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goulston&storrs
counsellors at law

Peter L. Tamm
ptamm@goulstonstorrs.com
(617) 574-7891 (tel)
(617) 574-7517 (fax)

December 22, 2011

Sudbury Board of Appeals
278 Old Sudbury Road
Sudbury, MA 01776
Attn: Elizabeth Quirk, Chairperson

Re: Johnson Farm - Request Waivers to Local Bylaw and Restriction

Dear Chairperson Quirk:

We are in receipt of the letter by Paul J. Haverty, of Regnante, Sterio & Osborne LLP, dated November 15, 2011, in connection with the above-referenced project. In response to Attorney Haverty's request for clarification and/or additional information, we have supplemented and amended the waiver list that was provided with the Chapter 40B Comprehensive Permit Application for the Residences at Johnson Farm (the "Project"). Please find enclosed herewith an updated waiver list for the Board's consideration. Those waivers that were identified as procedural only (and therefore are subsumed automatically into Chapter 40B procedures) have been removed from the waiver list and only waivers from substantive local regulations are included. As is contemplated by the Comprehensive Permit Process, as the Project remains under review, the list of waivers provided may need additional modification or amendment to reflect accurately the requirements of development pursuant to GL c. 408. As such, the enclosed waiver list remains subject to further review and update.

Please let us know if you have any further questions. Thank you.

Sincerely,

Peter L. Tamm /mw
Peter L. Tamm

PLT:mjm

cc: Paul J. Haverty, Regnante, Sterio & Osborne LLP
Ms. Jody Kablack, Town Planner

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The list below is an updated version of the required waivers necessary from applicable local bylaws and regulations, in order to construct the Residences at Johnson Farm development. This list is still subject to modification based on the advancement of project permitting.

I. TOWN BYLAWS

Section	Subject	Requirement	Requested Waiver / Project Applicability
A. ARTICLE IX - Zoning			
2210	Structures on a Lot	One (1) principal structure per residential Lot.	Allow for 10 principal structures within Project, constructed on one Lot.
2230 and App. A	Use	Multi-family housing is not an allowed use in A-Res Zone.	Allow for multi-family use within A-Res Zone per MGL Ch. 40B.
2310	Accessory Use	Any use not allowed in the district as a principal use is also prohibited as an accessory use. Rental office and WWTP not identified as allowed principal uses.	Allow accessory use for rental office and WWTP, incidental to the Project.
2322 and 2324	Trailers	Trailers...shall not be used...nor shall such trailers be stored or parked on any premises in a residence district...	Allow trailer to be used on site during construction.
2620 and App. B	Height	Maximum building height of 2.5 stories and 35'.	Allow for 3-story, 45' building height as shown on Preliminary Site Plans for the Project.
3110, 3111, and 3120	Parking Standards	2 spaces per dwelling unit.	Allow for Project to provide 1.5 parking spaces per dwelling unit, consistent with Sudbury 40B Guidelines in providing "sufficient parking" while avoiding large lots.
3200, 3250, and 3280	Signs	One Residential Identification Sign permitted which shall not exceed 2 sf. One sign per multi-unit development.	Allow for increase in number and size of monument and other signs in excess of this limitation to serve the Project. Additional information may be provided in connection with the Project signage parameters set during the ZBA hearing process.
3310	Common Driveways	In all Residential Districts, no driveway or other access to a way shall serve more than two (2) dwellings	Allow for the 120 dwellings within the Project to be served by one (1) driveway.

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Section	Subject	Requirement	Requested Waiver / Project Applicability
3431	Erosion Control	Grading or construction which will result in final slopes of 15% or greater on 50% or more of lot area, or on 30,000 sf or more on a single lot, even if less than half of the lot area, shall be allowed only under special permit from the Board of Selectmen	Waiver to allow grading for 34,200 sf of slopes that are 15% or greater.
3433	Performance Standard for Erosion Control	No areas totaling two (2) acres or more shall have existing vegetation clear-stripped or be filled 6 inches or more.	Allow for site activities associated with the Project on approximately 6.6 upland acres of the total 35.6 acre site.
3440	Excavations Abutting Roads	Excavation nearer than 50 feet to a road may be subject to Board of Appeals approval.	A waiver to permit initial excavation of existing soil within 50 feet of Landham Road is requested, absent separate approval of Board of Appeals.

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B. ARTICLE XXII – Wetlands Administration			
Regs Sect 7.3	Avoidance of Impacts to wildlife habitat	Section 7.3 allows the Commission to potentially impose conditions that would prohibit work in areas deemed to be “significant” to wildlife habitat, including in the Adjacent Upland Resource Area.	To the extent the ZBA determines that habitat impact is “significant,” the Applicant requests a waiver from any conditions imposed as a result of such determination.
Regs. Sect. 7.4	Wetland Habitat Evaluation	The Regulations allow the Conservation Commission to require a wetlands habitat evaluation.	In response to comments made previously by Sudbury’s Conservation Commission, the Applicant has prepared a wetlands habitat evaluation which exceeds MassDEP standards. To the extent the ZBA seeks any additional evaluation, the Applicant requests a waiver from this Section.
Regs sect 7.8.1	Wetland replication	The regulations allow the Conservation Commission to prevent development on the site until the Commission conditionally approves the replication area.	The Applicant is willing to work out a timeline for the expeditious initiation and completion of the replication area, however, a waiver is requested to permit construction of structures prior to the completion of the replicated area.
Regs sect 7.8.2	Wetland replication	Under this section, the Commission has the ability to require greater than 2:1 replication.	While the Applicant has proposed 2:1 replication, to the extent the ZBA seeks to eliminate or increase the proposed replication, a waiver is requested.
Regs sect 7.8.8	Bond	This section allows the Commission to require a Bond relative to the completion of the replication area.	To the extent the ZBA seeks to require a bond to ensure completion of replication areas, a waiver is requested.
Regs sect 7.10	Potential prohibition in Riverfront Area	The Regulations allow the Commission the discretion to impose conditions that would prohibit work in the Riverfront Area, on the basis of wildlife habitat or other wetland interest.	The Project contemplates work within the Riverfront Area established by the local wetlands bylaw so to the extent the ZBA seeks to exercise the discretion permitted under this regulation, the Applicant requests a waiver from any potentially-imposed conditions.
Bylaw Sect. 4 and Regs sect. 4.09	Filing Fees	Filing fees paid in accordance with the Bylaw and the Regulations.	A waiver from any filing fees under the Bylaw and the Regulations is requested.

We note also that Section 7.8.4 of the Wetlands Regulations refers to requirements imposed on Adjacent Upland Resource Area under Sections 7.5.2 and 7.5.3. Because these Sections are not currently included the

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Wetland Regulations and accordingly, we are not able to seek waivers of them at this time, but we reserve the right to do so should those references be corrected.

C. ARTICLE XXVII – In-Ground Irrigation Systems			
All Sections	Irrigation Wells	<ul style="list-style-type: none"> 100' setback required from well to wetlands. 	Allow for waiver from BOH setback requirement.

II. RULES AND REGULATIONS GOVERNING THE SUBSURFACE DISPOSAL OF SEWAGE

Section	Subject	Requirement	Requested Waiver / Project Applicability
III	Leaching Area	Minimum square footage requirements per bedroom.	Allow for waiver from minimum square footage requirements. Leaching areas have been designed to meet MassDEP standards only.
IV	Design Flow	Minimum sewage design flow based upon 200 gallons per day for one bedroom units.	Allow for a waiver to permit a minimum sewage design flow based upon 110 gallons per day for one bedroom units.
VI	Pumps	Prohibition of sewage pumps of any type.	Allow for a waiver to permit sewage pumps to be installed.

III. RULES AND REGULATIONS GOVERNING THE SUBDIVISION OF LAND

Section	Subject	Requirement	Requested Waiver / Project Applicability
V.F	One dwelling per lot.	Not more than one building designed or available for use for dwelling purposes shall be erected, or placed, or converted to use, as such, on any lot in a Subdivision.	Although the Project does not involve a subdivision filing, to the extent applicable, a waiver will be requested to permit more than one building per lot.

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IV. APPLICATION FEES

Section	Subject	Requirement	Requested Waiver / Project Applicability
Chapter 40B Regs Section 56.05(2) and Supp. Rules Section 3.6	Filing fee	The Board may require the payment of a reasonable filing fee with the application, if consistent with subdivision, cluster zoning, and other fees reasonably assessed by the municipality for costs designed to defray the direct costs of processing applications, and taking into consideration the statutory goal of M.G.L. c. 40B, §§ 20 through 23 to encourage affordable housing development.	To the extent that the filing fee of \$14,000.00 is in excess of the Board's direct costs associated with the Comprehensive Permit Application, the Applicant reserves its right to request a waiver of any portion of the fee.