

**REVISED PLANTATION I DECISION  
TOWN OF STOW**

**ZONING BOARD OF APPEALS**

Decision on Remand Application for Modifications to Comprehensive Permit  
"Plantation I"

**Applicant:** Stow Elderly Housing Corporation  
22 Johnston Way, Stow, MA 01775

**Owner:** Stow Elderly Housing Corporation and Plantation Apartments  
Limited Partnership

**Locus:** Assessor's Map U-11, Parcel 13-1  
also: Assessor's Map U-11, Parcel 10;  
Assessor's Map R-22, Parcel 1A-B

**Sitting:** Mark Jones , Chairman, William Byron, Ernest Dodd, Andrew DeMore,  
Leonard Golder

**Public Hearing  
Dates:original** September 11, 2017, October 16, 2017, November 13, 2017, December 4,  
2017, January 29, 2018, March 5, 2018, April 2, 2018, April 30, 2018,  
June 4, 2018, June 11 2018, July 16, 2018, August 27, 2018, October 22,  
2018, November 8, 2018, November 20, 2018, and December 6, 2018.

**Public Hearing  
Dates: on remand** May 18, 2020; June 4, 2020; June 11, 2020 (continuation only); June 18,  
2020; June 19, 2020

The Stow Elderly Housing Corporation (SEHC or Applicant) developed "Plantation I" on Johnston Way, an elderly housing project containing fifty (50) affordable rental units, under a comprehensive permit granted in 1982.<sup>1</sup> On August 10, 2017,<sup>2</sup> SEHC submitted an application for modifications to the Plantation I comprehensive permit, in conjunction with an application

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<sup>1</sup> The Plantation I comprehensive permit was filed with the Town Clerk on May 5, 1982, and recorded in the Middlesex South Registry of Deeds on September 28, 1982, at Book 14739, Page 11, together with an "Approval with Covenant Contract," (discussed below) recorded at Book 14739, Page 7, which references a Definitive Subdivision Plan dated September 16, 1982 and recorded on September 28, 1982 as Plan Number 930.

<sup>2</sup> SEHC was issued a comprehensive permit for Plantation II in 2010. That permit was appealed under G.L. c. 40A, s. 17 and G.L. 40B, s. 21, and vacated by the Appeals Court in 2015. SEHC returned to the Board in August 2017. For further discussion, see the separately-issued Revised comprehensive permit for Plantation II Decision.

for a separate comprehensive permit to develop "Plantation II," containing an additional thirty-seven units of affordable elderly housing to be located on an adjacent parcel. The modifications sought with respect to the Plantation I comprehensive permit arise from the development of Plantation II, where certain improvements, plan amendments, and a land swap are proposed affecting the Plantation I site and operations.

As requested by SEHC, the application for modification of the Plantation I comprehensive permit was heard simultaneously with the application for the Plantation II comprehensive permit. Public hearing opened on September 11, 2017, and was continued to the dates above. Pursuant to extensions granted by the Applicant, hearing closed on December 6, 2018. The Board deliberated on December 17, December 27, 2018; January 3, 2019 and January 9, 2019. Pursuant to G.L. c. 40B, ss. 20-23 and regulations thereunder, the Zoning Board of Appeals voted to grant the requested modifications to the 1982 Plantation I comprehensive permit, subject to the conditions below (Plantation I modification). By separate vote, the Board voted to grant a comprehensive permit for Plantation II, and a separate decision issued for that development. These decisions were filed with the Town Clerk on January 11, 2019.

On January 30, 2019, the Applicant appealed the Board's Plantation I modification and Plantation II Decision to the Housing Appeals Committee. In these appeals, the Applicant sought removal of certain conditions in the Plantation II Decision alleged to render the project "uneconomic"; to impose local requirements and regulations unequally to subsidized housing; and to be "inconsistent with local needs." The Applicant sought further amendments to the Plantation II decision to address inconsistencies between such decision and the Plantation I modification. By joint request, both appeals were remanded by the Housing Appeals Committee to the Board for public hearing on certain proposed modifications to the Plantation II project. The Applicant submitted revised plans, a narrative describing modifications requested, and other materials (Remand Application). Most of the requested modifications concern the Plantation II Decision, but certain modifications affect the Plantation I modification as well.

Public hearing on the Remand Application (Plantation I and II) opened on May 18, 2020, and closed on June 19, 2020. Following deliberations, the Board voted to **GRANT** the requested modifications to the project, and to issue new decisions for both Plantation I and Plantation II. These new decisions incorporate the changes approved by the Board, and correct certain minor inconsistencies between the Plantation II decision and Plantation I modification. These new decisions supersede the Plantation II decision and Plantation I modification issued on January 30, 2019.

## **I. Proposed Changes**

### Easements and Easement Areas; Land Exchange

As proposed to the Board in August 2017, the Plantation II project parcel was to be reconfigured so as to create a House Lot (on which a preexisting dwelling is located) and a Project Lot for the Plantation II development. In addition, a "land swap" was to be executed between the Plantation I parcel and the Plantation II project parcels. In the Remand Application,

the Applicant has eliminated the creation of a separate "House Lot," maintaining a single Plantation II "Project Lot" to include both the existing single family house and the thirty-seven housing unit development, for a total of thirty-eight units. The land swap between Plantation I and Plantation II remains a part of the proposal.

In the Remand Application, the Applicant submitted an ANR plan entitled "Plan of Land in Stow, Massachusetts, prepared by Ducharme & Dillis dated September 23, 2019," which was endorsed by the Town of Stow Planning Board on November 5, 2019 and recorded with the Middlesex Registry of Deeds (Southern District) as Plan No. 59 of 2020. This ANR plan redrew certain lot lines to accomplish the intended land swap accommodating the location of the Plantation II well and the Plantation II project building. As depicted on the ANR plan, a 1.2-acre portion of the Plantation I parcel (A-1) is anticipated to be combined with the Plantation II Project Lot, and a 1.2-acre portion of the Plantation II Well Lot (Parcel B-1) is anticipated to be combined with the Plantation I parcel.<sup>3</sup> With reference to the Assessor's parcel identifications, the Plantation II project site will be assembled by combining Assessor's Map U-11, Parcel 10 with a 1.2-acre portion of the Plantation I property. In exchange, a comparable portion of land owned by the Plantation II owner (Assessor's Map 22, Parcel 1A-B, located to the west of the Plantation I development and the site of Plantation II's well) will be joined to the Plantation I property

The Plantation II development will access Great Road over Johnston Way and a small strip of the Plantation I property (Assessor's Map U-11, Parcel 13-1), referred to by the Applicant as the "Easement Area" depicted on the Plantation II plans.<sup>4</sup> Easements for access (including emergency access) and for utilities will be granted by the Plantation I owner to the Plantation II owner over Johnston Way and the Easement Area. The Applicant proposes certain improvements to Johnston Way and the Easement Area, including the widening of Johnston Way; construction of an access driveway over the Easement Area; construction of several parking spaces along this access driveway; installation of stormwater management system elements; and landscaping improvements. Other proposed changes affecting the Plantation I property include the construction of sidewalks connecting Plantation I and Plantation II; installation of utility lines; installation of a sign for Plantation II.

#### Cisterns

A water storage cistern is currently located on the Plantation I property. In connection

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<sup>3</sup> Plantation Apartments II LLC owns the parcel (Assessor's Map U-11, Parcel 10) that will contain the existing single-family house and the Plantation II project. Plantation Apartments II LLC also owns the parcel (Assessor's Map R-22, Parcel 1A-B) on which Plantation II's well will be located. SEHC owns the land (Assessor's Map U-11, Parcel 13-1) on which Plantation I is located; the project buildings and other improvements are owned by Plantation Apartments Limited Partnership, which has a ground lease with SEHC.

<sup>4</sup> "Site Construction Plans, Plantation Apartments II," dated May 5, 2017, as revised through November 14, 2018. See Revised Appendix A for further information.

with the development of Plantation II, the Applicant proposes to install an additional cistern to increase capacity for firefighting purposes, and to update the existing cistern. These cisterns, along with other infrastructure, shall be the subject of an Operating Agreement and an Operations and Maintenance Plan described more fully in Conditions 17 and 28 below and Condition 39(F) of the Revised Plantation II Decision.

### Wastewater Treatment

As originally proposed, Plantation II was to be served by a Title 5 septic system separate from that serving Plantation I. The Applicant subsequently decided to abandon plans for a Title 5 system for Plantation II, and instead seek approval from the Department of Environmental Protection (DEP) for a Groundwater Discharge Permit for a facility to handle the combined wastewater flow of Plantation I and Plantation II. The wastewater treatment facility will be located on Plantation II property; its service of Plantation I will entail infrastructure located on both properties.

These Proposed Changes (as well as the construction of Plantation II) implicate a Covenant entered into by SEHC, for the benefit of the Town recorded in 1982 with the Plantation I permit. This Covenant and its relationship to the Plantation I and Plantation II developments are discussed below.

## **II. Record before the Zoning Board of Appeals**

The materials identified in **Revised Appendix A**, as modified by this decision comprise the record before the Board.

## **III. 1982 Covenant**

The 1982 Plantation I comprehensive permit is linked to a Covenant entered into by SEHC with the Town of Stow (by and through its Selectmen) and recorded in the Registry of Deeds along with the comprehensive permit itself. This covenant, entitled "Approval with Covenant Contract," references a Definitive Subdivision Plan dated September 16, 1982 (also recorded); this Plan depicts the original Lot 1, Lot 2 and Parcel C on which Plantation I was permitted and constructed. The Plantation I comprehensive permit, the Covenant, and the Subdivision Plan must be read of a piece, as they are expressly linked, and together represent the conditions under which the Board approved a project deviating from the Town's standards for roadways and access. The Covenant, in addition to containing terms relating construction and maintenance of the project roadway, states:

"5. That Lots 1, 2, and C as shown on [the Subdivision] plan shall remain in common ownership and that Lots 1 and 2 as shown on such plan shall be used only in connection with the project described in [the comprehensive permit] Decision.

6. That no buildings shall be constructed on said lots except as provided for in said Decision and the plans."

By its terms, the Covenant is binding on the Stow Elderly Housing Corporation, and any successor with respect to the lots comprising Plantation I and depicted on the Subdivision Plan.

The proposed Plantation II project, and resulting changes to the Plantation I permit and project, entail redrawing the lot lines of the 1982 Subdivision Plan; changes in ownership of the lots depicted; and additional development of the subject property. The Board notes that each of these changes is in conflict with terms of the Covenant. The Board further notes that the 1982 Plantation I Decision limits construction to a maximum of 50 units; thus the development of an additional thirty-seven units in Plantation II violates the Plantation I comprehensive permit as well as the Covenant.

The Board finds that it does not have the authority to modify or waive the terms of the Covenant, as that agreement was entered into by SEHC and the Town, through the Selectmen. Such authority lies with the Selectmen. The Board finds, however, that it has an obligation to consider the concerns underlying the Covenant, as such concerns are also reflected in the Plantation I comprehensive permit; in particular, its limitation of the project to fifty units.

Given the Covenant terms noted above, as well as Plantation I's limit to 50 units, the Board believes that a chief concern is whether the roadway is adequate to provide safe access for the combined 87 units of Plantation I and II. A second concern is whether a density of 87 units is appropriate for the site; the 1982 permit and Covenant represent an express finding that it is not.

Based on the information presented by the Applicant and the opinion of Town officials, the Board finds that the proposed access over Johnston Way will, with proposed improvements, be adequate to serve the combined Plantation I and II. The Fire Chief has stated that access to the project site will be sufficient; at 20 feet wide, the Fire Safety Code standard is met. As indicated by the Applicant's traffic study, vehicle trips associated with elderly housing are relatively limited and will neither overburden Johnston Way nor cause congestion at the Great Road intersection or neighboring intersections.

The Board further finds that while a limit to fifty units may have been reasonably imposed in 1982, there are valid and pressing grounds for increasing the number of units thirty-five years later. First, as stated above, the need for affordable housing for the elderly has increased substantially since the permitting and construction of the Plantation I development. Plantation I is rented to capacity; there is a lengthy waiting list for apartments; and the production of additional units of affordable elderly housing was identified as a goal in the Town's most recent Housing Plan. The Board further finds that the provision of Town services to elderly residents will be efficiently accomplished by the co-location of Plantation I and Plantation II.

Based on the above, the Board believes it may, subject to the Selectmen's waiver of the 1982 Covenant provisions pertaining to single ownership of site and prohibiting further development of the site, and the Selectmen's execution of a new covenant or covenants, grant a comprehensive permit for the thirty-seven additional units of Plantation II, consistent with the

purposes of the 1982 Covenant and Plantation I comprehensive permit. Certain conditions are imposed below and in the Plantation II comprehensive permit so as to ensure such consistency.

#### **IV. Reorganization of parcels and Plan endorsement**

The original Plantation II application proposed the redrawing of certain lot lines to create a “house lot” and a “project lot,” and further, to incorporate 1.2 acres of the Plantation I parcel into the Plantation II project lot – part of a land swap in which an equal-sized area owned by the Applicant would be incorporated into the Plantation I development.

The Remand Application for Plantation II application proposes a single “Project Lot” containing the house and the Plantation II project site, but retains the 1.2 acre “land swap” between the Plantation I and Plantation II project.

The original Plantation II application requested the Board's endorsement of plans effectuating the proposed re-division and recombination of parcels. This Board noted in its original Plantation II decision and Plantation I modification that it does not have the authority to make such endorsement. While the Board may waive Planning Board rules and regulations under G.L. c. 40B - that is, local regulations - it cannot perform any function assigned to the Planning Board under the Subdivision Control Law. The Subdivision Control Law is a separate statutory scheme, outside G.L. c. 40B.

Accordingly, the Board’s approval of the Plantation II project (and Plantation I modification, to the extent the Plantation I property was affected) was subject to the endorsement by the Planning Board, granting such relief as it deemed proper, of a Plan depicting the proposed reconfiguration of lot lines, such plan also depicting easements over the various parcels, for the benefit of Plantation I and Plantation II, to ensure access to all components of the two developments.

In the Remand Application, the Applicant submitted an ANR plan entitled “Plan of Land in Stow, Massachusetts, prepared by Ducharme & Dillis dated September 23, 2019,” which was endorsed by the Town of Stow Planning Board on November 5, 2019 and recorded with the Middlesex Registry of Deeds (Southern District) as Plan No. 59 of 2020. This ANR plan redrew certain lot lines to accomplish the intended “land swap” accommodating the siting of the Plantation II well and Plantation II project building, but as noted above, did not create a separate “house lot” for the Plantation II project. As depicted on this ANR plan, a 1.2-acre portion of the Plantation I parcel (A-1) is combined with the Plantation II Project Lot, and a 1.2-acre portion of the Plantation II Well Lot (Parcel B-1) is combined with the Plantation I parcel.

#### **V. Waivers**

Massachusetts General Laws c. 40B, §§20-23 empowers local Boards of Appeals to grant waivers from local rules and regulations, where the waivers are “consistent with local needs” under the statute. In its original application for the Plantation I modification, the Applicant did not submit a list of waivers sought, but did so at the Board's request. In the Remand Application,

the Applicant has requested several additional waivers with respect to Plantation I relating to use of land (Section 4.1.1 of the Zoning Bylaw) and minimum side setback (Section 4.4 of the Zoning Bylaw). In the event that the Applicant or the Board determines that the final design of the project necessitates further waivers, the Applicant shall submit a written request for such waiver(s) to the Board. The Board may grant or deny such additional waivers in accordance with applicable rules and regulations and the judgment of the Board.

The Board's decision as to each of the waivers and exemptions requested is set forth in Revised Appendix B, Decision on Waivers, Revised Appendix B to this Decision supersedes the waiver decisions in Appendix B to the January 11, 2019 decision. The only waivers granted are those expressly approved in Revised Appendix B. If a waiver is not expressly approved in Revised Appendix B, it is denied. All local regulations, other than those expressly waived in Revised Appendix B, are applicable to this project, including regulations for which no waiver was requested. No "plan waiver" is granted.

### **GRANT OF PERMIT**

Subject to the conditions set for hereinafter, the Board grants the Applicant's requested modifications of the Plantation I comprehensive permit, for the purposes of constructing the Plantation II project. These modifications are limited to the plan revisions necessitated by the Plantation II project, including the creation of the Easement and Easement Area; the Land Exchange; Cistern improvements; and service by the Wastewater Treatment Facility ("Plantation I Modifications") all as described above in Section I, Proposed Changes. As used below, the term "Project" and "Project Plans" refer to the Plantation II project and project plans

### **CONDITIONS**

1. The Proposed Changes shall conform to the following Plans:

“Site Construction Plan, Plantation Apartments II”, dated May 5, 2017, as updated through November 14, 2018 (ten sheets; see Revised Appendix A)

“Plantation Apartments II”, dated May 22, 2017 as updated through August 5, 2018 (seven sheets; see Revised Appendix A)

All of the above as further modified to comport with the requirements of this Decision and/or the Plantation II Decision; as well as any changes deemed necessary by the Building Inspector, the Planning Department, or the Board's consultant for compliance with this Decision, and/or with the Plantation II Decision.

#### **Conditions relating to Plans**

Prior to site disturbance, the following additions, changes and corrections shall be incorporated into revised Plan sets for the Project. No site disturbance shall occur until the Building Department and Highway Department, and, where noted, the Planning Department, with the advice of the Board's consultant, has reviewed and approved the Plans for compliance with the following conditions:

2. The Drainage design shall be updated on the Plans to account for the widening of Johnston Way, which will increase the area of impervious surface at the site and the volume of water discharged. Additional flows shall be pre-treated.
3. The Plans shall be amended to include details regarding the proposed paving overlay of Johnston Way, including cross sections to indicate width; details as to any required tree removal; the extent of required grading and provisions to maintain adequate access to Plantation I during construction of road improvements; details and limits of repaving, as well as all sawcuts; and information on the geometry of Johnston Way and detail regarding the connection of Johnston Way to Great Road.
4. Pavement Specifications on sheet C3.1 of the Plans shall be amended to reflect relevant work on the Plantation II site.
5. Areas for snow storage along Johnston Way shall be defined on the Plans.
6. The Record Plan shall be amended to show all properties entailed in the Project, and the owners of all abutting properties shall be labeled. The Plans shall be stamped by a Registered Land Surveyor.
7. Discrepancies on page 5 of the drainage report regarding the increase of runoff at analysis point C shall be resolved and resubmitted for review by Planning Department with advice of the Board's consultant. The current report indicates no increase in runoff and refers to a table in the report which shows negligible increase in runoff.
8. Seed mixes for erosion control shall be added to the Landscape plan for final review of appropriate species by the Board's consulting engineer.
9. Substantive revisions to the Project or the Plans shall not be permitted without the written approval of the Board. If, between the date that this decision is filed with the Office of the Town Clerk and the completion of the Project, Applicant desires to change any details of the Project (as set forth in the Plans, or as required by the terms of this Decision) the Applicant shall promptly inform the Board in writing of the change requested. Changes will be administered or addressed pursuant to 760 CMR 56.00 et seq.
10. Where this Decision provides for the submission of plans or other documents to the Building Inspector, the Board, or its agent, a written response shall be provided to the Applicant as to whether such plans or other documents are consistent with this Decision within forty-five days of receipt of such plans or other documents.

**Regulatory Compliance: State, Federal and Local**

11. The Project, and all construction, dwelling units, utilities, drainage, earth removal, and all related improvements of the Project, shall comply with all applicable state and federal regulations. The Applicant shall promptly provide the Board with copies of all permitting requests and other correspondence directed to any applicable state or federal



agency and of all correspondence, approvals or disapprovals received from any such agency.

12. The Project shall comply with all Town of Stow rules, regulations, and other local bylaws and requirements not expressly waived by this Decision.
13. The Project shall comply with all rules, regulations, permit and filing requirements, and certifications of the Stow Board of Health and the Massachusetts Department of Environmental Protection with respect to wastewater disposal, stormwater disposal, private wells, resource protection, water supply and low impact development best management practices, except as expressly waived in this Decision.
14. Results of soil testing in the area of the proposed leaching facility shall be provided to the Planning Department as agent for the Board in accordance with Massachusetts Department of Environmental Protection stormwater management manual requirements.
15. The Project shall comply with the Town of Stow Zoning Bylaw in effect at the time of the Application, except as expressly waived in this Decision
16. Stormwater management systems shall meet the requirements of the Department of Environmental Protection Storm Water Management Policy and Handbook (Vols. 1 & 2), as revised

#### **Management Documents - Operating Agreement**

17. The Applicant shall prepare an Operating Agreement to be executed by appropriate representatives of the Plantation I and Plantation II projects, to govern the coordinated use, repair, and maintenance of the ways, facilities and infrastructure to be shared by the two developments. Such Operating Agreement shall ensure that the terms and conditions of this Decision and the Plantation II Decision are enforced. The Applicant shall provide a copy of the Operating Agreement, and any updates to the same, to the Planning Department. Note: this Operating Agreement is distinct from the Operation and Maintenance ("O & M") Plan described in Condition 19F below, which shall contain the specific operating and maintenance tasks to be shared by Plantation I and Plantation II pursuant to the Operating Agreement.
18. The Operating Agreement, and any subsequent management documents shall provide that the Town of Stow shall not have any legal or financial responsibility for, operation or maintenance of roadways, driveways, parking areas, stormwater management systems, snow plowing, landscaping, trash disposal or pick up, street lighting or other illumination, or other roadway infrastructure within the Project or the locus.

#### **Conditions Precedent to Commencement of Project**

19. The conditions below are conditions precedent to site disturbance. In particular, and without limitation, no grading, land disturbance, or construction of any structure or infrastructure shall commence until the following conditions are satisfied

A. The Board of Selectmen have waived those provisions contained in the 1982 Covenant, identified above in Section II pertaining to additional development of the site and single ownership of the parcels; and 2) the Selectmen have executed a new Covenant or Covenants with SEHC with respect to all affected property associated with Plantation I and Plantation II, such Covenant(s) being binding on all successors in interest, and recorded in the Registry of Deeds.

B. The Building Inspector has reviewed and approved the Applicant's building, site and engineering construction drawings (Plans). These plans shall include the location and design (including materials to be used) of all retaining walls to be used within the project. Engineered plans for all retaining walls must be submitted to and approved by the Building Inspector; boulder retaining walls shall not be used. The Building Inspector, on behalf of the Board shall review the Plans for conformance with this Decision; for compliance with local requirements not waived in the Permit; and with state and federal codes. The Applicant shall designate an Onsite Contractor, who shall demonstrate to the satisfaction of the Building Inspector that these Conditions Precedent have been satisfied, to the extent possible.

C. Site Plans fully compliant with the requirements of Section 4.4 through 4.17 of the Site Plan Rules and Regulations, except as waived in this decision, have been reviewed and approved (without the need for public hearing) by the Planning Department with the advice of the Board's consultant.

D. The Department of Environmental Protection (DEP) has issued a Groundwater Discharge Permit as proposed by the Applicant, serving Plantation II and Plantation I, and such Permit has become final.<sup>5</sup>

E. The Planning Department, with the advice of the Board's consultant, has reviewed and approved a reasonable timeline submitted by the Applicant for commencement of construction and completion of the proposed project (including infrastructure, utilities, and landscaping).

F. The Planning Department, with the advice of the Board's consultant has reviewed and approved an Operations and Maintenance Plan (without the need for public hearing) The Plan shall include, at a minimum, 1) maintenance during and post construction; and 2) perpetual maintenance to the extent required and monitoring of the drainage systems (routine and seasonal); the wastewater treatment facility and related sewage disposal elements; Johnston Way and the access driveway from Johnston Way to the Plantation II

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<sup>5</sup>The Applicant had originally proposed a wastewater disposal system serving Plantation II only, to be permitted under Title 5 by the Stow Board of Health. Approximately a year into the Board's review of the project, the Applicant decided to pursue approval by the Department of Environmental Protection of a Groundwater Discharge Permit to serve both Plantation I and II, necessitating plan changes. Should the Applicant, for any reason (including but not limited to failure to obtain a Groundwater Discharge Permit, or invalidation of any such Permit), seek to have the proposed development served by a system permitted under Title 5, the Applicant must apply to the Board for modification of this permit.

site; landscaping installed on the Plantation II site; cisterns; and other project infrastructure. The Operations and Maintenance Plan shall bind the Applicant and all subsequent owners, and, with respect to facilities common to Plantation I and Plantation II, shall bind the owner of Plantation I, as the owners of Plantation I and II have joint and several responsibility for maintenance and repair of such common facilities. The Applicant shall provide a copy of the Operations and Maintenance Plan, and any updates to it, to the Planning Department.

G. The Planning Department, with the advice of the Board's consultant has reviewed and approved an erosion control plan to be in effect for the duration of site disturbance and project construction (without the need for a public hearing). Such plan shall include measures for extreme weather events. Such plan must ensure that there is no erosion or sedimentation from the project site onto Johnston Way, Great Road, Potash Brook, wetland resources, or abutting properties. The Onsite Contractor shall ensure compliance with the erosion control plan for the duration of site disturbance and project construction.

H. A pre-construction meeting shall be held with Town Staff, the Town's consultant and the on-site contractor to review the construction schedule, coordination with town officials for parking and stockpile of materials, erosion control methodology and construction schedule.

I. The owner of the Plantation I site (Assessor's Map U-11, Parcel 13-1) has executed and recorded in the Registry of Deeds all easements necessary to provide sufficient vehicular and pedestrian access to the Plantation II site (Assessor's Map U-11, Parcel 10, to be combined with so-called "Parcel A" on the Record Plan) from Great Road, including an easement over Johnston Way.

L. The owner of the Plantation I site (Assessor's Map U-11, Parcel 13-1) has executed and recorded in the Registry of Deeds a utility easement and any other easements necessary for the provision of water service to the Plantation II site (Assessor's Map U-11, Parcel 10, to be combined with so-called "Parcel A" on the Record Plan) from the Well site (Assessor's Map R-22, Parcel 1A-B).

M. The Applicant has executed and recorded in the Registry of Deeds any easements necessary to provide access to the Plantation I project owner with respect to any shared infrastructure, ways, and other project components, including but not limited to easements over Johnston Way, the "Easement Area" on Plantation I property intended for access to the Plantation II property; and easements necessary for use of the wastewater treatment facility; utilities, including the water line intended to serve Plantation II; and cisterns.

## **20. Conditions Relating to Construction**

A. During construction, the Applicant and its agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust, and use of Town roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any

day Monday through Friday before 7:00 AM or on Saturday before 9:00 AM. Construction activities shall cease by 6:00 PM on all days. No construction or activity whatsoever shall take place on Sunday. Interior work may be permitted at the discretion of the Building Inspector where necessary to address unforeseen circumstances.

B. The Applicant shall designate an Onsite Contractor who is responsible for all aspects of site work and project construction for the duration of the project. The name and phone numbers, including an emergency phone number, shall be provided to the Building Inspector. The Onsite Contractor shall demonstrate to the Building Inspector's satisfaction that Conditions 4-18 have been satisfied.

C. Additional erosion control materials must be readily available, either on site or adjacent sites) to allow replacement of measures as the project proceeds.

D. The Onsite Contractor shall comply with the approved Erosion Control Plan and develop a strategy for controlling the site in the event an extreme weather event is predicted.

E. Trees along the periphery of the limit of work shall be evaluated and removed if they are likely to sustain damage during construction (cut or filled root zone)

F. All stumps, brush, and other debris resulting from any clearing or grading shall be removed from the locus. No stumps or other debris shall be buried on the locus.

G. The Applicant shall keep the site and the adjoining existing roadway area clean during construction. Upon completion of all work on the site, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations.

### **Administrative**

The fees for consultant reviews incurred in the Board's review of this project application shall be the obligation of the Applicant. No site disturbance shall commence until all past fees are paid in full. The Applicant shall be responsible for fees incurred pursuant to consultant review of all project documents as provided in the Conditions above (including but not limited to review of Operations and Maintenance Plan; Erosion Control Plan; Building and site plans).

### **Conditions Relating to Johnston Way**

The Board finds that Johnston Way is a private way subject to Article 5 of the General Bylaws. In lieu of compliance with the provisions of Article 5, the Board imposes the following conditions to ensure public safety and to clarify the obligations of the parties.

21. The owners of Plantation I and II shall bear and have joint and several responsibilities and obligations for the repair, maintenance, reconstruction and snowplowing so as to provide continuous year-round access for vehicle traffic for the convenience of owners of

the lots, and to provide continuous year-round access for all emergency, fire, rescue, police, moving construction and maintenance vehicles.

22. Johnston Way shall not be presented to Town Meeting for acceptance as a public way.
23. Johnston Way shall not service any further developments.

### **Additional Conditions**

24. Invasive Plants. No plants on the Commonwealth's "Invasive Plants" list (see <https://www.mass.gov/service-details/invasive-plants>) may be used in the landscaping or any other area of the Plantation I or Plantation II properties.
25. No obligation accruing to Town. The Town shall at no time be responsible for the maintenance of, or repairs to any part of the project, or to the way(s) and easement areas serving the project; or any infrastructure or utilities associated with the project.
26. Shared responsibility for infrastructure. The owner of the Plantation I project and the owner of the Plantation II project shall enter into contractual agreement(s), acceptable in form to Town Counsel and naming the Town of Stow as a beneficiary, whereby each accepts joint and several responsibility and liability for the performance and cost of: the maintenance and snow clearance for the shared portion so Johnston Way; the maintenance of the fire protection water cisterns; compliance with all maintenance and regulatory requirements for the sewer treatment facility shared by the Plantation I project and Plantation II project. Further, the owner of the Plantation I project and the owner of the Plantation II project shall execute and record permanent easements, in forms satisfactory to Town Counsel, consistent with the installation, operation, and maintenance of all utilities as follows: an easement granted by the owners of Plantation I to the owners of Plantation II allowing the installation, operation, and maintenance of water service equipment within and across the Plantation I locus connecting the Plantation II well to the Plantation II project; an easement granted by the owners of Plantation II to the owners of Plantation I allowing the installation, operation, and maintenance of all elements of the shared wastewater treatment facility location on the Plantation I locus; and easements in Johnston Way allowing Plantation II to improve and use Johnston way for passage to and from the Plantation II project, and for the installation, maintenance, and repair of utilities serving the Plantation II project.
27. Johnston Way safety improvements. To improve pedestrian safety, a center line shall be installed on Johnston Way and the access way connecting Johnston Way to the Plantation II site. Signage for pedestrians, conforming to Bylaw requirements and otherwise satisfactory to the Building Inspector, shall also be installed.
28. Cisterns. The owners of Plantation I and Plantation II are jointly and severally responsible for the maintenance, repair, and sustained operation of all cisterns on the Plantation I and Plantation II sites, including those cisterns currently in existence, and those to be constructed in conjunction with the Plantation II development. The cistern

currently located on the Plantation I property, and any additional cisterns installed on the Plantation I property, shall be available for use by Plantation II in perpetuity, or until such time as a sufficient alternative is established by Plantation II for use on the Plantation II site.

29. Wastewater Treatment Facility. The owners of Plantation I and Plantation II are jointly and severally responsible for operation and maintenance of the wastewater treatment facility to be constructed for service to both projects.
30. Other Common Facilities. The owners of Plantation I and Plantation II are jointly and severally responsible for maintenance and repairs to all other common facilities and common areas serving both projects, to be constructed in conjunction with this Permit, including but not limited to access roads and driveways, utilities, and signs.
31. Decommissioning of existing septic system serving Plantation I. Prior to the issuance of any occupancy permit for the Project, the Applicant shall provide documentation to the Planning Department as agent for the Board, and to the Stow Board of Health, that the existing septic system has been decommissioned pursuant to the requirements and standards of the Massachusetts Department of Environmental Protection.
32. Reports. The Applicant shall provide to the Board of Health all periodic reports or monitoring reports pertaining to the wastewater treatment facility as deemed necessary by the Board of Health.
33. Soil Testing. Results of soil testing in the area of the proposed leaching facility shall be provided to the Planning Department as agent for the Board in accordance with Massachusetts Department of Environmental Protection stormwater management manual requirements.
34. All terms and conditions of this permit shall be binding upon the Applicant and all agents, successors and assigns.

### **CONCLUSION**

The requested modifications to Plantation I are granted with conditions. This Decision was approved by the Stow Zoning Board of Appeals at a meeting of the Board on July 20, 2020 pursuant to the following vote:

Jones:	Yea
Byron:	Yea
DeMore:	Yea
Dodd:	Yea
Golder:	Yea

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NOTICE OF RIGHTS OF APPEAL

Any person aggrieved by this Decision may file an appeal pursuant to the provisions of General Laws, c. 40A, Section 17. Such appeal must be filed within twenty (20) days of the filing of this decision in the Office of the Town Clerk.

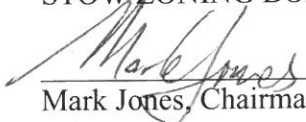
The Applicant has the right to appeal this Decision pursuant to the provisions of General Laws c. 40B, Section 22.

Copies of this Decision and notice thereof must be recorded by the Applicant at the Middlesex South Registry of Deeds and must bear the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied. A certified copy of said recording must thereafter be filed with the Board of Appeals.

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**THIS CONCLUDES THE DECISION OF THE BOARD OF THE APPEALS.  
SIGNATURES OF THE BOARD MEMBERS ARE FOUND IMMEDIATELY BELOW.**

STOW ZONING BOARD OF APPEALS

  
\_\_\_\_\_  
Mark Jones, Chairman

\_\_\_\_\_  
William Byron

\_\_\_\_\_  
Andrew DeMore

\_\_\_\_\_  
Ernest Dodd

\_\_\_\_\_  
Leonard Golder

DATE: July 21 2020

*Date Received + Filed  
July 24, 2020  
Linda E. Hathaway  
Stow Town Clerk*

## PLANTATION II

### APPENDIX A: LIST OF EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

A plan entitled "Site Construction Plan, Plantation Apartments II", dated May 5, 2017 consisting of ten sheets, indexed as follows:

- Sheet C1.0 Title Sheet (*revised November 14, 2018*)
- Sheet C1.1 Existing Conditions Plan (*revised November 14, 2018*)
- Sheet C1.2 Record Plan (*revised November 14, 2018*)
- Sheet C2.0 Layout Plan (*revised November 14, 2018*)
- Sheet C3.0 Grading & Drainage Plan (*revised November 14, 2018*)
- Sheet C3.1 Grading Details (*revised November 14, 2018*)
- Sheet C4.0 Utilities Plan (*revised November 14, 2018*)
- Sheet C5.0 Erosion Control Plan (*revised November 14, 2018*)
- Sheet C6.0 Water System Plan (*revised November 14, 2018*)
- Sheet C7.0 Preliminary Wastewater Plan (*revised November 14, 2018*)

A plan entitled "Plantation Apartments II", dated July 7, 2017, consisting of four sheets, indexed as follows:

- Sheet L-1.0 Landscape Plan (*last revised October 26, 2018*)
- Sheet L- 2.0 Lighting Plan (*last revised October 26, 2018*)
- Sheet L- 2.1 Lighting Cut Sheets (*last revised October 26, 2018*)
- Sheet L- 3.0 Landscape Details (*last revised October 26, 2018*)

A plan entitled "Plantation Apartments II", dated May 22, 2017, consisting of six sheets, indexed as follows:

- Sheet A1.01 First Floor Plan
- Sheet A1.02 Second Floor Plan
- Sheet A1.03 Third Floor Plan
- Sheet A2.01 Unit Types
- Sheet A4.01 Exterior Elevations
- Sheet A5.01 Building and Wall Section

Application for Comprehensive Permit dated August 14, 2017 consisting of the following:

- Section A: Preliminary Site Development Plans
- Section B: Report on Existing Conditions
- Section C: Preliminary Architectural Drawings
- Section D: Tabulation of Proposed Buildings
- Section E: Subdivision Plan
- Section F: Preliminary Utilities Plan
- Section G: Applicant Status



Section H: Requested Exceptions to Local Requirements (*last revised December 6, 2018*)  
Section I: List of Abutters  
Section J: Site Approval Letter  
Section K: Draft Notice of Public Hearing

Supplemental Application Materials submitted by Ducharme and Dillis:

- a. Stormwater Report dated May 5, 2017 for Plantation Apartments II, Great Road (*last revised September 26, 2018*)
- b. Storm Water Pollution Prevention Plan (SWPPP) dated September 21, 2017 – RE Plantation Apartments II, Great Road
- c. SU-30 Turning Exhibit Plan dated September 26, 2018

Additional information submitted by Stow Elderly Housing Corporation:

- a. Letter dated May 13, 2017 to Rebecca Frawley Massachusetts Department of Housing and Community Development – RE Request for Site Eligibility Determination for Plantation II
- b. Letter dated July 3, 2017 to Greg Reynolds, on behalf of Abutters of proposed Plantation II Project – RE Response to letter of concerns, issues and recommendations dated June 26, 2017
- c. Letter dated November 9, 2017 from Michael McGrath, Ground Penetrating Carbon, Inc.- RE Proposed Ruck System and GPC Bottomless Filter
- d. Email dated November 27, 2017 from Nina Schwarzschild - RE Requesting postponement from December 4 to late January 2018
- e. Letter dated May 31, 2018 from SEHC – RE Response to Hill Law Letter of May 29, 2018
- f. Letter dated June 6, 2018 from SEHC – RE Applicant Responses to Places letter of June 4, 2018
- g. Letter dated June 18, 2018 from SEHC – RE Applicant Responses to Places letter of June 4, 2018
- h. Letter dated June 13, 2018 from SEHC – RE Waiving of local bylaws related to waste water treatment
- i. Letter dated November 20, 2018 from SEHC – RE Response to Abutters' Letter of November 17, 2018

Additional information submitted by Klein Horning, LLP:

- a. Email with attachments dated May 13, 2017 from Nina Schwarzschild, Klein Horning - RE Request for site eligibility determination
- b. Correspondence dated June 15, 2017 – RE Plantation Apartments II Exceptions Requested from the Zoning Bylaw
- c. Traffic Impact and Access Study for Proposed Plantation II Apartments dated September 6, 2017 prepared by GPI
- d. Letter and attachments dated September 27, 2017 – RE Stow Elderly Housing Corp M.G.L. Chapter 40B Comprehensive Permit
- e. Letter with attachments dated October 11, 2017 – RE Stow Elderly Housing Corp M.G.L. Chapter 40B Comprehensive Permit
- f. Letter with attachments dated November 9, 2017 – RE Stow Elderly Housing Corporation Comprehensive Permit Application Under M.G.L. Chapter 40B, Section 20-23

- g. Letter dated November 14, 2017 – RE Comprehensive Permit Application Under M.G.L. Chapter 40B
- h. Letter dated January 9, 2018– RE Plantation Apartments II Application for Comprehensive Permit submitted on August 14, 2017 and Plantation Apartments I Application for Changes to Project pursuant to 760 CMR 56.05P
- i. Letter dated February 2, 2018 – RE Plantation Apartments II Application for Comprehensive Permit and Plantation Apartments I Application for Changes to Project pursuant to 760 CMR 56.05(11)
- j. Letter dated April 6, 2018– RE Plantation Apartments II Application for Comprehensive Permit and Plantation Apartments I Application for Changes to Project pursuant to 760 CMR 56.05(11)
- k. Supplemental Submission dated May 15, 2018 – RE Application for Comprehensive Permit for Plantation Apartments II and Application for Amendment to Comprehensive Permit for Plantation Apartments I
- l. Supplemental Submission dated October 5, 2018- RE Chapter 40B Comprehensive Permit Application for Plantation II Apartments and Application for Amendment to Plantation I Apartments Comprehensive Permit
- m. Letter dated October 5, 2018 – RE Exceptions Required Under Town of Stow Local Bylaws and Regulations and M.G.L. Chapter 41, Section 81K-81GG with Requested Waivers
- n. Letter dated October 30, 2018 - RE M.G.L. Chapter 40B Comprehensive Permit
- o. Supplemental Submission dated November 19, 2018 – M.G.L Chapter 40B Comprehensive Permit
- p. Letter with attachments dated November 19, 2018 – RE Stow Elderly Housing Corporation
- q. Email dated December 6, 2018 – RE Plantation Apartments 40B Application – Revised Waiver Request Lists

Additional information submitted by Ducharme & Dillis:

- a. Email dated September 19, 2017 from Greg Roy – RE Wastewater System Details
- b. Letter dated October 13, 2017 – RE Response to Nashoba Associated Board of Health Comments
- c. Letter dated June 13, 2018 from Greg Roy – RE Summary of Proposed Septic System
- d. Letter dated November 20, 2018 from Greg Roy - RE Plantation Apartments II

Additional information submitted by Avalon Consulting Group

- a. Letter dated September 6, 2017 from Kelly Cardoza, Avalon Consulting Group – RE Analysis of Nitrogen Impacts from proposed wastewater system, Plantation Apartments II
- b. Letter dated June 12, 2018 from Kelly Cardoza, Avalon Consulting Group– RE Analysis of Nitrogen Impacts from proposed wastewater system, Plantation Apartments II
- c. Letter dated June 15, 2018 from Kelly Cardoza, Avalon Consulting Group – RE Use of Recharge Volume in Nitrogen Loading Analysis

Correspondence from Huggins & Witten, LLC, Counsel for Town of Stow:

- a. Letter dated March 28, 2018 – RE Plantation Apartments II Application for Comprehensive Permit, Plantation I Application for Changes to Project
- b. Memorandum dated June 18, 2018 – RE Plantation II Application
- c. Memorandum dated December 4, 2018 - RE Plantation II application legal issues

Correspondence from Places Associates, Inc., Town of Stow's Consulting Engineer:

- a. Letter dated October 26, 2017 – RE Review Proposal
- b. Letter dated November 28, 2017 – RE Plantation Apartments II 40B Comprehensive Permit Application
- c. Letter dated June 18, 2018 – RE Plantation Apartments II 40B Comprehensive Permit Application
- d. Letter dated October 18, 2018 – RE Plantation Apartments II 40B Comprehensive Permit Application
- e. Letter dated November 20, 2018 – RE Plantation Apartments II 40B Comprehensive Permit Application
- f. Email dated November 27, 2018 – RE Waste Water Treatment Facility
- g. Letter dated December 4, 2018 - RE Plantation Apartments II 40B Comprehensive Permit Application

Correspondence from Town Boards and Departments:

- a. Memorandum dated August 29, 2017 from Planning Board– RE Plantation Apartments II - Recommendations on Requested Zoning Exceptions
- b. Letter dated September 6, 2017 from Stow Conservation Commission – RE Comments on Comprehensive Permit Application, Plantation Apartments II - 252 Great Road
- c. Correspondence from Treasurer's Office dated September 22, 2017 – RE: Application for 37 Unit Comprehensive Permit at 22 Johnston Way, known as Plantation Apartments II
- d. Correspondence from Assessors' Office dated September 22, 2017 – RE: Application for 37 Unit Comprehensive Permit at 22 Johnston Way, known as Plantation Apartments II
- e. Email dated September 28, 2017 from Kalene Gendron, Nashoba Associated Boards of Health – RE Plantation Apartments II
- f. Letter dated October 2, 2017 from Stow Fire Department – RE Plantation Apartments II
- g. Memorandum dated October 6, 2017 from James Garreffo, Nashoba Associated Boards of Health – RE Review of Plantation Apartments II
- h. Correspondence dated June 4, 2018 from James Garreffo, Nashoba Associated Boards of Health – RE Plantation Apartments II
- i. Letter from Stow Board of Health dated June 18, 2018 – RE Plantation II Project
- j. Memorandum from Planning Department dated September 13, 2018 – RE Plantation II Site Plan Comments
- k. Email dated November 14, 2018 from Detective Sergeant Michael Sallese – RE Plantation Phase II
- l. Letter dated November 19, 2018 from Joseph Landry, Fire Chief - RE Comments on Plantation Apartments II
- m. Email dated November 20, 2018 from Detective Sergeant Michael Sallese – RE Plantation Phase II

Correspondence from Dennis Murphy, Hill Law:

- a. Letter dated November 9, 2017 - RE Comprehensive Permit Application for Plantation Apartments II
- b. Letter dated May 29, 2018 - RE Revised submission for Plantation Apartments II
- c. Letter dated June 18, 2018 – RE Comments on Plantation Apartments II

- d. Email with attachments dated June 19, 2018 – RE Plantation Apartments II
- e. Email dated November 8, 2018 - RE Plantation Apartments II, Stow MA

General Correspondence:

- a. Email dated June 26, 2017 from Bruce Fletcher to Greg Reynolds – RE Proposed Plantation II Project Abutter concerns/comments
- b. Letter from Greg Reynolds on behalf of Abutters of proposed Plantation II Project to Stow Elderly Housing Corporation dated June 26, 2017 - RE Concerns, issues and recommendations for consideration
- c. Email from Ernest Dodd, Member of Zoning Board of Appeals, dated November 9, 2018 – RE Plantation II Safety Recommendations

HEARING ON REMAND

Submitted for the Board's deliberation were the following exhibits related to the Remand Application:

A plan entitled "Plantation Apartments II – Building and Wall Section" dated April 16, 2019 and prepared by the Architectural Team, Inc., consisting of 1 Sheet"

Sheet A5.01

A Plan entitled "Plantation Apartments II – Exterior Elevations dated April 16, 2019 and prepared by The Architectural Team, Inc." consisting of X Sheets:

Sheet A4.01

A Plan entitled "Plan of Land in Stow, Massachusetts" prepared by Ducharme and Dillis, dated September 23, 2019, endorsed by the Stow Planning Board on November 5, 2019 consisting of 1 Sheet.

A Plan entitled "Area Suitable for Buildings Exhibit Plan" dated May 18, 2020 and prepared by Ducharme and Dillis, Inc. consisting of 1 Sheet.

Application for Remand Modification of Comprehensive Permit dated March 12, 202, consisting of the following:

- Cover Letter and list of requested waivers
- Exhibit A – HAC Remand Order
- Certificate of Service
- Exhibit B – Table of Dimensional Requirements

Additional Information submitted by Klein Hornig, LLP

- a. Email dated May 18, 2020 from Rita Schwantes RE Plantation Apartments Public Hearing on Remand from HAC with two attachments:
  - a. 4644-2 4.3.2.3 Exhibit Plan
  - b. (C2.0) 46442 – LAYOUT 05152020

- b. Email dated June 10, 2020 from Rita Schwantes RE Plantation Drafts and questions with 1 attachment:
  - a. Plantation 2 ANR Plan Dated and Stamped 9.23.19, Approved 11.5.2019 [BK 2020, PL 59]
- c. Email dated June 11, 2020 from Rita Schwantes RE Revised Plantation I and II Decisions and Waiver Documents with two attachments:
  - a. Comparison – BHC June 5 Plantation I Draft Waivers on Remand – KH Comments bhc June 5 Plantation Draft Waivers on Remand
  - b. Comparison – BHC June 5 Plantation I Draft Waivers on Remand – KH Comments bhc June 5 Plantation Draft Waivers on Remand
- d. Email dated June 16, 2020 from Rita Schwantes RE Revised Plantation I and II Decisions and Waiver Documents with 1 attachment:
  - a. Pages from Appendix B Waivers Plantation 2 Decision
- e. Email dated June 18, 2020 from Rita Schwantes RE Revised Plantation I and II Decisions and Waiver Documents
- f. Email dated June 19, 2020 RE Plantation drafts and questions
- g. Email dated March 13, 2020 RE Plantation 2 2017 40B REMAND letter to Town of Stow ZBA re Application for Plantation II Modifications with one attachment:
  - a. Plantation 2 2017 40B REMAND letter to Town of Stow ZBA re application for Plantation II modifications 3.12.2020

Correspondence from KP Law, Counsel for Town of Stow

- a. Memorandum to Stow ZBA dated May 15, 2020

Correspondence from Town Departments:

- a. Email from Craig Martin, Building Commissioner, dated May 13, 2020 at 11:28 AM RE Building Height
- b. Email from Craig Martin, Building Commissioner, dated May 13, 2020 at 12:56 PM RE Building Height

Correspondence from Hill Law

- a. Email from Dennis Murphy dated June 18, 2020 RE Plantation Apartments Public Hearing on Remand from HAC with one attachments
  - a. Stow\_2019\_shi\_monitoring\_summary,14may2020
- b. Email dated June 4, 2020 from Dennis Murphy RE Plantation Apartments public hearing on remand from HAC with 4 attachments:
  - a. Ltr. To Stow ZBA re Plantation remand 2
  - b. Complaint package 5-18-20
  - c. 2013-04-23\_policy\_-\_final\_adopted\_by\_selectmen
- c. Email from Dennis Murphy dated May 15, 2020 RE Plantation Apartments public hearing on remand from HAC with one attachment:
  - a. Ltr. To Stow ZBA re Plantation remand

Information Submitted by Hill Law

- a. Letter to Stow Zoning Board of Appeals from Dennis Murphy, dated May 15, 2020 RE Public Hearing for Plantation Apartments, Stow, MA on remand from HAC.
- b. Letter to Stow Zoning Board of Appeals from Dennis Murphy, dated June 4, 2020 RE Public Hearing for Plantation Apartments, Stow, MA on remand from HAC
- c. Project Eligibility Letter from Ellen Cataldo dated August 10, 2017 to MA Department of Housing and Community Development
- d. Trial Court of Massachusetts Land Court Department Complaint Package dated May 18, 2020.

## REVISED PLANTATION I

### REVISED APPENDIX B: DECISION ON WAIVERS

The Board GRANTS and DENIES the requested waivers as follows:

#### Zoning Bylaw

Zoning Bylaw Section 4.1.1 This provision prohibits construction or use of land or building in violation of Zoning Bylaw or any Town Bylaw.

The Board grants this waiver in part, only as specifically provided below.

Zoning Bylaw Section 4.4 (Table of Dimensional Requirements).

<u>Dimension</u>	<u>Required</u>	<u>Provided</u>	<u>Waiver Granted</u>
Minimum side setback:			
Plantation I building E	25 ft.	11.5 ft.	13.5 ft.
Plantation I building F	25 ft.	10.5 ft.	14.5 ft.

#### Project Lot

Zoning Bylaw Section 3.8.1.3. Noise. Applicant requests relief from this section, which limits noise generated on any lot. Applicant requests relief "to the extent that it is more restricted than applicable state requirements.

The Board denies this waiver. In the event that the development is not in conformance with Section 3.8.1.3 of the Zoning Bylaw, the Applicant or owner shall provide noise abatement options for the Building Inspector's approval. Approval of such noise abatement options by the Building Inspector shall constitute compliance with this Bylaw section and this Permit.

Zoning Bylaw Section 3.8.1.10.7. Applicant requests an exception from the requirement that a copy of the Stormwater Prevention Plan and Notice of Intent filed with EPA be submitted to the Planning Board.

The Board grants this waiver with respect to filing these items with the Planning Board. Copies of the relevant documents shall be provided to the Planning Department.

Zoning Bylaw Sections 5.2.1.1.2 and 5.2.2.3. Water Resource Protection District. Applicant requests relief from this section, which prohibits uses generating onsite sewage disposal exceeding 110 gallons per day per 10,000 square feet of lot area.

The sewage disposal area for the wastewater treatment facility intended to serve Plantation I and Plantation II is located outside the WRPD boundary. The Plantation I buildings

(as well as the proposed Plantation II building), and thus the "use," lie within the WRPD boundary. Interpreting the Bylaw conservatively, which the Board believes it must, the Board finds this section of the Bylaw applicable to the Project. Based on the advice of consultant, the Board finds that to the extent a waiver of these Bylaw provisions are necessary, such provisions may be waived consistent with health and safety. The Board grants this waiver.

Zoning Bylaw Section 6.2.5. Joint Responsibility of Lot owners sharing common drive. The Applicant seeks relief from this provision, which requires owners of lots bordering common drive to have joint and several responsibility for maintenance, so as to allow the responsibility for maintenance of Johnston Way to be shared "by owners of Parcel A and A1 and the Neighboring lot only" (that is, by whomever ultimately owns Plantation I and Plantation II).

The Board grants this waiver.

Zoning Bylaw Section 6.2.6. Applicant seeks relief from this section which requires that an Erosion Control and Sedimentation Plan, in accordance with Planning Board Rules and Regulations governing the same, be submitted to and approved by the Planning Board.

The Board grants this waiver. The Erosion Control and Sedimentation Plan shall be submitted to the Planning Department.

Zoning Bylaw Section 6.2.7. The Applicant seeks relief from this section, which provides that "as part of an approved subdivision or special permit granted by the Planning Board, the number of lots served by a common drive may be increased to five."

The Board grants this waiver, to the extent the lots served are those depicted in the approved plans. No additional lots or units may be served.

Zoning Bylaw Section 6.3. Signs. The Applicant seeks a determination from the ZBA that Section 6.3. is waived in its entirety to permit installation of a sign, subject to the Building Commissioner's reasonable review and approval."

The Board denies this request for waiver of the Bylaw Section in its entirety. The Board waives the Bylaw only to the extent necessary to allow for a "Plantation II" sign to be located offsite, meeting the approval of the Building Inspector as to size, form, and location.

Zoning Bylaw Section 7.7.2. Access Driveways. Applicant seeks relief from this section which requires, among other things, an access driveway of 24 feet in width, to allow for Johnston Way, widened to between 18 and 22 feet.

The Board grants this waiver, noting that a width of 20 feet has been deemed adequate by the Fire Chief.

Zoning Bylaw Section 8.9.2.1. Inclusion of Affordable Housing. The Applicant requests relief from this section, which requires among other things a special permit from the Planning Board for development or division of land resulting in creation of six or more units



The Board grants this waiver.

Zoning Bylaw Section 9.3.3.5. Site Plan Approval - establishment of area for vehicle parking, loading storage or vehicular access. The Applicant seeks waiver of this section to allow for parking and vehicle access areas to be built as designed and shown on the Plans without site plan approval.

The Board grants this waiver, to the extent the Bylaw would require a separate site plan review and approval process. Preliminary site plans have been reviewed by the Board and its consultants, and the final Site Plans must be reviewed and approved by the Board's consultant or the Planning Department prior to site disturbance.

### **Other regulations**

#### **Subdivision Control regulations**

1) A waiver is sought from the ZBA with respect to the fees listed in the Subdivision Control Regulations in connection with the Project.

The Board grants this waiver.

2) A waiver is sought from the requirement of Section 7.4.1 of the Subdivision Control Regulations regarding performance guarantees. Developer proposes to provide a guarantee with respect to construction-related damage of public roads adjacent to the Site.

The Board denies this waiver. The applicant shall provide a performance guarantee in accordance with Section 5 for the Subdivision Rules and Regulations, such as a Restrictive Covenant, proper bond, deposit of money or negotiable securities, or funds retained by a lender.

3) A waiver is sought from the administrative requirements of Section 10.4, Mandatory Notice Prior to Commencement of Construction Work, Section 10.5, Inspections, and Section 10.8, Completion within Eight Years.

The Board denies waivers of Sections 10.4 and 10.5 of the Subdivision Rules and Regulations. The Board grants a waiver from Section 10.8 of the Subdivision Rules and Regulations.

### **Board of Health**

#### Leaching Area Requirement Regulation.

The Applicant requests that the ZBA "confirm [the Applicant's] understanding or make the determination that the Board of Health's Leaching Area Regulation, which requires sewage disposal system leaching areas to have an effective square footage to handle 150% of the estimated design flow (as defined by Title 5) only applies to Title 5 sewage disposal systems and

is inapplicable to the Project which will be installing a [wastewater] discharge facility to be permitted by the State Department of Environmental Protection."

The Board finds that the referenced regulation is inapplicable to the Project, provided that a wastewater disposal permit is issued.

## **General Bylaws**

### Acceptance and Repairs of Private Roads, Section 1.

The Applicant requests a waiver of this provision, specifically, that "with respect to Johnston Way and the access driveway, the Applicant requests that the ZBA find and determine that Johnston Way and the access driveway are not private roads or ways subject to Article 5 of the General Bylaws. If the ZBA determines that Johnston Way and the access driveway are private roads or ways subject to Article 5 of the General Bylaws, the Applicant requests that the ZBA find and determine that Johnston Way and the access driveway, although not meeting all of the requirements of Article 5, are of sufficient width, suitable grade, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of land abutting thereon and served thereby and accordingly waive strict compliance with Article 5 of the General Bylaws to construct the Project as shown on the Plans:."

The Board finds that Johnston Way is a private way subject to Article 5 of the General Bylaws. To the extent that Johnston Way and the access driveway do not conform to the requirements of Article 5 of the General Bylaws, relief is granted, only upon compliance with the following conditions:

- 1) The owners of Plantation I and II shall bear and have joint and several responsibilities and obligations for the repair, maintenance, reconstruction and snowplowing so as to provide continuous year-round access for vehicle traffic for the convenience of owners of the lots, and to provide continuous year-round access for all emergency, fire, rescue, police, moving construction and maintenance vehicles.
- 2) There shall be no site disturbance until a restriction or covenant to run with the land has been approved by the Planning Department in a form satisfactory to assure compliance with this provision and a copy of the document received by the Building Inspector.
- 3) The above-described restriction or covenant shall include a provision that the way shall not be presented to Town Meeting for acceptance as a public way.
- 4) As proposed, the road shall not service any further developments.

## **Wetlands Bylaw**

### Section 5.4(a) General Performance Standards Applying to Any Area

The Applicant requests a waiver from this provision, stating that "[w]ith respect to the proposed water line that will cross a wetland area on the Neighboring [Plantation I] lot, the Developer seeks a temporary waiver from the ZBA from the requirement that an undisturbed buffer of naturally occurring plant materials shall be left adjacent to all wetlands, water bodies and watercourses to a minimum width of thirty-five feet only in the event it proves infeasible to install the water line without disturbing said buffer.

As was discussed at hearing, the Applicant has not yet prepared plans indicating where this proposed water line would be installed, nor has it established the existing conditions that would determine what methods would be used for such installation. Lacking this essential information, the Board has no basis on which to grant a waiver. The waiver is denied, without prejudice for the Applicant to return to the Board to request a modification of the Permit based on such information as would enable the Board to make such determination.

#### Other

The Board acknowledges and agrees that pursuant to the relief granted in the Plantation I and II decisions and waivers, the Plantation I project will not be in violation of this Decision by virtue of any violation of the Zoning Bylaw or Plantation II Decision, with respect to the Plantation II project.