traffic engineer peer review, completed by Green International Affiliates, Inc., dated September 6, 2017, concluded “[t]he study area and intersections... are reasonable for a development project of this size based on the amount of traffic expected to be generated by the development project, and is consistent with current MassDOT guidelines.”

87. The Board found that it was “impossible” for the Applicant to obtain a safe access and egress from the Project to Route 111.

88. In an email dated October 16, 2017, the traffic peer review consultant Green International Affiliated, Inc., opined that the available sight distance of 375 feet looking west from the access point from the Project meets “the minimum requirements for vehicles traveling at 44 mph, and of course also meets the minimum requirements for vehicles traveling at the posted speed limit of 40 mph.” The peer review also concluded that the 375 feet of available sight distance looking to the east “exceeds the minimum

requirements for vehicles traveling at both the posted speed limit (40mph) and the 85th percentile speed (44 mph).”

89. The Board’s finding that the Proposed Project does not meet Criterion five (5) are not grounded in fact, are arbitrary and capricious, and constitute an abuse of discretion and are made in bad faith.

90. The Board, in their Decision, concluded the Proposed Project did not meet Criterion six (6) because “adequate buffer would not be provided to protect abutting properties from lighting, sight, sound, dust, and vibration, both during construction and once the project is completed.”

91. The Board’s conclusory finding, made without recitation to specific facts, that the Proposed Project does not meet Criterion six (6) is not grounded in fact, is arbitrary and capricious, constitutes an abuse of discretion, and is made in bad faith.

92. Regarding Criterion seven (7) as established by Section 8007, the Board concluded the two public water supply wells to serve the Proposed Project were “structures” and do not meet setback requirements of such, therefore the Proposed Project does not have adequate water supply for the use.

93. The proposed wells are located in the Northwest portion of the Subject Property, immediately adjacent to the boundary of Parcel A.

94. The Board found that the Applicant did not demonstrate right to title to Parcel A therefore the proposed wells located on the Subject Property did not meet setback requirements because the wells were within 20 feet of Parcel A.

95. The Applicant has a duly signed Purchase and Sale agreement to purchase Parcel A.

96. The Applicant has control over Parcel A, therefore the wells meet the setback requirements, if applicable.

97. The Boxborough Zoning By-law defines a structure as:

“... anything constructed or erected, the use of which requires fixed location on or under the ground. Structure shall not include landscape features such as fences no greater than six (6) feet in height, stone walls or retaining walls no greater than four (4) feet in height, bird baths, driveways, detached stiles, open terraces, ornamental pools, outdoor fireplaces, planting boxes, shelters for household pets, tool houses having not more than 125 square feet of floor area, sculpture, residential lamp posts, mailboxes, fire suppression equipment and their appurtenances, and dry hydrants.”

98. A water well is not a structure subject to the 20-foot side yard setback requirement.

99. Even if the wells are considered structures, Section 5002 of the Zoning By-laws requiring the side setback requirement of 20 feet does not apply to the wells, because Section 5002 only applies to “building[s]... [to be] occupied as dwellings[s][.]”

100. The Board’s findings that the Proposed Project does not meet Criterion seven (7) are not grounded in fact, are arbitrary and capricious, constitute an abuse of discretion, and are made in bad faith.

101. The Board concluded that the Proposed Project did not provide adequate access to each structure for fire and service equipment, and therefore fail to meet Criterion eight (8).

102. In part, the Board decided the Proposed Project did not meet Criterion eight (8), because Access Easement C was not available to a large parcel of the Subject Property, reasoning the use of the easement would be overburdening the easement under the title rights of the Applicant.

103. The Board finding that there would be “overburdening” on the Access

Easement is entirely a question of private property rights, not public rights. See, *Hahn v. Planning Board of Stoughton*, 24 Mass. App. Ct. 533 (1987) (“[T]he planning board is not authorized to determine the existence of easements or to settle other property disputes.”)

104. The proposed Access Easement C does not provide any vehicle access to the Proposed Project except it shall be available for use of emergency vehicles. The only vehicles that will use the Access Easement C are the Town’s fire, police, and other public safety vehicles, and then only in an emergency. Access Easement C is the third means of access for emergency vehicles to the Project, and thus even if it were not available the elimination of this emergency access would not impact the safety of the Proposed Project.

105. General Laws Chapter 87, Section 7, states “[t]he members and apparatus of a fire department while going to a fire or responding to an alarm, police patrol vehicles and ambulances, and ambulances on a call for the purpose of hospitalizing a sick or injured person shall have the right of way through any street, way, lane or alley.”

106. The Board also concluded that the Access Easement C was not entitled to the zoning freeze and has not “obtained the required Special Permit for use of [Access Easement C] to serve the Project.”

107. The Access Easement is a private property interest arising from an express reservation in the 1995 deed from Town Center Limited Partnership to Sheriff’s Meadow Development Corp. The jurisdiction of the Planning Board is limited to site plan approval. Under Section 8002 of the Zoning By-law, “any alteration of a ... lot” requires such approval. Thus, the Applicant is entitled to exercise its rights to build the Access Easement after site plan approval. In short, whether the freeze extends to the land outside

the land which benefits from the freeze is irrelevant.

108. The Board concluded that Proposed Project also did not have access through Priest Lane because such access would be in violation of the terms of the Priest Lane Definitive Subdivision Plan, specifically Finding #8 which states “all stonewalls on-site shall be preserved except for the stone wall opening required for the construction of the driveway on lot C-4 as shown on the site plan[.]”

109. The proposed Priest Lane Emergency Access does not provide any vehicle access to the project except it shall be available for use of emergency vehicles consistent with G.L. c. 89, §7.

110. Priest Lane is a public way which can be used for access to the Project site.

111. The Board concluded the Proposed Project did not meet Criterion eight (8) because the Applicant had not sought or obtained the requisite Special Permits to allow access to the Subject Property by way of the Access Easement C and the Priest Lane Emergency Access pursuant to Section 4800 of the Zoning By-law.

112. Article IV, Section 4800 of the Zoning By-law entitled “Special Permit for Alternate Access” states, in relevant, “[t]he Planning Board shall be the Special Permit Granting Authority for the issuance of special permits in the case where an applicant requests to access a lot through a portion of the same lot which is not the legal frontage for said lot.”

113. The Applicant proposed that the primary access to the Subject Property be from Massachusetts Avenue, over which the Subject Property has its frontage.

114. The Applicant has not proposed an alternate access, it has proposed

additional emergency access points, which are not subject to the special permit requirements of Section 4800.

115. The Town Planner in an email dated January 19, 2017 stated that Boxborough Town's Counsel opined that the Proposed Project did not need a special permit for alternate access for the access points from Priest Lane and Stow Road.

116. The Board's findings that the Proposed Project does not meet Criterion eight (8) are not grounded in fact, are arbitrary and capricious, constitute an abuse of discretion, and are made in bad faith.

117. The Boxborough Stone Wall By-law prohibits "removal, tearing down, or destruction of stone walls within or on the boundary of a Town Way... without prior written approval from the Board."

118. The Applicant sought a Stone Wall Removal Permit to create an opening in the stone wall at the north end of Priest Lane to construct an emergency access roadway to the Project Site.

119. The Board denied the Stone Wall permit finding that such a removal required approval from the Priest Lane subdivision.

120. Whether authorization from the owners of the Priest Lane Subdivision is required for the removal of the stone walls is entirely a question of private property rights, not public rights.

121. Board has the authority to amend previously issued subdivision decisions.

122. The Board findings that the plan does not meet the requirements of the Stone Walls By-law are not grounded in fact, are arbitrary and capricious, constitute an abuse of discretion, and was made in bad faith.

Count I

123. The Plaintiff repeats and realleges Paragraph Nos. 1 through 121, above, and incorporates the same herein by reference.

124. The Board found that the Proposed Project does not meet the purpose and intent of the Town Center Zoning District and that no reasonable conditions can be devised to bring the Proposed Project into compliance.

125. The Board found that the Applicant did not voluntarily offer any affordable housing in the Project when requested to do so by the Board.

126. The Board found that the Project did not meet the purposes of the 2012 Zoning By-law which mentions lessening congestion in the streets, the overcrowding of land, and the appropriate use of land.

127. These findings are not grounded in fact, are arbitrary and capricious, constitute an abuse of discretion, and are made in bad faith, solely as a pretext to reduce the density of the Proposed Project, despite such density being allowed as-of-right.

128. For the above stated reasons, the Court is requested to annul the Decision of the Board and to order issuance of site plan approval for the Project.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment reversing the Decision of the Board and ordering the issuance of Site Plan Approval, and awarding the Plaintiff its costs and attorney's fees, or grant such other relief as may be just and equitable.

Count II

129. The Plaintiff repeats and realleges Paragraph Nos. 1 through 127, above, and incorporates the same herein by reference.

130. The Board found that there will be “significant” grade changes in the construction of the Project.

131. The Board found that there will be “excessive” retaining walls in the construction of the Project.

132. The Board found that that the blasting and site work necessary to building the Project will have a “a substantial negative impact” on neighboring properties and the environment.”

133. These findings are not grounded in fact, are arbitrary and capricious, constitute an abuse of discretion, and are made in bad faith, solely as a pretext to reduce the density of the Proposed Project, which is allowed as-of-right.

134. For the above stated reasons, the Court is requested to annul the Decision of the Board and to order issuance of Site Plan Approval for the Project.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment reversing the Decision of the Board and granting Site Plan Approval to the Plaintiff, and awarding the Plaintiff its costs and attorney’s fees, or grant such other relief as may be just and equitable.

Count III

135. The Plaintiff repeats and realleges Paragraph Nos. 1 through 133, above, and incorporates the same herein by reference.

136. The Board found that the proposed architecture for the units in the Project do not “relate harmoniously to each other,” the neighborhood, or the Town.

137. The Board found that the scale of the proposed units in the Project is not harmonious with other units in the Town Center Zoning District.

138. The Board found that the absence of a mixed-use component in the Project “consistent with intended Town Center development.”

139. The Boxborough Design Review Board had relatively minor concerns about the Project until new members, who were evidently opposed to the Project, joined the Design Review Board and issued a critical report to the Board.

140. These findings are not grounded in fact, are arbitrary and capricious, constitute an abuse of discretion, and are made in bad faith, solely as a pretext to reduce the density of the Proposed Project, which is allowed as-of-right.

141. For the above stated reasons, the Court is requested to annul the Decision of the Board and to order issuance of Site Plan Approval for the Project.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment reversing the Decision of the Board and issuing Site Plan Approval, and awarding the Plaintiff its costs and attorney’s fees, or grant such other relief as may be just and equitable.

Count IV

142. The Plaintiff repeats and realleges Paragraph Nos. 1 through 140, above, and incorporates the same herein by reference.

143. The Board found that the stormwater system proposed for the Project was “inadequate as designed.”

144. These findings are contrary to the evidence provided to the Board, are inconsistent with the opinion of the Board’s own peer review engineer, and are not grounded in fact, are arbitrary and capricious, constitute an abuse of discretion, and are made in bad faith, solely as a pretext to reduce the density of the Project, which is

allowed as-of-right.

145. For the above stated reasons, the Court is requested to annul the Decision of the Board and to order issuance of Site Plan Approval for the Project.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment reversing the Decision of the Board and granting Site Plan Approval, and awarding the Plaintiff its costs and attorney's fees, or grant such other relief as may be just and equitable.

Count V

146. The Plaintiff repeats and realleges Paragraph Nos. 1 through 144, above, and incorporates the same herein by reference.

147. The Board found that the Project will not have adequate safe stopping sight distance.

148. The Board imposed a safe stopping sight distance greater than the requirements of MassDOT (and the AASHTO industry standards) in making this finding.

149. The Board found that it was "impossible" for the applicant to obtain safe access and egress from the Project to Route 111.

150. These findings are not grounded in fact, are arbitrary and capricious, constitute an abuse of discretion and are made in bad faith, solely as a pretext for reducing the density of the Proposed Project, which is allowed as-of-right.

151. For the above stated reasons, the Court is requested to annul the Decision of the Board and to order issuance of Site Plan Approval for the Project.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment reversing the Decision of the Board and granting Site Plan Approval, and awarding the

Plaintiff its costs and attorney's fees, or grant such other relief as may be just and equitable.

Count VI

152. The Plaintiff repeats and realleges Paragraph Nos. 1 through 150, above, and incorporates the same herein by reference.

153. The Board found that adequate buffers would not be provided to screen the Project from abutters with regard to noise, light, visual impacts, dust and vibration, during the construction phase and after completion. The Board's finding was not based upon any evidence suggesting that the Project would not comply with applicable requirements regarding noise, light, visual impacts, dust and vibration.

154. These findings are not grounded in fact, are arbitrary and capricious, constitute an abuse of discretion, and are made in bad faith, solely as a pretext to reduce the density of the Proposed Project, which is allowed as-of-right.

155. For the above stated reasons, the Court is requested to annul the Decision of the Board and to order issuance of Site Plan Approval for the Project.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment reversing the Decision of the Board and granting Site Plan Approval, and awarding the Plaintiff its costs and attorney's fees, or grant such other relief as may be just and equitable.

Count VII

156. The Plaintiff repeats and realleges Paragraph Nos. 1 through 154, above, and incorporates the same herein by reference.

157. The Board found that the wells are "structures" as defined in the local by-

law.

158. The Board found that the wells are located in setback areas where “structures” are prohibited.

159. These findings are not grounded in fact, are arbitrary and capricious, constitute an abuse of discretion, and are made in bad faith, solely as a pretext for reducing the density of the Proposed Project, which is allowed as-of-right.

160. For the above stated reasons, the Court is requested to annul the Decision of the Board and to order issuance of Site Plan Approval for the Project.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment reversing the Decision of the Board and granting Site Plan Approval, and awarding the Plaintiff its costs and attorney’s fees, or grant such other relief as may be just and equitable.

Count VIII

161. The Plaintiff repeats and realleges Paragraph Nos. 1 through 159, above, and incorporates the same herein by reference.

162. The Board found that a portion of the Applicant’s property did not have the right to use Access Easement C.

163. The Board was without authority to render a decision which essentially involves purely private property rights.

164. The Board failed to take into account G.L. c. 89, §7, which allows success by first responders in any emergency.

165. The Board found that Access Easement C is not protected by the zoning freeze in effect.

166. The Board found that the proposed Priest Lane Emergency Access is inadequate.

167. These findings are not grounded in fact, are arbitrary and capricious, constitute an abuse of discretion, and are made in bad faith, solely as a pretext to reduce the density of the Proposed Project, which is allowed as-of-right.

168. For the above stated reasons, the Court is requested to annul the Decision of the Board and to order issuance of Site Plan Approval for the Project.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment reversing the Decision of the Board and granting Site Plan Approval, and awarding the Plaintiff its costs and attorney's fees, or grant such other relief as may be just and equitable.

Count IV

169. The Plaintiff repeats and realleges Paragraph Nos. 1 through 167, above, and incorporates the same herein by reference.

170. The powers of the Planning Board under Site Plan Approval are limited to the provisions of the Boxborough Planning Board Rules and Regulations.

171. The Board exceeded its authority in denying the Project because it exercised discretion normally associated with a special permit application.

172. The powers of site plan review were described by the Appeals Court in *Prudential Ins. Co. of Am. v. Board of Appeals of Westwood*, 23 Mass.App.Ct. 527, 534-535 (2004). The Court in *Prudential* held that such boards may: (1) reject a site plan that fails to furnish adequate information by the bylaw; (2) impose reasonable conditions in connection with plans approval; and (3) reject a site plan, that "although proper in form,

may be so intrusive on the needs of the public in one regulated aspect or another that rejection by the board would be tenable.”

173. The Board’s findings are not grounded in fact, are arbitrary and capricious, constitute an abuse of discretion, and are made in bad faith, solely as a pretext for reducing the density of the Proposed Project, which is allowed as-of-right.

174. For the above stated reasons, the Court is requested to annul the Decision of the Board and to order issuance of Site Plan Approval for the Project.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment reversing the Decision of the Board and granting Site Plan Approval, and awarding the Plaintiff its costs and attorney’s fees, or grant such other relief as may be just and equitable.

Count V

175. The Plaintiff repeats and realleges Paragraph Nos. 1 through 173, above, and incorporates the same herein by reference.

176. The Board’s denied the Applicant’s application for a stone wall permit because it required a modification of the Priest Lane Subdivision.

177. The Board’s finding that it lacked the authority to modify the Priest Lane Subdivision is inconsistent with applicable case law, is not grounded in fact, is arbitrary and capricious, constitutes an abuse of discretion, and is made in bad faith, solely as a pretext to reduce the density of the Proposed Project, which is allowed as-of-right.

178. For the above stated reasons, the Court is requested to annul the Decision of the Board and to order issuance of stone walls permit for the Project.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment

reversing the Decision of the Board and granting a stone wall permit, and awarding the Plaintiff its costs and attorney's fees, or grant such other relief as may be just and equitable.

Count VI

179. The Plaintiff repeats and realleges Paragraph Nos. 1 through 177, above, and incorporates the same herein by reference.

180. The Board's denial of the Applicant's application for stone walls special permit and site plan approval to construct a 100-unit elderly housing project consisting of 50 duplex structures was based on concerns articulated by the Board but unsupported by the evidence.

181. The Proposed Project complies with the zoning by-law and there was no credible evidence introduced at the hearing to demonstrate that the Project will be detrimental to the surrounding neighborhood, and there was no evidence introduced that there were issues with the site plan that could not be addressed through appropriate conditions.

182. The findings by the Board to deny the stone walls permit and Site Plan Approval show that the Board did not fairly weigh the evidence before it, was biased with regard to the application (particularly given the heavy local opposition), and prejudged the application, all in violation of Article 29 of the Massachusetts Declarations of Rights.

183. In particular, the Board's reliance upon a strongly negative recommendation from the reconstituted Boxborough Design Review Board after two strident and vocal opponents were appointed to the such board with the express purpose of derailing the Proposed Project, made one-year after an initial benign recommendation was

submitted by the Design Review Board, shows the bias and bad faith of the Board's decision.

184. The Board's bias and bad faith is also shown by the two improper executive sessions held by the Board, on March 5, 2019 and March 19, 2019, held before the Board voted on the Plaintiff's application, after being provided a letter by the Plaintiff objecting to numerous draft conditions prepared by the Board. The Applicant was thus deprived of the opportunity to hear the discussion of these draft conditions (and presumably the reasoning of the Board in rejecting to impose conditions and instead choosing to deny the Proposed Project) in a public meeting, as required by the Open Meeting Law.

WHEREFORE, the Plaintiff respectfully requests that the Court enter declaratory judgment reversing the Decision of the Board, awarding the Plaintiff its costs and attorney's fees, or granting such other relief as may be just and equitable.

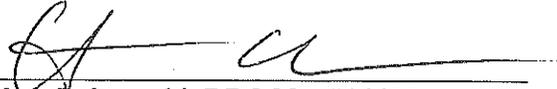
Prayer for Relief

For the reasons set forth above, the Plaintiff prays that this Honorable Court grant the following relief:

- * Determine that the denial by the Planning Board for a stone wall special permit and Site Plan Approval for the Project was in error.
- * Determine that Decision of the Board was arbitrary and capricious, erroneous, in excess of the authority of the Board, and was made in bad faith.
- * Award the Plaintiff its costs and attorney's fees.
- * Enter such other relief as may be just and appropriate.

Plaintiffs,
by their attorneys,

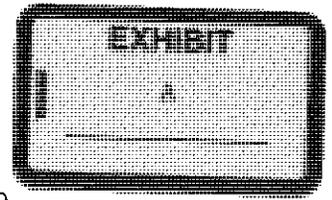
Date: May 18, 2018



Mark Bobrowski, BBO No. 546639
Paul Haverty, BBO No. 652359
Christopher J. Alphen, BBO No. 691813
Blatman, Bobrowski & Haverty, LLC
9 Damonmill Square, Suite 4A4
Concord, Massachusetts 01742
(978) 371-2226
mark@bbmatlaw.com
paul@bbmatlaw.com
chris@bbmatlaw.com



BOXBOROUGH PLANNING BOARD
29 Middle Road, Boxborough, Massachusetts 01719
Phone: (978) 264-1723 · Fax: (978) 264-3127
www.boxborough-ma.gov



John Markiewicz, Chair Abby Reip, Clerk Nancy Fillmore Eduardo Pontoriero Hongbing Tang

RECEIVED

MAY 21 2018

PLANNING BOARD
TOWN OF BOXBOROUGH

Filed with the Town Clerk
May 2, 2018

DENIAL DECISION
SITE PLAN APPROVAL & STONE WALL REMOVAL PERMIT
BOXBOROUGH TOWN CENTER, LLC
700, 750, & 800 Massachusetts Avenue

DECISION of the Planning Board (the Board) on the application of Boxborough Town Center, LLC (the Applicant) for Site Plan Approval and a Stone Wall Removal Permit to construct a 100-unit elderly occupancy residential development on several contiguous parcels of land located at 700, 750, and 800 Massachusetts Avenue (the "Application"). The Application was filed with the Planning Board on December 23, 2016.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted, and mailed as required by law, the Planning Board opened the public hearing on the application on January 23, 2017, and held continued sessions of the public hearing on February 27, 2017, March 20, 2017, May 15, 2017, June 26, 2017, September 11, 2017, October 2, 2017, October 16, 2017, November 27, 2017, January 8, 2018, February 5, 2018, March 5, 2018, and March 19, 2018, when it was closed. The Planning Board deliberated on the proceedings on April 3, 2018, April 10, 2018, April 23, 2018, and April 30, 2018. The following members of the Planning Board were present throughout the proceedings: John Markiewicz, Eduardo Pontoriero, Abby Reip, and Hongbing Tang.

After due consideration of the application, the record of the proceedings, the exhibits, the Town Planner's reports, and based upon the findings set forth herein, the Board voted 4 to 0 to **DENY** approval of the Site Plan and Stone Wall Removal Permit on April 10, 2018 pursuant to the following findings:

The following were tendered as exhibits:

- Exhibit A:** Planning Board Site Plan Approval Application with a Planning Board date stamp of December 23, 2016.
- Exhibit B:** Planning Board Stone Wall Removal Application with a Planning Board date stamp of December 23, 2016.

- Exhibit C:** Design Review Board Application dated December 22, 2016 with a Planning Board date stamp of December 23, 2016.
- Exhibit D:** "Site Plan For Enclave At Boxborough, 700-800 Massachusetts Avenue, Boxborough, Massachusetts" (Sheets 1 through 30) dated December 22, 2016 and revised through August 30, 2017, prepared by Stamski and McNary, Inc. with a Planning Board date stamp of September 5, 2017.
- Exhibit E:** "Site Plan In Boxborough, Massachusetts -- Fire Truck Turning Plan" (Sheets 1 and 2) dated August 30, 2017, prepared by Stamski and McNary, Inc. with a Planning Board date stamp of September 5, 2017.
- Exhibit F:** "Landscape Plan" (Sheets 1 through 9) dated December 22, 2016 and revised through August 30, 2017, prepared by ESE Consultants, Inc. with a Planning Board date stamp of September 5, 2017.
- Exhibit G:** "Highlight Plan -- Landscape Revision -- Enclave At Boxborough" dated September 1, 2017, prepared by ESE Planning with a Planning Board date stamp of September 5, 2017.
- Exhibit H:** "Boxborough Carriage Homes -- T. Hill -- Enclave At Boxborough, Right Hand" (Design Scopes: Bethel Wellesley, Bryn Athyn Wellesley, Granview Wellesley, and Bucknell Wellesley) dated April 6, 2017, prepared by Toll Architecture with a Planning Board date stamp of June 1, 2017.
- Exhibit I:** "Wastewater Treatment Plant Control Building -- Exterior Elevations" (Sheet A-3) dated February 13, 2013, prepared by Roth & Seelen, Inc. with a Planning Board date stamp of June 1, 2017.
- Exhibit J:** "Stow, Massachusetts, Regency In Stow -- Boxboro Road, Booster Pump Station Installation -- Architectural Plans, Elevations" (Drawing A-1) dated February 2017, prepared by Wright-Pierce with a Planning Board date stamp of June 1, 2017.
- Exhibit K:** "Boxborough Town Center Project -- Exterior Lighting Schedule" (11 pages) dated April 21, 2017 with a Planning Board date stamp of June 1, 2017.
- Exhibit L:** "Boxborough Town Center -- Exterior Building Lighting" dated September 8, 2017, prepared by Progress Commercial Lighting with a Planning Board date stamp of September 8, 2017.
- Exhibit M:** "Boxboro Street Lighting" (Sheets 1 through 4) dated May 1, 2017, prepared by PHILIPS with a Planning Board date stamp of June 1, 2017.

- Exhibit N:** “Stormwater Management Report For Enclave at Boxborough, 700-800 Massachusetts Ave, Boxborough, MA” dated December 22, 2016 and revised through August 31, 2017, prepared by Stamski and McNary, Inc. with a Planning Board date stamp of September 5, 2017.
- Exhibit O:** “Stormwater Operation and Maintenance Manual For Regency at Boxborough, 700-800 Mass Ave, Boxborough, MA” dated December 22, 2016, prepared by Stamski and McNary, Inc. with a Planning Board date stamp of December 23, 2016.
- Exhibit P:** “Traffic Impact and Access Study – Regency At Boxborough, Massachusetts Avenue” dated December 12, 2016, prepared by Bayside Engineering with a Planning Board date stamp of December 23, 2016.
- Exhibit Q:** “BRP WS-15 Report – Boxborough Town Center, LLC – Massachusetts Avenue – Boxborough, MA 01719 – Transmittal #: X273115” dated January 5, 2017, prepared by GeoHydroCycle, Inc.
- Exhibit R:** “Addendum to BRP WS-15 Report: Community Wells PW-1 and PW-2 – Boxborough Town Center, LLC – Massachusetts Avenue – Boxborough, MA 01719 – Transmittal #: X273115” dated April 12, 2017, prepared by GeoHydroCycle, Inc.
- Exhibit S:** “Fiscal Impact Analysis Report – Age-Restricted Carriage Home Community – In The Town of Boxborough, Middlesex County, Massachusetts” dated February 14, 2017, prepared by Hannah Mazzaccaro with a Planning Board date stamp of February 15, 2017.
- Exhibit T:** “Design Review Report – Enclave at Boxborough – 700, 750, & 800 Massachusetts Avenue” dated February 2, 2018, prepared by the Design Review Board with a Planning Board date stamp of February 2, 2018.
- Exhibit U:** Memorandum from Stamski & McNary, Inc. entitled “Site Plan Revision #2, Site Plan Approval – Plan Revision dated August 30, 2017, Two-family dwellings, reserved exclusively for elderly occupancy, Boxborough Town Center, LLC, 700, 750, & 800 Massachusetts Avenue” dated September 1, 2017 with a Planning Board date stamp of September 5, 2017.
- Exhibit V:** Memorandum from Green International Affiliates, Inc. entitled “Engineering Peer Review Services for Traffic Access at the Proposed ‘Regency at Boxborough’ at 800 Massachusetts Avenue” dated April 28, 2017 with a Planning Board date stamp of April 28, 2017.
- Exhibit W:** Memorandum from Bayside Engineering entitled “Regency at Boxborough, 800 Massachusetts Avenue” dated June 23, 2017 with a Planning Board date stamp of June 26, 2017.

- Exhibit X:** Memorandum from Green International Affiliates, Inc. entitled "Traffic Engineering Peer Review, 700, 750, and 800 Massachusetts Avenue" dated September 6, 2017 with a Planning Board date stamp of September 6, 2017.
- Exhibit Y:** Email from Jason Sobel of Green International Affiliates, Inc. entitled "700, 750, & 800 Mass Ave – sight distance follow-up" dated October 16, 2017.
- Exhibit Z:** "Fundamentals of Traffic Crash Reconstruction – Volume 2 of the Traffic Crash Reconstruction Series" by the Institute of Police Technology and Management with a Planning Board date stamp of October 17, 2017.
- Exhibit AA:** "Quantifying Driver Response Times Based Upon Research And Real Lift Data" by Jeffrey W. Muttart with a Planning Board date stamp of October 17, 2017.
- Exhibit BB:** Memorandum from Places Associates, Inc. entitled "Site Plan Review, Enclave at Boxborough aka Regency at Boxborough, Project No. 5249" dated September 11, 2017 with a Planning Board date stamp of September 11, 2017.
- Exhibit CC:** Letter from the Applicant (on Planning Board letterhead) entitled "APPLICANT RESPONSES – February 4, 2018" dated February 4, 2018 with a Planning Board date stamp of February 5, 2018.
- Exhibit DD:** "Facts About Blasting for Massachusetts Property Owners" by the Commonwealth of Massachusetts Department of Fire Services Division of Fire Safety with a Planning Board date stamp of October 2, 2017.
- Exhibit EE:** "Certificate Of The Secretary Of Energy And Environmental Affairs On The Expanded Environmental Notification Form" from the Executive Office of Energy and Environmental Affairs dated January 27, 2017.

FINDINGS OF FACT – GENERAL

1. As depicted on the Application, the project site consists of: 1) Assessor's Parcel #s 14-210-000 and 14-209-000, owned by the Applicant (the "BTC Parcel"); 2) Assessor's Parcel # 14-208-000, owned by Mane Realty Trust, John J. Lyons, Trustee (the "Mane Parcel"); 3) a portion of Assessor's Parcel #14-045-000, owned by Fal Bassett Realty Trust, Stuart H. Bleck, Trustee, and depicted as "Parcel A" on the Site Plan; and 4) an access easement to Stow Road across the land at 109-131 Stow Road, Assessor's Parcel #s 14-055-000 through 14-055-611, owned by the members of the Sheriff's Meadow Condominium Association, depicted as "Access Easement C" on the Site Plan (together, the "Project Site"). The Project Site does not include two parcels of land identified on the Site Plan as "Parcel B" and "Parcel C". Pursuant to the Application, Parcel A is under agreement and will be acquired by the Applicant and incorporated in the Project Site.

2. The Project Site is located entirely within the Town Center Zoning District, and also within the Wetlands and Watershed Protection District.
3. The Applicant achieved a zoning freeze with respect to a substantial portion, but not all, of the Project Site, by virtue of the filing of a preliminary subdivision plan filed with the Board on May 9, 2013, followed by the Board's endorsement of the subsequent definitive plan on April 28, 2014, which plan was recorded on April 24, 2015 with the Middlesex South Registry of Deeds as Plan No. 294 of 2015 (the "2014 Plan"). Neither Parcel A nor the land subject to the Access Easement was part of the land shown on the 2014 Plan. For those portions of the Project Site benefitted by the zoning freeze, the Planning Board applied the May 2012 version of the Zoning Bylaw to review this project for compliance.
4. The Applicant seeks Site Plan Approval under Section 8000 of the 2012 Zoning Bylaw and a Stone Wall Removal Permit under the Stone Walls Bylaw to construct 50 two-family dwellings (100 units of housing) reserved exclusively for elderly occupancy with an associated clubhouse with amenities, signage, private driveways, parking, public water supply, wastewater treatment, drainage, and site grading on the Project Site.
5. The Project Site contains approximately 2,519,642 square feet (57.8 acres), not including Parcel A.
6. The subject properties contain significant wetlands and the proposed internal roadway would cross a portion of this wetland, which requires a filing with the Conservation Commission.
7. Since the proposed project is subject to the 2012 Zoning Bylaw, the proposed project is also subject to the regulations of the Wetlands and Watershed Protection District which requires a Special Permit filing with the Zoning Board of Appeals.
8. The proposed project requires a review by the Massachusetts Environmental Policy Act (MEPA) Office.
9. The proposed project requires a Massachusetts Department of Transportation (MassDOT) Permit to Access a State Highway (Route 111/Massachusetts Avenue).

SITE PLAN APPROVAL -- SECTION 8000 OF THE ZONING BYLAW

The Applicant has submitted plans consistent with Sections 8005 and 8006 of the Boxborough Zoning Bylaw and the Site Plan Approval Rules & Regulations. Pursuant to Section 8007 of the Zoning Bylaw, "site plan approval shall be granted upon determination by the Planning Board that new buildings or other site alterations have been designed in the following manner, after considering the qualities of the specific location, the proposed land use, the proposed building form, grading, egress points, and other aspects of the development." Section 8007 sets forth nine criteria that a site plan must satisfy to merit approval. The Planning Board reviewed the Project

for compliance with each of these criteria, and its findings with respect to such review are as follows:

Criterion 1. The proposal shall comply with the purpose and intent of the Zoning Bylaw and with existing local and regional plans.

Findings:

The Purpose and Intent of the Town Center Zoning District

1. The Planning Board's report to the 1989 Annual Town Meeting regarding the initial proposal for the creation of a Town Center Zoning District indicated the Planning Board preferred "the development of a Town Center where buildings are clustered around a common open area." The report went on to state the Planning Board believed the proposed "bylaw provides a workable framework for the establishment of a Town Center with small scale buildings incorporating a mix of uses from housing to office and commercial establishments."
2. The Town Center Zoning District in the 2012 Zoning Bylaw calls for the densest development of any zoning district in Boxborough. This is evident as the zoning district has the smallest minimum lot size requirement, the shortest amount of minimum frontage, the narrowest amount of minimum lot width, and the smallest minimum setback requirements of any zoning district.
3. The Town Center Zoning District is intended to create a mixed use setting by restricting the types of residential development which are permitted, while at the same time allowing for a number of as-of-right commercial and office uses. Section 4301 of the 2012 Zoning Bylaw specifically indicates the intent of the Town Center Zoning District is to "promote mixed uses in the Town Center District" by only allowing single-family dwellings "by Special Permit in conjunction with commercial development in a Mixed Use development."
4. The Town Center Zoning District is the only zoning district which requires a minimum amount of open space; a dimensional requirement which is not mandated in any other zoning district.

Conclusion: The intent of the Town Center Zoning District was to create a real Town Center with mixed use buildings and a park-like common area in a colonial village style setting that would bring Boxborough townspeople together. The Project does not meet these intentions, and, in light of the Applicant's refusal to consider design alternatives, no reasonable conditions can be devised to bring the Project into compliance. While there would be a sizable portion of the property which would remain undisturbed, this was not a decision made by the Applicant to preserve these areas as open space. This determination was necessitated by the requirements of the Town's Wetland Bylaw which prohibits land disturbance in the wetlands and their 100 foot buffer areas. This required open space area is

very different from anything which would resemble a common open area which is typically found in a more traditional New England Town Center.

Affordable Housing

1. The Town's Master Plan (Boxborough2030) and Housing Production Plan both identify a need for low to moderately priced senior housing units in the community. The residents of Boxborough created Boxborough2030 for the Town anchored by its vision statement: "Boxborough's Vision: A Rural, Engaged Community for All. Boxborough shall maintain its traditional values of rural open space, a first-rate educational system, agricultural and conservation lands, and historical roots, while fostering a balanced economic environment and enhancing a close-knit sense of community for all generations."
2. MetroFuture, the Metropolitan Area Planning Council's (MAPC) Regional Plan for greater Boston, has one of its housing goals state that "an increasing share of housing in each municipality will be affordable to working families and fixed-income seniors."
3. During the public hearing process for the proposal, a member of the Applicant's project team indicated each unit would sell for approximately \$500,000. It should be noted here that units in a very similar project (Regency at Stow) in the adjacent community of Stow, Massachusetts, being constructed by the same entities (Applicants, owners, and other members of the project team), are selling for between \$500,000 and \$700,000, but in some instances, even more. This pricing falls closer to the "high priced" senior housing category, which is not a type of housing needed in the community.
4. Additionally, the Project does not provide any deed restricted affordable units. While the Town is just over its 10% affordable housing unit inventory requirement, the community needs to plan for the future to maintain this requirement and the project as proposed only detracts from this state mandate. The Applicant refused to consider the Board's request for inclusion of affordable housing units.

Conclusion: The Project is not consistent with Boxborough2030 or the Housing Production Plan, which call for more moderately priced senior housing units in the community and more diverse housing options in general. The Project as proposed negates the premise to "maintain its traditional values of rural open space" as predicated in Boxborough2030. The \$500,000 price point for units in the Project would not be readily affordable to many fixed-income seniors in the area. The Project does not meet these intentions, and, in light of the Applicant's refusal to consider any changes in affordability of units, no reasonable conditions can be devised to bring the Project into compliance.

Section 1100 of the 2012 Zoning Bylaw: Purpose

1. **Lessen Congestion in the Streets.** The Project would increase, not lessen, congestion in the streets by adding a significant number of vehicles to the roadways in town. One hundred homes will be clustered tightly together on a project site consuming

approximately 75% of the entire land area of the Town Center Zoning District. All of the buildings are closely packed, side by side, with each unit containing two or three bedrooms and two car garages. It is anticipated that households may include two people (or potentially more) plus a caregiver (even if only during the day) and, as such, this may lead to two or three cars per dwelling unit traveling each day. This could in turn generate upwards of 200 to 300 cars for the entire proposed development.

2. Prevent Overcrowding of Land. The Project would increase the overcrowding of land and create an undue concentration of population. Construction of 100 dwelling units, access roadways, a public water supply, a wastewater treatment facility, a swimming pool, and other amenities on a property in the Town Center Zoning District is disproportionate to the existing buildings in the District. Specifically, the Project Site is bordered by single-family dwellings along its western, southern, and southeastern sides, and two senior housing developments to the east (Sheriff's Meadow and Tisbury Meadow), located entirely within the Town Center Zoning District. These existing senior housing developments contain single story, two bedroom, and one-car garage units, which are dramatically different from what the Applicant has proposed.
3. Appropriate Use of Land. The purpose and intent of the Town Center Zoning District was to create the development of a Town Center where small scale buildings incorporate a mix of uses including housing, office space, and commercial establishments, centered around a common open area. The Town Center Zoning District, including the Project Site is the geographic center of the community on the most highly traveled roadway in the Town. The Project would be a private residential community with no commercial or office space provided, and thus is not the most appropriate use of this land. Based on the above, the Board finds the proposed plan does not comply with the purpose and intent of the Zoning Bylaw or with existing local and regional plans.

Conclusion: The Project is inconsistent with the purposes of the Zoning Bylaw as set forth in Section 1100. It proposes a dense residential development where mixed-use is desired, and is inconsistent with the scale of existing uses in the Town Center Zoning District. The Project does not meet these purposes, and, in light of the Applicant's refusal to allow for mixed-use or to amend the design of the Project to reflect the intent of the Bylaw and as exemplified by existing uses, no reasonable conditions can be devised to bring the Project into compliance.

Criterion 2. The development shall be integrated into the existing terrain and surrounding landscape and shall be designed to protect abutting properties and community amenities. To the extent possible, building sites shall be designed to minimize the use of wetlands, steep slopes, floodplains, hilltops; minimize obstruction of scenic vistas from publicly accessible locations; preserve unique natural, scenic and historic features; minimize tree, soil and vegetation removal; and maximize open space retention.

Findings:

1. In examining the proposed Site Plan and after conducting grading calculations¹ along the proposed internal access roadway, the Board notes the following significant proposed grade changes:
 - a. Site Plan Sheet 18 of 30 shows over a 560 foot long length of fill with a 6.33 foot height increase (sta. 22+0) compared to the existing grades along the entry roadway.
 - b. Site Plan Sheet 19 of 30 shows over a 400 foot long length of fill with an 8.76 foot height increase (sta. 5+50), and an over 200 foot long cut with a 5.49 foot height decrease (sta. 2+50) along the north loop roadway.
 - c. Site Plan Sheet 20 of 30 shows over a 300 foot long length of fill with a 6.72 foot height increase (sta. 16+00).
 - d. Site Plan Sheet 21 of 30 shows over a 370 foot long cut with a 6.16 foot height decrease (sta. 5+50) and a 160 foot long length of fill with a 12.71 foot height increase (sta. 0+00) along Private Drive C.
 - e. Site Plan Sheet 22 of 30 shows over a 180 foot long length of fill with an 11.28 foot height increase (sta. 7+50) along the road connecting to Stow Road.
 - f. Site Plan Sheet 23 of 30 shows over a 160 foot long cut with a 6.19 foot height decrease (sta. 0+25) along the road connecting to Priest Lane.

Please note the above elevation changes compare the proposed roadway's finish grades to the existing grades at the site.

2. The Board finds excessive retaining walls are proposed beyond a normal range in order to build the development. When adding the length of all these retaining walls together as shown on plans, there is a total of 2,680 linear feet of retaining walls. In the New England climate, even a very low retaining wall needs to have 4 foot deep footings constructed underground below the frost line. A number of the tall retaining walls are at the stormwater management areas and along the property lines in order to accommodate significant grading changes. Examples of these retaining walls are as follows:
 - a. Site Plan Sheet 5 of 30 shows a 160 foot long retaining wall at Stormwater Management Area 1 and an 80 foot long retaining wall on the east side of the entry road. The sheet also shows a 50 foot long retaining wall at the edge of the clubhouse patio.
 - b. Site Plan Sheet 6 of 30 shows a 140 foot long retaining wall proposed at the sediment forebay of Stormwater Management Area 2 and another 140 foot long retaining wall

¹ All lengths discussed under Criterion 2 of this decision are approximate measurements which used the scale bar shown on the provided plans.

at Stormwater Management Area 3 at the back of Building 17. The sheet also shows an 80 foot long retaining wall on the east side of Building 2.

- c. Site Plan Sheet 7 of 30 shows a 200 foot long retaining wall with a height of 10 feet proposed for Stormwater Management Area 4 at the back of Building 15. A 180 foot long retaining wall is also proposed for Stormwater Management Area 4 at the west side of Building 18. These proposed tall retaining walls with fences are approximately 20 feet away from the adjacent senior housing developments. This sheet also shows a 180 foot long retaining wall proposed for Stormwater Management Area 6 at the back of Buildings 19 and 20. It also shows a 110 foot long retaining wall at the back of Building 39, very close to the property line. Additionally, the sheet also shows a 55 foot long retaining wall on the north side of Building 21.
 - d. Sheets 6 through 8 show approximately 45 foot long retaining walls at Buildings 5, 6, 10, 11, 13, 18, 19, 20, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 42, 43, 45, 46, and 48.
3. According to the proposed roadway construction detail on Site Plan Sheet 26 of 30 (per MassDOT standards), it requires a minimum of 18" of subbase and 3-6" gravel underneath the 3 ½" bituminous concrete courses, totaling 2 extra feet of excavation for cut conditions.
 4. The Project will require the blasting of 25,000 cubic yards by the Applicant's estimate.
 5. The Project Site is currently forested land and wetlands. Vegetation and trees will be clear-cut on over approximately 30 acres of the Project Site to accommodate construction.
 6. The dramatic grade changes proposed will result in steep slopes and require deep foundations and long retaining walls anchored well underground. The dwelling units must be tied into the internal access roadway, and the Site Plan depicts densely packed contour lines surrounding and between each building. To tie the proposed site reconstruction to the existing property lines, 100-foot long retaining walls and extensive steep slopes are required, the construction of which will generate an enormous amount of engineering earthwork, cut and fill activities, and the destruction of significant amounts of existing vegetation.

Conclusion: The Project is not integrated into the existing terrain and surrounding landscape, and will not protect the abutting properties from noise, odors, sound pollution, or light pollution. As disclosed by the Site Plan, construction will require tremendous grading and massive earthwork, including significant ledge removal and blasting, which will create adverse environmental impacts and directly affect the surrounding neighborhood, especially the adjacent senior housing developments, for a prolonged period of time.

Further, the Project as proposed will have a substantial negative impact on the environmental quality of the surrounding area and the Town. The extensive grading, blasting, transportation

of cut and fill, construction of retaining walls and steep slopes, and clear-cutting of trees and vegetation required to build the Project over the five-year period estimated by the Applicant will increase the potential for soil erosion, remove natural habitat, require otherwise unnecessary stormwater management infrastructure, and result in significant sustained negative impact on the Town Center Zoning District and the Town. It is not designed to minimize tree, soil, or vegetation removal, nor the extreme grading of steep slopes. It does not maximize open space retention on the property. In light of the Applicant's refusal to consider changes to the design of the Project to reduce the scale and allow for less environmental impact and more effective integration into the existing landscape, no reasonable conditions can be devised to bring the Project into compliance.

Criterion 3. Architectural style shall be in harmony with the prevailing character and scale of buildings in the neighborhood and the Town through the use of appropriate building materials, screening, breaks in the roof and wall lines, and other architectural techniques. Proposed buildings shall relate harmoniously to each other.

Criterion 9. Architectural Standards in the Town Center District Only. Materials shall be harmonious with existing buildings. In the interest of maintaining a sense of history, vertical siding shall be discouraged and synthetic siding shall imitate the character and dimensions of traditional clapboards. Masonry block buildings should be faced in an appropriate material, such as horizontal wooden siding or brick of a traditional red color. Buildings shall fit in with existing architecture in terms of height, massing, roof shapes, and window proportions.

Findings:

1. Abutting the Project Site to the east, within the Town Center Zoning District, are two, recently-constructed elderly residential developments known as Sheriff's Meadow and Tisbury Meadow. Each is made up of single-story, two-family structures containing one-car garages, having approximately 1,300 to 1,500 square feet per unit, two-bedrooms per dwelling unit, and main entrance doors located on the front of each dwelling.
2. The remainder of the Project Site is surrounded predominantly by single-family homes each separated from the other by vegetation and significant open space.
3. The Applicant has proposed several styles of building, as depicted in Exhibit H. Those styles are similar, in the Planning Board's judgement, to those utilized by the Applicant in constructing a senior residential development (the Regency at Stow) in the adjacent community of Stow, Massachusetts.
4. The Applicant does not have a plan, however, for where each specific style of building will be located, because this will be determined by the desires of each buyer. Since, this makes it impossible for the Board to determine whether the proposed buildings will relate harmoniously to each other, the Board finds the Applicant has failed to furnish adequate information for this aspect of the Project.

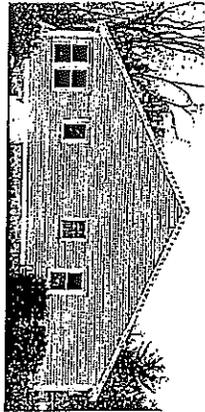
5. The residential buildings proposed by the Applicant will be two-story, two-family structures containing two-car garages, with main entrance doors on the sides of each dwelling unit. The mean roof height of each building from grade would vary between 25.75 and 28.5 feet, with the gable style roof peaks extending even higher. Unit size would range anywhere from approximately 1,627 to 2,676 square feet depending upon each particular unit type, and whether or not a buyer would prefer to have the basement of their unit finished as living space. Each building would have vinyl windows by Silverline from their Premium Single Hung 4900 series with integral casing and colonial grill patterns. Siding would consist of a Certainteed Encore Vinyl with an Environmental Stoneworks manufactured stone veneer base.

6. The following images display the visual differences between the existing buildings in Sheriff's Meadow and Tisbury Meadow and the elevations provided by the Applicant for the Project:

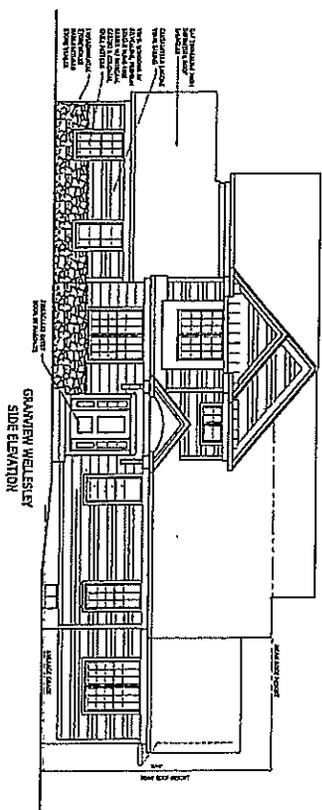
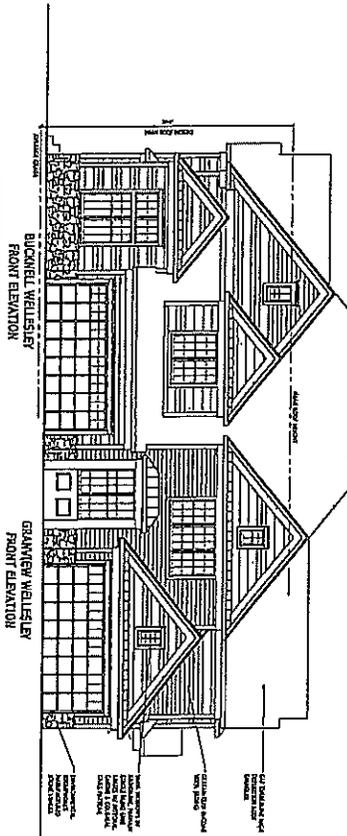
SURROUNDING NEIGHBORHOOD - SHERIFF'S MEADOW



SHERIFF'S MEADOW DUPLEX FRONT VIEW



SHERIFF'S MEADOW DUPLEX SIDE VIEW



7. The prevailing character of the neighborhood and the Town is “scenic, historic, and rural.”
8. The Board adopts the Design Review Board’s comments and recommendations outlined in their February 2, 2018 Design Review Report in their entirety. In particular, the Board wanted to highlight the specific items set forth below:
 - a. The Board finds that in order to meet the Site Plan Review criteria, as articulated in the Design Guidelines, the Project should incorporate different styles of buildings, colors, spacing, and variations to ensure consistency with Boxborough’s general scenic, historic, and rural character. The Site Plan must clearly identify where each style of building would be located, the specific primary color for each building, and the total number of each building style and primary color which will be created in the proposed development;
 - b. Further, the density should be decreased and the spacing between the buildings increased significantly, in order to bring the Project in harmony with the prevailing character and scale of buildings in the neighborhood and the Town.

Conclusion: The proposed architectural style for the project is not in harmony with the prevailing character of the neighborhood and Town, or with the scale of the other buildings in the Town Center Zoning District, in particular the abutting senior housing developments. The Project further fails to protect and enhance the visual quality of the Town and specifically the Town Center Zoning District, which is intended to define the rural character of the Town of Boxborough. The proposed 100 dwelling units will be clustered together in a relatively small amount of buildable land, resulting in a high concentration of people and cars. In some instances, the buildings will be located so close together they will likely appear to be one solid façade along the streetscape instead of stand-alone, two-family dwellings. This type of relationship between buildings does not fit within the neighborhood as defined by existing properties in the Town Center Zoning District, especially the units at Sheriff’s Meadow and Tisbury Meadow. Those senior housing developments are single-story buildings with wider separation between them and are vastly different in terms of their massing and density. Further, the grade changes, setbacks, rear elevations, and structures of the Project are overpowering and clearly not in harmony with the site, and are intimidating to the abutters. The effect is to create a private compound in the Town Center with no mixed use development consistent with intended Town Center development. Therefore, the Board finds the Project does not meet Criterion 3 or Criterion 9 of Section 8007, and in light of the Applicant’s refusal to consider changes to the design of the Project, no reasonable conditions can be devised to bring the Project into compliance.

Criterion 4. Adequate measures shall be proposed to prevent pollution of surface and ground water, to minimize erosion and sedimentation, to prevent changes in groundwater levels, to minimize potential for flooding, and to provide for stormwater drainage consistent with the functional equivalent of the Planning Board’s Subdivision Rules & Regulations.

Findings:

1. Access to infiltration basins Stormwater Management Area (SMA) 4, SMA 6, and SMA 8 is inadequate, pursuant to the September 11, 2017 report of the Town's Consulting Engineer.

Conclusion: The stormwater system is inadequate as designed.

Criterion 5. Roadways and circulation system shall be designed to promote convenience and safety for both pedestrians and vehicles. Access roads by which the proposed development is reached shall be adequate in width, grade and construction to carry, without danger or congestion, the additional traffic that is generated from the development.

Findings:

1. The entrance/exit to the Project is from Route 111/Massachusetts Avenue.
2. The location of this entrance/exit driveway within the Project Site is limited by wetlands to the east and the Project Site boundary to the west.
3. Route 111/Massachusetts Avenue is a substantial thoroughfare in Boxborough providing access to Route 2 on the east and Interstate 495 on the west, with heavy vehicular traffic in size and amount, including school buses, large trucks, and other commercial vehicles.
4. The proposed location of the entrance/exit driveway conflicts with the driveway of a landscaping business directly across Route 111/Massachusetts Avenue to the north, while 60 feet further to the east is another driveway for a highly active automotive repair and towing business. Each of these businesses has a significant amount of traffic going to and from their properties each day.
5. The section of Route 111/Massachusetts Avenue in question has no shoulders and is lined by trees and other vegetation, making it particularly susceptible to icing and reduced visibility in winter and at night. From the west it slopes downwards to the Project Site at a 4% grade.
6. The Boxborough Police Chief has expressed his concerns about the safety of the proposed Project entrance as proposed, citing existing traffic and limited visibility.
7. The Project will be home to older drivers (seniors 55 years of age or older) more likely to have impaired vision and slower reaction speeds. The U.S. Department of Transportation Federal Highway Administration produced a publication which speaks to this item entitled "Travel Better, Travel Longer – A Pocket Guide to Improve Traffic Control and Mobility for Our Older Population" (publication identification FHWA-OP-03-098). Within that document, the Federal Highway Administration states "Older drivers experience inordinate difficulties when making left turns and may need extra guidance to know when a left turn is permissible."

8. The speed limit on Route 111/Massachusetts Avenue, a State highway, is 40 miles per hour, but the 85th percentile speed of travel on this roadway is 46 miles per hour for eastbound traffic and 44 miles per hour for westbound traffic.
9. The minimum safe stopping distance required for vehicles approaching the entrance driveway based on the 85th percentile speed of travel is 398 feet for vehicles approaching from the west and 328 feet for vehicles approaching from the east.
10. Based on the above factors, the Planning Board finds the safe stopping distance for the Project entrance/exit driveway should be the longer Decision Sight Distance requirements as defined by MassDOT.
11. Due to the limitations of the Project Site, the vegetation on abutting properties, and the topography and curvature of Route 111/Massachusetts Avenue, the Project's primary entrance/exit is not and cannot be located so as to provide the necessary safe stopping distance for vehicles traveling east on Route 111/Massachusetts Avenue, either at the minimum recommended safe stopping distance for the 85th percentile speed of travel, or at the longer Decision Sight Distance.
12. The Applicant has refused to seek and/or not obtained permission to alter the design/topography of Route 111/Massachusetts Avenue, or obtained sight easements or other off-site means of providing adequate safe stopping distance.

Conclusion: The Project does not and cannot, due to on-site and off-site limitations making safe stopping distance impossible to obtain, provide safe access or egress to the Project Site from Route 111/Massachusetts Avenue. Accordingly, the Project does not meet Criterion 5 of Section 8007, and no reasonable conditions can be devised to bring the Project into compliance.

Criterion 6. Adequate buffers shall be provided to protect abutting properties from lighting, sight, sound, dust, and vibration.

Findings:

1. In the south, southwestern, and southeastern portions of the project site, the existing vegetation, primarily trees, will be removed almost up to the property line to provide for Project construction. The proposed buildings for the Project would be pressed against the minimum setback lines for the zoning district, and with so many buildings squeezed so tightly together, noise, odors, and light from each of the dwellings units would quickly multiply to impact abutting properties.
2. The proposed screening along the south, southwestern, and southeastern property lines is inadequate in light of the proposed density of the residential buildings.

3. The placement of the wastewater facility will not protect abutters from odors, sight, or light pollution emitting from this building.

Conclusion: Therefore, based on the above, the Board finds adequate buffers would not be provided to protect abutting properties from lighting, sight, sound, dust, and vibration, both during construction and once the project is completed.

Criterion 7. Adequate facilities shall be provided for water supply and for handling and disposal of waste and other production by-products.

Findings:

1. To provide drinking water for the Project, the Applicant installed two public water supply wells in the northwest portion of the Project Site, immediately adjacent to the boundary separating the BTC Parcel and Parcel A, as depicted on the Site Plan.
2. The wells are "structures" within the meaning of that term as defined in the Zoning Bylaw, and are located within the required 20 foot side yard setback for lots in the Town Center Zoning District.
3. The Applicant has expressed an intent to include Parcel A as part of the Project Site, but has not demonstrated title or right to title to Parcel A.

Conclusion: The public water supply wells for the Project are located within the required side yard setback from existing lot lines in violation of the Zoning Bylaw and without permission from the Town. Accordingly, the Project does not have adequate water supply for the use.

Criterion 8. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment.

Findings:

Access Easement C: Overburdening

1. The Fire Chief has indicated, and the Planning Board so finds, that one primary entrance/exit roadway and two emergency access roadways are necessary for fire prevention and emergency response service measures serving the Project.
2. The Site Plan proposes an emergency access roadway serving the Project extending from the Project Site through a 50-foot wide access easement (Access Easement C) over the adjoining Sheriff's Meadow Condominium property to Stow Road.
3. Access Easement C was established by reservation in the deed dated April 14, 1995, and recorded with the Middlesex South Registry of Deeds in Book 25286, Page 52. By its terms, the easement is made appurtenant to and benefits other land of the Grantor (Town Center Limited Partnership, the predecessor in interest to the Applicant).

4. The Mane Parcel, which makes up a northwest-most corner of the Project Site and includes the proposed main access to the Project from Route 111/Massachusetts Avenue, is not benefitted by Access Easement C. It was not part of the land owned by the Applicant's predecessor in title when Access Easement C was created as appurtenant to that land, and no such easement has ever been granted to its owner.

Conclusion: Access Easement C is not available for use as part of the Project. Access to the Project must utilize the Mane Parcel, and persons using such access are not entitled to use of Access Easement C. Such use would constitute overburdening of Access Easement C. Accordingly, the Project as proposed does not have adequate access for emergency purposes, and no condition can be devised to bring the Project into compliance.

Access Easement C: Plan Freeze

1. Access Easement C is not located on the land shown on the 2014 Plan.
2. Under the current Zoning Bylaw, use of land within the Town Center Zoning District for one or more two-family dwellings reserved exclusively for elderly occupancy requires a Special Permit.
3. Use of Access Easement C for emergency access is integral to the Project.

Conclusion: Use of Access Easement C is not entitled to the zoning freeze applicable to the land shown on the 2014 Plan. The Applicant has neither applied for nor obtained the required Special Permit for use of this land to serve the Project. Accordingly, the Project as proposed does not have adequate access for emergency purposes.

Priest Lane Emergency Access

1. The Site Plan proposes a secondary emergency access roadway extending southwesterly from an access road cul-de-sac through the Project Site to its frontage on Priest Lane, a cul-de-sac roadway serving an adjacent subdivision (the "Priest Lane subdivision").
2. Access to Priest Lane is governed in part by the terms of the Definitive Subdivision Plan decision for the adjacent Priest Lane subdivision recorded with the Registry in Book 30673, Page 591. Pursuant to Finding of Fact #8 in this decision: "all stonewalls on-site shall be preserved except for the stone wall opening required for the construction of the driveway on lot C-4 as shown on the site plan (Sheet No. 5)."
3. The stone walls governed by the condition are shown on that definitive subdivision plan for the Priest Lane subdivision recorded as Plan No. 973 of 1999.
4. Use of the Priest Lane emergency access requires the removal of one of the stone walls preserved by the condition of approval for the Priest Lane subdivision.

5. The Applicant has failed to seek or obtain a modification of the Priest Lane subdivision approval allowing for removal of an existing stone wall subject to the conditions of that approval.

Conclusion: The Applicant has failed to obtain the requisite approval for use of the proposed Priest Lane emergency access. Accordingly, the Project as proposed does not have adequate access for emergency purposes.

Alternate Access

1. Section 4800 of the Zoning Bylaw provides that a Special Permit must be obtained "in the case where an applicant requests to access a lot through a portion of the same lot which is not the legal frontage for said lot."
2. The legal frontage for the Project Site is Route 111/Massachusetts Avenue, and the Project includes two emergency access roadways that obtain access to the Project through Stow Road and the eastern property line of the Project Site (Access Easement C) and through Priest Lane through the Project Site's frontage on that road (Priest Lane Access).
3. The Applicant has not sought or obtained the requisite Special Permit to allow for access to the Project Site by way of the two emergency access roads, neither of which access the Project Site through its legal frontage.

Conclusion: The Applicant has failed to obtain the requisite Special Permits for use of the two proposed emergency access roads as alternative access pursuant to Section 4800. Accordingly, the Project as proposed does not have adequate access for emergency purposes.

COMPLIANCE WITH THE STONE WALLS BYLAW – A GENERAL BYLAW IN THE TOWN OF BOXBOROUGH

The Applicant is seeking a Stone Wall Removal Permit to create an opening in the stone wall at the north end of Priest Lane to construct an emergency access roadway to the Project Site.

That request is denied based upon the finding set forth more fully above that a modification of the conditions of approval for the Priest Lane subdivision is required authorizing such removal.

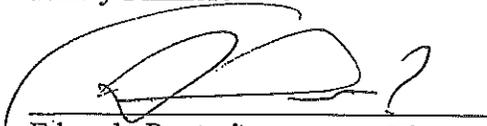
Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A and shall be filed within twenty (20) days after the date of filing of the above referenced Decision with the Town Clerk.

Witness our hands this 30th day of April, 2018:

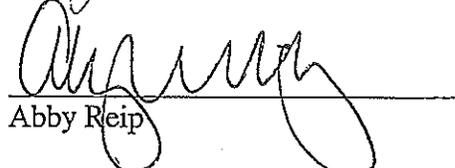
BOXBOROUGH PLANNING BOARD:

Nancy Fillmore

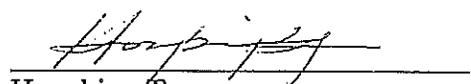
John Markiewicz



Eduardo Pontoriero

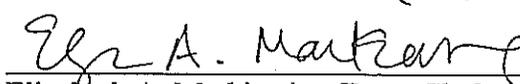


Abby Reip



Hongbing Tang

Received:



Elizabeth A. Markiewicz, Town Clerk

May 2, 2018
Date Filed

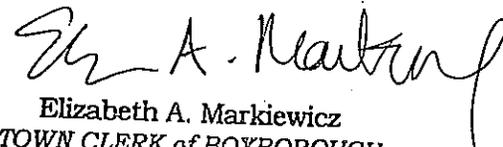
TO WHOM IT MAY CONCERN

I, Elizabeth A. Markiewicz, hereby certify the 20-day appeal period on this Decision has expired, and no appeals have been filed with this office.

Elizabeth A. Markiewicz, Town Clerk

Date

A true copy, attest:


Elizabeth A. Markiewicz
TOWN CLERK of BOXBOROUGH



BOXBOROUGH PLANNING BOARD
29 Middle Road, Boxborough, Massachusetts 01719
Phone: (978) 264-1723 · Fax: (978) 264-3127
www.boxborough-ma.gov

John Markiewicz, Chair Abby Reip, Clerk Nancy Fillmore Eduardo Pontoriero Hongbing Tang

Filed with the Town Clerk
May 2, 2018

DENIAL DECISION
SITE PLAN APPROVAL & STONE WALL REMOVAL PERMIT
BOXBOROUGH TOWN CENTER, LLC
700, 750, & 800 Massachusetts Avenue

DECISION of the Planning Board (the Board) on the application of Boxborough Town Center, LLC (the Applicant) for Site Plan Approval and a Stone Wall Removal Permit to construct a 100-unit elderly occupancy residential development on several contiguous parcels of land located at 700, 750, and 800 Massachusetts Avenue (the "Application"). 750 and 800 Massachusetts Avenue are owned by the Applicant and known as Assessor's Parcel #s 14-210-000 and 14-209-000. 700 Massachusetts Avenue is owned by Mane Realty Trust (John J. Lyons, Trustee) and known as Assessor's Parcel # 14-208-000. This Decision is in response to an application filed under Section 8000 of the 2012 Boxborough Zoning Bylaw, the Site Plan Approval Rules & Regulations, and the Boxborough Stone Walls Bylaw by the Applicant on December 23, 2016.

The Board opened the duly noticed public hearing on the application on January 23, 2017, and held continued sessions of the public hearing on February 27, 2017, March 20, 2017, May 15, 2017, June 26, 2017, September 11, 2017, October 2, 2017, October 16, 2017, November 27, 2017, January 8, 2018, February 5, 2018, March 5, 2018, and March 19, 2018, when it was closed. The Board deliberated on the proceedings on April 3, 2018, April 10, 2018, April 23, 2018, and April 30, 2018. The following members of the Board were present throughout the proceedings: John Markiewicz, Eduardo Pontoriero, Abby Reip, and Hongbing Tang.

After due consideration of the application, the record of the proceedings, the exhibits, the Town Planner's reports, and based upon the findings set forth within the Decision, the Board voted 4 to 0 to **DENY** approval of the Site Plan and Stone Wall Removal Permit on April 10, 2018 pursuant to the findings stated within the Decision.

Full copies of the Decision can be reviewed in the Town Clerk or Planning Offices during regular business hours. Appeals, if any, shall be made within twenty (20) days of the filing date of this Decision with the Town Clerk in accordance with MGL Chapter 40A, Section 17.

Copies to:
Applicant
Abutters
Town of Acton
Town of Harvard
Town of Littleton
Town of Stow