

**REVISED PLANTATION II DECISION
TOWN OF STOW**

ZONING BOARD OF APPEALS

Decision on Remand Application for Comprehensive Permit
"Plantation II"

- Applicant:** Stow Elderly Housing Corporation
22 Johnston Way, Stow, MA 01775
- Owner:** Plantation II Apartments LLC and Plantation Apartments Limited
Partnership
(address identified on application: "c/o Stow Elderly Housing Corporation,
22 Johnston Way, Stow, MA 01775")
- Locus:** 252 Great Road, 22 Johnston Way and property off Great Road
Assessor's Map U-11, Parcel 10
Assessor's Map U-11, Parcel 13-1
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 18, 2020; June 19, 2020

On August 10, 2017, the Stow Elderly Housing Corporation (SEHC or Applicant) submitted an application for a comprehensive permit for a project known as "Plantation II." 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, 2019.¹ Pursuant to G.L. c. 40B, ss. 20-23 and regulations thereunder, the Zoning Board of Appeals voted to grant the application for a comprehensive permit for "Plantation II," subject to certain conditions contained in the permit decision ("Plantation II decision"). Concurrently, the Board granted modifications to a comprehensive permit issued in 1982 for the "Plantation I" development ("Plantation I modification"). The two 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" on March 12, 2020)

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. History of Plantation II and Summary of Proposed Project, including Application on Remand

Pursuant to a comprehensive permit granted by the Board in 1982, SEHC developed the original Plantation project, now referred to as "Plantation I", containing fifty affordable apartments for the elderly on parcels off of Great Road. In 2010, the Board granted a second comprehensive permit for "Plantation II", containing thirty-seven additional affordable units for the elderly, to be located on property adjacent to Plantation I. Pursuant to G.L. c. 40B, ss. 20-23, the Board waived certain local regulations for the Plantation II project, including a provision of the Zoning Bylaw limiting the discharge of onsite sewage disposal within the Water Resource Protection District (WRPD). As then designed, both the Plantation II project building and its wastewater disposal system were located within the WRPD.

Appeal was taken under G.L. c. 40, s. 21 and G.L. c. 40A, s. 17 to Middlesex Superior Court by an abutter to the project site. The Superior Court found that the project's wastewater discharge would more likely than not cause nitrogen levels to exceed acceptable levels at neighboring wells, but nevertheless found the project's compliance with state requirements to be sufficient, and upheld the comprehensive permit. In a decision dated September 15, 2015, the Appeals Court reversed, finding that state standards were insufficient to protect neighboring wells; that it was "unreasonable to conclude that the need for affordable housing outweighs the health concerns of existing abutters"; and unreasonable to waive the WRPD Bylaw provision limiting the discharge of wastewater within the District. The Appeals Court directed revocation of the comprehensive permit.

On or about August 14, 2017, SEHC submitted a revised application to the Board for Plantation II. The project consists of thirty-seven affordable one-bedroom rental apartments for the elderly, together with related facilities, and the refurbishment of an existing single-family

dwelling, on properties off Great Road. The proposal entailed the reconfiguration of several parcels, owned by related entities², such that 1) the single family dwelling would be located on a lot containing approximately 0.46 acres, with frontage on Great Road ("House Lot"); 2) the thirty-seven housing units would be constructed on a second lot to the south of the house lot, containing approximately 3.3 acres ("Project Lot"); and 3) a third lot, the site of a well to serve the project (Well Lot"). In its Plantation II decision, the Board declined to approve this reconfiguration of lots as requested, noting that it was without authority to do so under the Subdivision Control Law. The Plantation II comprehensive permit was issued subject to endorsement by the Planning Board, granting such relief it deemed proper, of a plan depicting the reconfigured lot lines.

In the Remand Application, the Applicant has eliminated the creation of a separate "House Lot," maintaining a single "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 Applicant's stated intent with respect to the single family house is to 1) rent it at market rate; or 2) impose a condominium scheme such that the single family house and the Plantation II development will be separate units, with the single family house unit to be sold at market rate.

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 an intended "land swap" accommodating the location of the Plantation II well and Plantation II project building, but as described above, did not create a separate "house lot."

The new Project Lot has frontage on Great Road. A driveway located on the Project Lot will continue to serve the single family house. The Plantation II development will be accessed by easement over Johnston Way, a private way currently serving the existing Plantation I development. Plantation I contains fifty affordable apartments for the elderly constructed under a comprehensive permit issued in 1982 to the Stow Elderly Housing Corporation. It consists of six two-story buildings sited around a cul-de-sac (in which Johnston Way terminates), to the west of the Project parcel. Ownership and configuration of the Plantation II lots, as well as their relationship to the Plantation I development, are discussed further below. The Well Lot is to the west of Plantation I.

SEHC proposes to rent all thirty-seven Plantation II apartments to low- or moderate - income households, and to rent the single family house at market rate, or sell it as a

² 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.

condominium unit at market rate.³ SEHC states that, to the extent consistent with applicable law, "a local preference will be implemented to rent up to 70% of the Elderly Housing units to households meeting local preference guidelines, including a preference for current residents of Plantation I." The Project Eligibility Letter states that the project has been approved under the Low Income Housing Tax Credit (LIHTC) program.⁴ A Special Town Meeting vote on October 19, 2009 approved the allocation of \$825,000 in Community Preservation Funds for the Plantation II project.

At the time SEHC submitted its original Plantation II application, SEHC also submitted an application for modification of the 1982 Plantation I comprehensive permit, to reflect certain changes to that project arising from the Plantation II development. Modifications to the Plantation I comprehensive permit were contained in a separate decision filed with the Town Clerk on January 11, 2019 (the Plantation I modification). In conjunction with its Remand Application on Plantation II, SEHC has submitted requests for changes to the Plantation I modification. These requests are addressed in a separate decision filed herewith.

The issuance of in 2019 of the Plantation II comprehensive permit, as well as the modification of the Plantation I permit, implicated 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 again implicated by the revised applications and are discussed below.

II. Record before the Zoning Board of Appeals

The materials identified in **Revised Appendix A** comprise the record before the Board, with the addition of certain materials submitted in the Remand Application.

III. Findings of the Board

A. Findings on "Project Eligibility"

Based on the materials submitted by the Applicant, the Board makes the following findings with respect to the requirements of 760 CMR 56.04(1):

The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization

³ The Project Eligibility Letter issued by DHCD specifies an affordability level of "no more than 60% of area median income" for all thirty-seven rental units.

⁴The original Plantation II application stated that the project is to be constructed under the Department of Housing and Community Development's HOME program and/or DHCD's Housing Stabilization Fund. In public hearing following remand, the Applicant advised that this is still the case.

According to the application originally submitted and confirmed in public hearing following remand, SEHC expects Plantation Apartments II LLC "to ultimately own and operate the Project." The managing member of Plantation Apartments II LLC is Plantation Apartments II MM LLC, which has no managers; its office, agents and authorized signatories are SEHC and/or its president. SEHC states that Plantation Apartments II LLC "will be controlled by (or under common control with [SEHC] and will be a qualified limited dividend organization within the meaning of Massachusetts General Laws Chapter 40B." Separately, the Applicant has requested a finding that "Stow Elderly Housing Corporation, which is a qualifying nonprofit organization within the meaning of General Laws Chapter 40B or its designee, is eligible to receive a subsidy under a state or federal affordable housing program after a Comprehensive Permit is issued."

It is unclear whether the necessary finding under 760 CMR 56.04(1)(a) is sought only with respect to the Applicant, SEHC, or, in addition, with respect to Plantation Apartments II LLC, which currently owns a portion of the project site, and which SEHC states will ultimately own and operate the Project. The Board finds that that the Applicant, SEHC, is a qualifying "nonprofit organization" for purposes of 760 CMR 56.04(1)(a), and leaves it at that.

The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program.

The Project Eligibility Letter issued by DHCD on August 10, 2017, states that the project has been approved under the Low Income Housing Tax Credit (LIHTC) program. Under DHCD regulations, this approval letter is sufficient to establish "fundability" for purposes of 760 CMR 56.04(1)(b); although as noted by the Project Eligibility Letter, it is not a guarantee that LIHTC funds will be allocated to this Project.⁵

The Applicant shall control the site.

Plantation Apartments II LLC currently owns most of the property that will become the Project Lot and the Well Lot. The managing member of Plantation Apartments II LLC is Plantation Apartments II MM LLC, which has no managers; its office, agents and authorized signatories are SEHC and/or its president. A portion of the current Plantation I parcel (Assessor's Map U-11, Parcel 13-1) abuts and will become part of the Plantation II Project Lot; this property is owned by SEHC.

The Board finds that based on the control exercised by SEHC with respect to the other entities involved in the transactions proposed, that the Applicant controls the site for purposes of 760 CMR 56.04(1)(c).

⁵ In public hearing following remand, the Applicant advised that due to the project change involving the single-family house (that it will remain part of the project, rather than being severed from the project site), the Applicant is pursuing any necessary modifications of its Project Eligibility letter with DHCD. For purposes of the hearing on remand, the original Project Eligibility letter and the Applicant's pursuit of any needed modification to it is sufficient to satisfy this Project Eligibility Requirement.

B. Findings on the need for affordable housing

Based on the application and hearing evidence, the Board made certain findings in the Plantation II decision regarding the need for affordable housing. The Board reiterates those findings here:

1. The Board finds that there is a critical, unmet need for affordable housing in the Town of Stow. Approximately 20% of households in Stow meet the income eligibility requirements for affordable housing.

2. The Board finds that the need for affordable units for the elderly is particularly acute.

3. The Board finds that Plantation I development is rented to capacity, and that there is a lengthy waiting list for apartments.

4. The Board finds that the need for affordable units for the elderly has increased substantially since the permitting and construction of the Plantation I development.

5. The Board finds that the production of additional units of affordable elderly housing was identified as a priority in the Town's most recent Housing Production Plan (HPP). The HPP noted that the need for such housing is set to *further* increase in the coming years as the population of older adults continues to grow. It is expected that by 2030, 29.7% of the population of Stow will be over the age of 65.

6. The Board finds that the Town of Stow has not achieved the 10% threshold identified in G.L. c. 40B, ss. 20. The Town currently has 185 subsidized housing units on the Department of Housing and Community Development's Subsidized Housing Inventory (SHI), or 7.4%.

IV. 1982 Covenant

The 1982 comprehensive permit issued to SEHC for Plantation I 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 Board has reviewed the Plantation I Decision, the Covenant, and the Plan.

The Covenant, in addition to containing terms relating to 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 revised Plantation II project entails 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 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.

As discussed below, 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 so as to ensure such consistency.

V. 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 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 redivision and recombination of parcels. This Board noted in its original Plantation II decision 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 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.

While the Applicant's appeal was pending at the Housing Appeals Committee, the Applicant obtained the Planning Board's endorsement of the ANR plan identified above. This ANR plan redrew certain lot lines to accomplish an intended "land swap" accommodating the siting of the Plantation II well, but as discussed, did not create a separate "house lot." 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.

VI. Chapter 61B

As noted in the Plantation II decision, a portion of the Well lot is currently classified and taxed under G.L. c. 61B as Recreational Land. The Applicant's modified proposed development entails a "land swap" under which a portion of this Chapter 61B land (shown as "Parcel B2" on the proposed record plan), will be conveyed and joined to the Plantation I parcel, and a portion

of the Plantation I parcel will be conveyed and joined to the Well lot. The remainder of the Well lot shown as "Parcel B1" on the proposed record plan is proposed to remain under Chapter 61B.

The Applicant states that Parcel B1 will contain over five acres after the land swap, and suggests that the property will otherwise continue to be eligible to be classified and taxed as Recreational Land following the swap. Two wells, a pump house, and underground tanks (fenced) will be located on this parcel, served by a gravel service road from Great Road.⁶ The Board finds that the gravel road should be gated to preclude unauthorized vehicle access.

The Board finds that the question of whether the proposed development, as modified, will entail a change in use of the property - and thus whether the property will continue to be eligible to be classified and taxed as Recreational Land - is for the Assessor to determine. Application to the Assessor for such determination is a condition of this approval.

With respect to Parcel B2, and its intended conveyance and joining to the Plantation I parcel (and residential use), the Applicant states that such transfer would constitute a sale for other use (that is, other than Recreational use), triggering the Town's right of first refusal under Chapter 61B. The Applicant notes that this right of first refusal is typically triggered by a notice of intent to sell, accompanied by a purchase and sale agreement representing a "bona fide offer" from a third party. In this case, the intended conveyance of Parcel B2 does not fit the statute's requirements, especially where no purchase and sale agreement will be entered into until after any comprehensive permit is issued. As stated by the Applicant, "the timeline for the Owner to provide a notice of intent to sell to the Town of Stow is not at the present time when no comprehensive permit has yet been granted for the project but instead will be when the terms of the land swap are finalized."

The Board finds that the intended conveyance of Parcel B2 would appear to trigger the Town's right of first refusal, and that such right of first refusal will not ripen until such time that the "land swap" is to be executed. The owner of Parcel B2 shall comply with all requirements of G.L. c. 61B. s. 9 with respect to such intended conveyance.

This approval is subject to compliance by the Applicant, and all related parties and successors in interest, with all requirements of G.L. c. 61B.

VII. Water Resource Protection District

In the Applicant's original Plantation II proposal in 2010, both the project building and the leaching fields of its Title 5 wastewater disposal system were located within the Water Resource Protection District (WRPD). The Board waived provisions of the Zoning Bylaw prohibiting uses generating the discharge of wastewater exceeding 110 gpd per 10,000 square feet within the WRPD. As noted above, the Board's waiver of the WRPD regulation was the basis for the Appeals Court reversal in the *Reynolds* decision.

⁶ The Town Assessor has advised that the land under the proposed improvements will be removed from Chapter 61B.

Following the *Reynolds* decision, the Applicant's engineers redesigned the project. The application submitted in August of 2017 kept the project building within the WRPD, but moved the leaching fields outside the WRPD boundary. Abutters to the project site continued to express concerns regarding the safety of their wells given the proximity of the leaching fields to their properties. While the Board was vetting these concerns with the Town's Title 5 consultants, the Applicant decided to abandon plans for a Title 5 system serving 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 current project design locates such facility outside the WRPD, and the Applicant's engineers assert that discharge from this facility will pose no threat to neighboring wells - in particular, no elevated levels of nitrogen at their property boundaries.

Due to the proximity of the proposed facility to the WRPD and to neighboring properties, the Board continued to be concerned with the safety of the design and whether the WRPD Bylaw provisions might safely be waived. Based on such concerns, the Board requested the opinion of its consultant as to whether, given the proximity of the proposed wastewater treatment facility to the WRPD, the facility poses a threat to health and safety. The response of the Board's consultant included the following opinion:

"The proposed Waste Water Treatment Facility is located outside of the WRPD, does not contain hazardous materials and will have routine inspections/maintenance by a licensed professional with reporting requirements to DEP. The effluent discharged from the Waste Water Treatment Facility will have a greater level of treatment and lower nitrogen levels than if both [Plantation I and II] lots used a Title 5 system similar to the existing system on Plantation Apartments.

The Groundwater Discharge Permit, when issued by DEP, will have strict testing requirements and standards and will typically require testing of monitoring wells. The effluent being discharged from the facility will be monitored for the nitrogen levels set in their permit and DEP has the jurisdiction to enforce these pre-determined levels.

It is the opinion of this office that the use of a properly permitted Waste Water Treatment Facility located outside of the WRPD will not pose a threat to health and safety. The implementation of this treatment facility may actually improve the water quality in the area."

Susan E. Carter, P.E. LEED-AP, Director of Engineering and President, Places, Associates, Inc.

Based on the above advice, the Board finds that it may, consistent with its responsibility to protect public health and safety, waive applicable provisions of the WRPD, and approve this project, subject to the Applicant obtaining a Groundwater Discharge Permit for the combined treatment of Plantation I and II, and subject to such permit becoming final.

The Board finds that it may be useful to establish a baseline for existing nitrogen levels in the wells serving those properties abutting Assessor's Map U-11, Parcel 10. Accordingly, the Applicant shall pay the costs of testing the well of any abutter to the project site, who so elects,

to establish existing nitrogen levels only, prior to construction and operation of the proposed wastewater treatment facility. Such testing, if any, shall occur prior to site disturbance, and test results shall be available forty-five (45) days prior to site disturbance.

VIII 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. The Board understands that reasonable waivers from local regulations should be granted if, but for the waiver, the development of the housing project would be "uneconomic," as that term is used in G. L. c. 40B, §§ 20-23.

The Applicant included its August 10, 2017 application to the Board a "List of Exceptions to the Zoning Ordinances and other Local Land Use Requirements." This List was updated several times prior to the Board's Plantation II decision, in which the Board granted waivers and denied others. As part of the Remand Application, the Applicant has submitted a revised list of waivers, and modifications to waivers granted, reflecting proposed project changes.

Under existing law and regulation, the Applicant has an affirmative obligation to demonstrate the need for the requested waivers to avoid the proposed project becoming "uneconomic." Although the Applicant has not provided documentation to demonstrate that the project would be rendered uneconomic *but for* the specifically requested waivers and exceptions, the Board has reviewed the Applicant's waiver requests and has granted those that are consistent with protection of the general health, safety and welfare. The Board has denied requests that do not appear necessary to construct the Project. The Board finds, in the absence of any substantiation to the contrary, that the waivers not granted do not either alone, or in the aggregate, render the project uneconomic.

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 this comprehensive permit (the "Permit") to the Applicant for the project proposed. The Board notes that 760 CMR 56.05(8)(d) provides that:

"The Board shall not issue any order or impose any condition that would cause the building or operation of the Project to be Uneconomic...."

In reaching this Decision, the Board has endeavored to ensure that the conditions herein do not render the project uneconomic and that the conditions are consistent with local needs. If the Applicant should appeal this Decision to the Housing Appeals Committee and the Committee were to find that any particular condition or conditions render the project uneconomic or not consistent with local needs, the Board requests that any order to the Board to remove or modify any condition in this Decision be limited to such particular condition or conditions and that all other conditions and aspects of this Decision be confirmed.

1. The Comprehensive Permit application was based on a Project Eligibility letter issued to the Applicant by DHCD on August 10, 2017. This Permit is conditional upon the execution of a Regulatory Agreement for this Permit by DHCD, the Applicant and the Town of Stow, and issuance of Final Approval from DHCD. Issuance of Final Approval and the execution of such Regulatory Agreement is a condition precedent to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit.
2. The Applicant shall comply with the terms of the Regulatory Agreement and the Project Eligibility letter of August 10, 2017, to the extent applicable, prior to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit. No building permit shall be granted until the terms and conditions of the Regulatory Agreement and project eligibility letter have been complied with in full, except for those which by their nature are to be complied with during and after construction of the project.
3. The Project 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", Landscaping and Lighting Plans dated July 7, 2017, as updated through October 26, 2018. 4 Sheets; see Revised Appendix A (Landscaping Plan Sheets L-1.0, L-3.0 and Lighting Plan Sheets L-2.0, L-2.1)
 - "Plantation Apartments II", dated May 22, 2017 as updated through August 5, 2018 (seven sheets; see Revised Appendix A)

“Plantation Apartments II – Exterior Elevations dated April 16, 2019 and prepared by The Architectural Team, Inc.”

“Plantation Apartments II – Building and Wall Section” dated April 16, 2019 and prepared by the Architectural Team, Inc.”

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

“Layout Plan” Sheet No. C2.0 last revised May 15, 2020 prepared by Ducharme & Dillis.

“Area Suitable for Buildings Exhibit Plan” dated May 18, 2020 prepared by Ducharme & Dillis.

All of the above as further modified to comply with the requirements of this Decision and/or the Plantation I 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 I Decision.

Conditions relating to Project Plans and Erosion Control

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:

4. The Applicant, and all agents thereof, shall comply with all conditions contained in Appendix C to this Decision pertaining to Plan Changes, which Appendix is expressly incorporated into this Decision.
5. 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.
6. 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.

7. Pavement Specifications on sheet C3.1 of the Plans shall be amended to reflect relevant work on the Plantation II site.
8. Areas for snow storage along Johnston Way shall be defined on the Plans.
9. The Water System Plan shall be amended to include applicable notes and detail regarding installation of the water line in the wetland resource area by directional drilling. In addition, prior to site disturbance, the Applicant shall obtain an Order of Conditions from the Conservation Commission, providing a copy of such OOC to the Planning Department as agent for the Zoning Board of Appeals.
10. Cut sheets for all exterior lighting fixtures utilized shall be reviewed and approved by the Planning Department as agent for the Zoning Board of Appeals. No substitutions of lighting types are allowed to the fixtures unless found by the Planning Department to have equivalent illuminance specifications. Prior to issuance of the first building permit, confirmation of full cut-off fixtures shall be provided.
11. The Lighting Plan shall be amended to reflect structural fixtures. Detail for the exterior light posts shall be added to the Plan, including height.
12. The Lighting Plan shall be amended to show an adequate level of light at the entrance and plaza areas, provided such increase from 1 foot candle remains in accordance with Section 3.8.1.5 of the Zoning Bylaw.
13. 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.
14. The Plans shall be amended to include signage at turnaround areas labeled "no parking," to ensure access by emergency vehicles.
15. The Plans shall indicate compliance with ADA accessibility requirements at the building entrance. Additions to the Plan may include but not be limited to spot elevations for top and bottom of ramps and curbs, and tactile detection strips.
16. The Plans shall be amended to contain sufficient detail of the proposed grass paved shoulder along the western side of the building, so as to provide a determination of the shoulder's ability to withstand H-20 loading requirements, and to be maintained and accessible at full width year round. Such detail shall be provided to the Fire Department for approval prior to commencement of construction.
17. The Plan notes shall be modified to provide clarification regarding the conditions of the post development woods area, including directions for removing all construction debris and minimizing damage to existing vegetation.

18. 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 table which shows negligible increase in runoff.
19. Seed mixes for erosion control shall be added to the Landscape plan for final review of appropriate species by the Board's consulting engineer.
20. 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.
21. 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 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

22. 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.
23. Development of the Project shall comply in all respects with the conditions contained in the Project Eligibility approval for the Project issued by DHCD dated August 10, 2017 and any modifications thereto.
24. The Project shall comply with all Town of Stow rules, regulations, and other local bylaws and requirements not expressly waived by this Decision.
25. 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.
26. 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.
27. 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

28. Stormwater management systems shall meet the Guidelines of the Department of Environmental Protection Storm Water Management Policy and Handbook (Vols. 1 & 2), as revised.

Dwelling Units; Affordability in Perpetuity

29. The project shall consist of thirty-seven one-bedroom apartments, a community room, meeting room and management office located in a single three-story building, constructed in conformity with the Plans specified in Condition 3 above, and the existing single family house ("House").
30. All thirty-seven apartment units shall be affordable, in perpetuity, to individuals and/or families earning no more than 60% of area median income, as calculated pursuant to formulas determined by the U.S. Department of Housing and Urban Development (HUD) or DHCD. For the avoidance of doubt, the House shall not be subject to any affordability restrictions with respect to the rental or sale of the House.
31. All thirty-seven apartments shall be subject to a permanent affordable housing restriction conforming to G.L. c. 184, ss. 31-33 and in a form acceptable to the Town, and recorded in the Registry of Deeds. For the avoidance of doubt, the House shall not be subject to any affordability restrictions.
32. Said affordable housing restriction, enforceable by the Town of Stow, requiring that the affordable units remain affordable in perpetuity and in a form approved by the Board, shall be recorded senior to any liens on the Project locus to protect the requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale.
33. None of the apartment units may be rented to anyone other than a qualified tenant as required by this Decision and consistent with the requirements of DHCD and other relevant state agencies governing the rental of below market rate units in a comprehensive permit project. To the extent allowed by law, the units shall be rented to persons meeting requirements for elderly housing or otherwise eligible for such housing. For the avoidance of doubt, the House shall not be subject to any such requirement.
34. Upon the rental of an affordable dwelling, the Applicant or its successors or assigns shall provide written notice to the tenant that the premises are subject to an affordable housing restriction and is subject to the terms and provisions of the affordable housing restriction and that any amendment purporting to alter, amend or delete the restriction shall be void and of no effect.

Management Documents – Operating Agreement

The Applicant shall prepare documents in a form that conforms to this Decision and applicable law designed to manage the Project and ensure that the terms and conditions of this Decision are enforced.

35. 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 I 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 38F below, which shall contain the specific operating and maintenance tasks to be shared by Plantation I and Plantation II pursuant to the Operating Agreement.

36. 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.

Profitability

37. The Project shall be limited to the profit allowed under the Regulatory Agreement (the "allowable profit").
38. Any profit that is above the allowable profit pursuant to the Regulatory Agreement, shall be returned to the Town of Stow for use by the Town. The profit limitation may be enforced by the Town or its agencies, boards or commissions at anytime.

39. Conditions Precedent to Commencement of Project

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. 1) The Board of Selectmen have waived those provisions contained in the 1982 Covenant, identified above in Section IV, 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 shall 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.⁷

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 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 shall ensure that there is no erosion or sedimentation from the project site onto Johnston Way, Great Road, 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

⁷ 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.

officials for parking and stockpile of materials, erosion control methodology and construction schedule.

I. The Applicant, Monitoring Agent and DHCD have executed a Monitoring Agreement as provided by DHCD.

J. The Applicant, the Town of Stow and DHCD have executed a Regulatory Agreement, and said Agreement has been recorded at the Middlesex Registry of Deeds. The Regulatory Agreement shall provide that all units shall be restricted as affordable in perpetuity to households with less than 60% of the applicable area median income.

K. 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 but not limited to easements over Johnston Way and over the "Easement Area" depicted on the Plans on the Plantation I property.

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 all easements necessary for installing and maintaining utilities serving Plantation II, including but not limited to 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), and all other easements necessary for the installation and use of utilities serving Plantation II, and for use of the cisterns on Plantation I property.

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.

N. The Applicant has executed and recorded in the Registry of Deeds an easement over Assessor's Map U-10, Parcel 42, granted by the owner of such parcel, for the benefit of the Applicant, providing an access and utility easement for connection to the Pump House.

O. The adequacy of the proposed well to provide service to the development has been confirmed.

P. The conveyances described in Section V above, providing for the combination of the described lots, shall be recorded in the Registry of Deeds, except that site disturbance and site work needed for the septic system and well, and other preconstruction work, which may take place as allowed by the Building Inspector.

40. 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 and to the Planning Department as agent for the Board. The Onsite Contractor shall demonstrate to the Building Inspector's satisfaction that Conditions 4-18 have been satisfied.

C. Additional erosion control materials shall 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

41. The fees for consultant reviews incurred in the Zoning 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).

42. Temporary certificates of occupancy by the Building Department and Fire Department will not be permitted. The Fire Department will not sign the occupancy permit until all required fire prevention and detection systems are installed and operating, carbon monoxide detectors are installed and operating, and all required inspections have been

completed by the Fire Department. All cisterns indicated in the project plans, as well as any other improvements required by the Fire Department, shall be installed and operational prior to the grant of any occupancy permit.

43. Pursuant to the Project Eligibility letter issued by DHCD, following the issuance of certificates of occupancy, the Applicant shall submit to the Board and to the Stow Board of Selectmen the comprehensive permit project cost certification

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.

44. 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.
45. Johnston Way shall not be presented to Town Meeting for acceptance as a public way.
46. Johnston Way shall not service any further developments.

Conditions relating to Erosion Control

The Applicant and all agents thereof shall comply with all conditions contained in Appendix C to this Decision pertaining to Erosion Control.

Additional Conditions

47. Invasive Plants. No plants on the Commonwealth's Department of Agriculture "Invasive Plants" list (see <https://www.mass.gov/service-details/invasive-plants>) may be used in the landscaping or any other area of the proposed project.
48. 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.
49. 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.

50. Community Preservation Act. The Applicant shall comply with any conditions associated with the funding provided through allocation(s) by the Town pursuant to the Community Preservation Act, and comply with the funding agreement of such allocation.
51. Lighting. All proposed lighting including freestanding fixtures or those attached to a structure shall comply with Section 3.8.1.5 (Exterior Lighting) of the Zoning Bylaw. Specification cut sheets for each type of fixture shall be provided to the Board or its agent.
52. Lighting. Lighting from the new parking area associated with the development shall be shielded from the Plantation I buildings and from abutters to the project site.
53. 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.
54. Cisterns. The owners of Plantation I and Plantation II are jointly and severally responsible for the maintenance and repair 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 Plantation II. Plans and location of cisterns must be finalized prior to issuance of any Building Permit.
55. 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.
56. 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.
57. Decommissioning of existing septic system serving Plantation. 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.

58. 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.
59. 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.
60. Testing of wells The Applicant shall pay the costs of testing the well of any owner of property abutting Assessor's Map U-11, Parcel 10, who so elects, to establish existing nitrogen levels prior to construction and operation of the proposed wastewater treatment facility. Such testing, if any, shall occur prior to site disturbance, and test results shall be available forty-five (45) days prior to site disturbance.
61. Inspections. Such reasonable inspections of the project site and construction by the Board's consultant, as needed to implement the terms of this Permit, shall be funded by the Applicant pursuant to s G.L. c 44, s. 53.
62. Agents, successors and assigns. All terms and conditions of this permit shall be binding upon the Applicant and all agents, successors and assigns.
63. Zoning status of single-family house. For purposes of zoning, including any alterations to the structure, the single family house on the Project Lot shall be treated as a pre-existing nonconforming structure subject to the protections of G.L. c. 40A, s. 6 and the Stow Zoning Bylaw. Alterations to the structure increasing any existing nonconformities, or creating any new nonconformities, shall require modification of this comprehensive permit, following public hearing, with any appeal of the Board's decision on such modification request to be taken pursuant to G.L. c. 40A, s. 17.
64. This decision is issued pursuant to a remand jointly requested by the parties from the Housing Appeals Committee, for hearing on certain agreed-upon issues. The Board finds these issues to be resolved herein through the revision of certain terms of the January 11, 2019 Decision. The Applicant, while reserving its rights, has represented that should such revisions be made, it would no longer pursue its appeal of certain other issues originally raised in the Housing Appeals Committee. Accordingly, should the Applicant appeal this Decision to the Housing Appeals Committee, all further relief granted in this decision shall be nullified, as well as all other alterations to the Board's January 11, 2019 decision, such that the January 11, 2019, is the only and operative permit.

CONCLUSION

This Permit is 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

NOTICE OF RIGHTS OF APPEAL

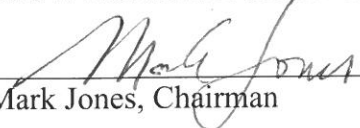
Any person aggrieved by this Decision may file an appeal pursuant to the provisions of General Laws, c. 40A, Section 17. Such appeal must be filed within twenty (20) days of the filing of this decision in the Office of the Town Clerk.

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.

**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

July 24, 2020
DATE RECEIVED + FILED
Lucia E. Hathaway
STOW Town Clerk

Ernest Dodd

Leonard Golder

DATE: July 21 2020
|

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

- 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

- 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

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.

**PLANTATION II
APPENDIX C**

Additional Plan Changes

1. All properties being developed shall be identified and shown on the Existing Conditions Plan.
2. The following information shall be shown or referenced as applicable on the Record Plan:
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3. A note shall be added to indicate flush curbing around all handicapped accessible parking spaces.
4. A detail for proposed project signage, in accordance with Section 6.3 of the Zoning Bylaw, shall be added to the Plan.
5. The format and location of all signage, including but not limited to Stop signs, No Parking signs, Handicapped Parking signs, Emergency Access, and pedestrian safety shall be shown on the plan with a corresponding detail.
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7. Signage indicating speed, pedestrian usage and a stop sign at the intersection Johnston Way and Great Road shall be added to the Site Plan. A center line strip and stop sign line shall be added to the Plan.
8. A reference shall be added for the easement/agreement regarding the use of the proposed fire cistern, including how water will be supplied if it is unavailable during construction. The Stow Fire Department should be made aware of water availability on a regular basis in accordance with Stow Fire Department Policies.
9. The Erosion Control Plan shall be updated to provide detail on erosion and sedimentation control efforts for the pump house and well site's gravel access road on parcel R22-1A-B.

Additional Erosion Control Related Conditions

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1. The Plans shall include a note indicating compliance with NPDES reporting requirements.
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 - c. Areas not to be disturbed shall be clearly delineated through flagging, signage;
 - d. There shall be no storage of any kind of pesticides, chemicals, fuels, and other potentially toxic or hazardous materials on site;
 - e. No debris, waste, junk, or rubbish shall be burned or buried on site;
 - f. Stumps and other wood debris shall be disposed in accordance with the "Policy on Disposal of Wood Wastes" Published by the Executive Office of Energy and Environmental Affairs;
 - g. The job superintendent shall be responsible for the installation and maintenance of all erosion and sediment control practices.
3. Prior to the commencement of construction, the Plan shall be modified to include the following notes regarding Maintenance and Performance Standards:
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 - b. All erosion control and sedimentation control measures shall be inspected weekly and after each rainfall in excess of 0.25 inches, including specific checks of the following items:
 - i. Silt fence barriers shall be checked routinely for tears, deterioration or undermining;

- ii. All seeded areas shall be checked to confirm that a good cover is maintained;
 - iii. All areas on site subject to erosion and sedimentation shall be inspected on a regular basis. All items specified on the plan shall be inspected to confirm they are functioning as designed and intended. It shall be the contractor's responsibility to maintain and repair all erosion controls.
 - iv. Drainage swales during construction shall be inspected monthly, and/or after rainfall events exceeding 0.25 inches for erosion, sediment accumulation, and leaf buildup. All eroded area shall be stabilized. Sediment shall be removed and leaf litter removed.
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 - viii. Contractor shall maintain a stockpile of additional erosion control measures on-site throughout construction, including straw bales, wattles, silt fence, crushed stone, and stump grindings as appropriate.
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 - d. If loam is placed outside of the normal growing season, silt fence or straw wattles shall be placed to prevent erosion of soil.

- e. Stockpile locations shall be within the proposed limit of work. Piles left for 21 days or more shall be seeded or covered with plastic sheeting.
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5. Prior to the commencement of construction, the Plan shall be modified to include the following notes regarding Permanent Stabilization Measures:
- a. Slopes flatter than 3 to 1 shall be loamed a minimum of 6" and hydroseeded with mulch and tackifier. Slopes shall be monitored for signs of washout. Provide additional mulching or other acceptable slope protection as required until vegetation is established.
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 - c. Any locations not stabilized before the end of the fall planting season shall be stabilized with mulch and then hydroseeded in the spring.
6. The Applicant shall provide a sequence of construction for the purpose of providing the contractor with an expected order of operations and estimated time frame for completion of the various tasks.
7. Prior to the commencement of construction, the Applicant shall provide the Planning Department with a construction sequence detailing the order of operations, including but not limited to initial clearing of the land, installation of erosion controls, installation of exclusionary construction fencing, stripping, grading, stockpiling and the order of construction of the various components of the plan.
8. Prior to commencement of construction, the Plan shall be updated to reflect the construction sequence, including but not limited to showing the locations of all stockpile areas and equipment storage locations.

**REVISED PLANTATION II
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 4.1.2. This provision prohibits the construction of more than one building on a lot.

The Board grants this waiver with respect to construction of the Project building.

Zoning Bylaw Section 4.3.1 Lot area

The Board grants this waiver.

Zoning Bylaw Section 4.4 (Table of Dimensional Requirements).

Project Lot

<u>Dimension</u>	<u>Required</u>	<u>Provided</u>	<u>Waiver Granted</u>
Minimum Lot Area	65,340 sq. ft. per unit x 38	163,684 sq.ft.	*
Minimum Frontage	200 ft.	75 ft.	125 ft.
Minimum front setback (to House)	30 ft.	29.1 ft.	.9 ft.
Minimum side setback (to House; west)	25 ft.	2.1 ft.	22.9 ft.
Minimum side setback (to House; east)	no relief required		
Minimum rear setback	40	*	*
Minimum front setback (Project Building)	from Great Road - no relief required		

Minimum rear setback: (Project Building)	40	*	*
Minimum side setback (Project Building, west)	25 ft.	15 ft.	10 ft.
Minimum side setback (Project Building, east)	no relief required		
Minimum open space	10%	33.4%	no relief required
Maximum Height	35	35	no relief required
Minimum side setback: Control Building	25	6.5	18.5

*The Board waives these requirements as inapplicable to the project.

Zoning Bylaw Section 7.3.3. Applicant requests relief from the minimum number of parking spaces per unit/square foot, and requests approval for 47 spaces.

The Board finds 47 spaces to be sufficient for the uses proposed and grants relief from the Bylaw requirement of two spaces per dwelling unit.

Zoning Bylaw Section 3.2 Applicant requests relief from this section, which describes purpose of District as intended for typical rural, single family residential and noncommercial uses, to allow the single-family house, multifamily housing and accessory uses including community space, meeting rooms, management office, and parking to serve the development.

The Board grants this waiver to allow the above-listed uses only.

Zoning Bylaw Section 3.2.1. Applicant requests relief from this section, which defines permitted Residential District Uses, to allow the single-family house, multifamily housing and accessory uses including community space, meeting rooms, management office, and parking to serve the development.

The Board grants this waiver to allow the above-listed uses only.

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. Erosion Control. Applicant requests, as relief, a waiver from the requirement to obtain a special permit from the Planning Board regarding the erosion control measures regarding the total area of site disturbance of approximately 111,950 square feet, and the clearing and regrading of approximately 111,950 square feet.

The Board grants a waiver only from the requirement to obtain a special permit from the Planning Board. The Board denies any additional waiver or relief. The project must comply with all other requirements of the Zoning Bylaw with respect to erosion control.

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

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

Zoning Bylaw Section 3.10. Table of Principal Uses. Applicant requests relief from the requirements of this Table, which require a special permit for multi-family use, and do not permit a 37-unit multi-family dwelling and a single family dwelling unit to be located on the same lot in residential districts.

The Board grants this waiver.

Zoning Bylaw Section 4.3.2.4. Lot Width. The Applicant seeks relief from this requirement with respect to the Project parcel.

The Board grants this waiver.

Zoning Bylaw Section 4.3.2.5. Lot Shape. Applicant seeks relief from this requirement, which prohibits the laying out of a lot having an index of regularity below 0.4, with respect to the combined Project parcel.

The Board grants this waiver.

Zoning Bylaw Sections 4.3.1.3, 4.3.2.6, 4.3.2.7 and 4.4. Front and Rear Yards. Applicant seeks relief from these requirements, as needed, to allow for the relative locations of the structures.

The Board waives the requirements of Sections 4.3.1.3, 4.3.2.6 and 4.4 to the extent needed to permit the house to be located within the "Front Yard" of the elderly housing development, as otherwise subject to the Zoning Bylaw and this Decision. Likewise, the Board waives the requirements of Sections 4.3.1.3, 4.3.2.7 and 4.4 to the extent needed to permit the elderly housing development to be located within the "Rear Yard" of the house, as otherwise subject to the Zoning Bylaw and this Decision.

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 significance of this Bylaw is discussed in Section VII of the decision. While the Project's sewage disposal area is located outside the WRPD boundary, the Project building itself, and thus the "use" lies 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 its advice of consultant, the Board finds that to the extent a waiver of these Bylaw provisions is necessary, such provisions may be waived consistent with health and safety.

The Board grants this waiver.

Zoning Bylaw Section 5.2.1.1.8. Water Resource Protection District. The Applicant seeks relief from this section, which prohibits uses with impervious surfaces of greater than 10% of lot area, or 5000 square feet, whichever is greater. The Project parcel will render impervious 46,711 square feet out of 163,684 square feet (28.5%).

The Board's consultant found the above to be satisfactory for the sites, notwithstanding the Bylaw limitations.

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 6.3.4 Off-Site Signs. The Applicant seeks relief from this section, which allows off-site signs only for seasonal agriculture and limits the size of signs. The Applicant seeks a waiver "to allow the sign to be located off-site in a location subject to the Building Commissioner's review and approval."

The Board grants this waiver only to the extent necessary to allow for a "Plantation II" sign to be located offsite, on Johnston Way, meeting the approval of the Building Inspector as to size, form, and location.

Zoning Bylaw Section 7.7.1. Parking. Applicant seeks relief from this section, which provides that no parking spaces may be located within 30 feet of the front lot line and within 10 feet of side or rear lot lines.

The Board grants this waiver. With respect to the lot line(s) shared with Plantation I property, the parking spaces shall be located no closer than eight (8) feet to the lot lines. The project lot line with the U11 Parcel 11 property is considered a side lot line for the project lot. The distance from the U11 Parcel 11 lot line to the parking area conforms with the 10 foot requirement and shall in no case be less than 19 feet.

Zoning Bylaw Section 7.7.2. Access Driveways. Applicant seeks relief from this section which requires, among other things, 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 7.7.5. Interior Area Landscaping Requirements. The Applicant seeks relief from this section which requires a minimum of 10% of interior area to be planted as landscaped islands, to allow parking areas to be built as designed and shown on plan.

The Board grants this waiver.

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 5 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 discharge 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

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

Furthermore, the Board acknowledges and agrees that, in the event the applicant submits the Plantation II project to a condominium regime and the existing house is sold as a separate condo unit to a party unrelated to the owner of the elderly housing unit, then pursuant to the relief granted in the Plantation I and II decisions and waivers, the house unit 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 elderly housing unit and, similarly, the elderly housing unit shall not be in violation of this Decision by virtue of any violation of the Zoning Bylaw or Plantation II Decision, with respect to the house unit.

2. The Developer seeks express acknowledgement of the ZBA that the Applicant intends to build wells and associated outbuildings on Parcel B 1, as contemplated in the Developer's Application on the Plans, pursuant to all relevant Massachusetts Department of Environmental Protection requirements and approvals.

The Board declines to make such declaration. The uses for which the Board has granted approval are depicted in the Plans and described in the permit Decision.

**PLANTATION II
APPENDIX C**

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 - g. A combination of the use of stump grindings, winter rye plantings, and erosion control mats, and dense mats of straw mulch with tackifier shall be used if the vegetation is not fully established by the onset of winter.
5. Prior to the commencement of construction, the Plan shall be modified to include the following notes regarding Permanent Stabilization Measures:
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 - b. Slopes 3:1 or greater shall be restored with 6" of loam, hydroseeded with mulch and tackifier and staked down with erosion control blankets similar to North American green sc 150BN. Install in accordance with the manufacturer's instructions.
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6. The Applicant shall provide a sequence of construction for the purpose of providing the contractor with an expected order of operations and estimated time frame for completion of the various tasks.
7. Prior to the commencement of construction, the Applicant shall provide the Planning Department with a construction sequence detailing the order of operations, including but not limited to initial clearing of the land, installation of erosion controls, installation of exclusionary construction fencing, stripping, grading, stockpiling and the order of construction of the various components of the plan.
8. Prior to commencement of construction, the Plan shall be updated to reflect the construction sequence, including but not limited to showing the locations of all stockpile areas and equipment storage locations.