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BUSINESS LAW & LITIGATION

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VIA EMAIL ONLY

Planning Board
Town of South Kingstown
180 High Street
Wakefield, RI 02879
c/o James Rabbitt, AICP
Jason Parker, AICP
jrabbitt@southkingstownri.gov
jparker@southkingstownri.gov

RE: *Fieldstone Farms Preliminary Plan Application*

Dear Hon. Planning Board Members:

In advance of the continued meeting on the above-referenced comprehensive permit application, we seek to provide you with written responses to some of the comments received at the last hearing.

Traffic

Many of the residents referenced traffic as their opposition to this Project. The Applicant presented an expert report with their submission and Registered Professional Engineer John Shevlin, with decades of experience testified as to the analysis he performed. Importantly, both the report and testimony reveal existing traffic counts, as well as predicted “no-build” counts and “build” counts in accordance with industry standards for traffic analysis. He also testified and reported that the counts did not warrant any traffic mitigation. What the analysis revealed was that while the levels of service at several intersections were low in existing conditions and “no-build” conditions, the addition of the 39 single family homes did not have a detrimental impact on those conditions, specifically that the “no-build” versus “build” data¹ did not show a

¹ As explained in the report and by the traffic expert—“no build” conditions represent future conditions without the proposed development and “build” conditions are with the proposed development.

substantial decrease in the level of service or delay. Specifically, when comparing the traffic under future conditions if this Project were not built, the addition of the thirty-nine homes did not have a measurable detrimental effect.

The testimony of the public at the September hearing was that existing traffic was problematic. The Project includes traffic from single-family homes, which is not a generator of significant traffic as the Project expert (and many before him) has testified in accordance with industry standards and the trip generation for the residents of these proposed homes.

Additionally, an increase in traffic at an already-congested site, is not a valid basis for denial of an application. Our courts have found:

In the instant case the Board denied the application “because it would add to the traffic conditions that already exist in that area at this time.” This Court in applying the reasoning in the Bonitati Bros., Inc., case finds that the Board's statement “that it would add to traffic conditions that already exist in that area at this time” is not a valid predicate for a denial of the application.

Nautel v. Zoning Bd. of Review of Town of Cumberland, C.A. NO. 79-1384, 1979 WL 196126 (R.I. Super. Sept. 21, 1979) *citing* Bonitati Bros., Inc. v. Zoning Board of Review, 242 A.2d 692, 693 (R.I. 1968).

Counts

An issue regarding the timing of the traffic counts was raised in public comment. It was represented that traffic counts were performed when URI was not in session and during finals period. This is a misrepresentation. The traffic counts were conducted on April 26, 2022, and April 28, 2022. According to the URI calendar for 2022, attached hereto as Exhibit B, the last day of classes that year was the following week. In any event, no one disputes that URI generates significant traffic to and from the University. That is not the analysis, nor is the analysis to study peak hours of URI traffic—rather it is to study and analyze what occurs during the peak times for the *proposed development*, which was done. Additional recent counts have confirmed the comparison between “no-build” conditions and “build” conditions is negligible and the traffic generated by the 39 single-family homes will not detrimentally impact traffic in the area. See Exhibit A, Supplemental Traffic Report.

Site distance

Additional information regarding site distances was requested by the Town Planner and the same is also provided in the Supplemental Traffic Report. See Exhibit A at pages 9-10.

Old North/Stony Fort Intersection

Further, staff requested the Applicant look again at whether the Old North Road and Stony Fort intersection warrants a 4-way stop sign. The expert concludes, in the Supplemental Traffic Report, that while the intersection does not meet a warrant for an all-way stop, the Town can install the same at their discretion. See Exhibit A at page 11.

Density

Many of the public members stated their opinion that the 39 lots proposed was “too dense” for the area. The density is exactly what would be allowed by right, without any density bonus or consideration. In fact, the yield plan provided to the Planning Board as part of the master plan approval showed that a conventional application would allow for 39 single-family lots. See Exhibit C.

The Property contains 116.62 acres, and of that, 61.85 acres are suitable for development. If this Project were re-designed and applied for from scratch January 1, 2024, it would be entitled to a density bonus of 3 dwelling units per acre of suitable land and entitled to zoning incentives and adjustments like setback, lot size and frontage relief in order to provide that density. Such a bonus, on top of what the property yields as a conventional development would result in a project in excess of 190 units. Likewise, if the entire property was developed as a residential, flexible design project utilizing R10 dimensional requirements would result in significantly more units at the property given the size of the Property.

In any event, the vast majority of the lots (29) are far in excess of the minimum lot size requirements for the Project. The remaining 10 lots are just shy of the 40,000 sf requirement for the frontage lots in an effort to preserve the remaining land for open space.

Size of lots

Lots 1-16—“frontage lots”

As noted by the Planning staff at the end of the last meeting and as shown on the plans, despite public comment intimating otherwise, the frontage lots either comply with the area requirements of 40,000 sf or come very close. Below is the listing of the lot area (in square feet) for the frontage lots as shown on the most recent plan where the area of the sidewalks is deeded to the Town. Relief was already granted for frontage requirements for these lots as part of master plan approval.

| Lot Number | Size |
|------------|--------|
| 1 | 49,116 |
| 2 | 58,008 |
| 3 | 42,042 |
| 4 | 43,810 |
| 5 | 42,477 |
| 6 | 38,345 |
| 7 | 38,341 |
| 8 | 38,483 |
| 9 | 38,729 |
| 10 | 38,805 |
| 11 | 38,805 |
| 12 | 36,729 |
| 13 | 38,303 |
| 14 | 36,870 |
| 15 | 48,349 |
| 16 | 38,582 |

Lots 17-39—the cul de sac lots

In the vicinity of the Property are properties zoned R40 but also those zones R30 and R10, and across the street a condo development approved, designed and built as a residential flexible design project where the lot size is well under 40,000 square feet. Here, Fieldstone Farms is not only in excess of those lots, and the frontage lots meet or are close to or above one acre, but the Project benefits from a set aside of 54 acres of open space, well in excess of any requirement for such a project.

These lots are subject to the standards of the Flexible Design Residential Project (in the overarching context of a Comprehensive Permit) and received several waivers at master plan. Importantly, under the FDRP standards, the lots are required to comply with the R10 standards, meaning lots are required to have 10,000 sf. As noted in the list of lots and lot area for these lots, they are far in excess of the minimum lot size required:

| | |
|----|--------|
| 17 | 18,738 |
| 18 | 21,992 |
| 19 | 14,147 |
| 20 | 15,125 |
| 21 | 17,874 |
| 22 | 19,249 |
| 23 | 19,249 |
| 24 | 19,249 |
| 25 | 18,412 |
| 26 | 24,620 |
| 27 | 17,134 |
| 28 | 17,794 |
| 29 | 15,272 |
| 30 | 20,943 |
| 31 | 20,944 |
| 32 | 20,895 |
| 33 | 19,445 |
| 34 | 19,353 |
| 35 | 16,436 |
| 36 | 16,388 |
| 37 | 15,524 |
| 38 | 15,187 |
| 39 | 20,584 |

LMI units

Putting aside the unfortunate remarks about low- and moderate-income housing and the potential purchasers of these homes at the previous public hearing, we feel the need to highlight several items, which seem to be misunderstood at the last hearing and from what we have seen on social media. Your staff and legal counsel have helped to clarify the comprehensive permit process, the waivers (soon to be known as “adjustments”) that can be granted and generally a developer’s ability to use the process while the Town remains short of its 10% required mandate. Here, the application, as noted above and on the plans, does not present a high-density development shoved into a small site which is typical of such applications due to density bonuses and the like.

To be clear, these single-family homes will be sold to households earning a maximum of 120% of the Area Median Income (“AMI”). As of 2022, the sale price for such an “affordable” single-family home was \$377,280. *See* Letter of Eligibility in the application package for Preliminary Plan. With a conventional mortgage at today’s average rates with putting 20% as a downpayment (\$75,456), the mortgage payment per month is \$2,338, not including utilities, insurance and property taxes. According to RI Housing’s FY2023 Rhode Island Income Limits

for Low- and Moderate-Income Households, a household of 4 making **\$122,800** yearly would qualify for this “affordable” home.

The median single family home price, as of 2022 (per Housing Works RI) was \$487,950, which requires a household income of \$122,772, while the median household income in South Kingstown was \$96,526. According to Housing Works RI as of 2022, 2,803 households in Town are cost-burdened, and of those, 1,862 are owner households.

Architectural and Integration

The law provides that this Board shall make a finding, on an approval that:

(C) All low- and moderate-income housing units proposed are integrated throughout the development; are compatible in scale and architectural style to the market rate units within the project; and will be built and occupied prior to, or simultaneous with the construction and occupancy of any market rate units.

The Applicant has agreed to construct the affordable in a 1:4 ratio as construction occurs on this Project. Additionally, after speaking with staff, the Applicant has revised the integration plan for the affordable units, which plan was previously submitted, but is attached hereto as **Exhibit D** for reference.

At master plan, samples were provided as to the types of homes. The market will truly indicate the types of houses a private buyer wants to build but the Applicant is diligently working with his team to provide styles of the market rate and affordable units to show the units are compatible in scale and architectural style and will supplement the same.

Driveways

The Applicant has agreed to alter the driveways to 12', based on staff recommendation and will show that size as agreed to on the final plan.


Landscaping

To clarify, the stone walls at the Property will be kept in their current form, as the Planning Board had made a binding finding that the stone walls, as they exist are an important historical and cultural feature that is maintained. Where stones have fallen over, they will be placed back with the wall, but no stones will be brought in from off-site to “re-build” the walls. Final plans will be edited to reflect this.

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From the street to the sidewalk, which will now be owned by the Town, as shown on the plan previously submitted, but also attached as **Exhibit D**, the Applicant does not see any significant removal of vegetation unless to accommodate the area of the sidewalks. To the extent vegetation needs to be removed for utilities or any other item in this area, the Applicant will provide some infill low vegetation native to the existing area.

Thank you in advance for your continued attention to this Project.

Sincerely,

Joelle C. Rocha

Attachments