

REVISED PLANTATION I

REVISED APPENDIX B: DECISION ON WAIVERS

The Board GRANTS and DENIES the requested waivers as follows:

Zoning Bylaw

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

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

Zoning Bylaw Section 4.4 (Table of Dimensional Requirements).

<u>Dimension</u>	<u>Required</u>	<u>Provided</u>	<u>Waiver Granted</u>
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Minimum side setback (feet)	25	10.5	14.5
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Comment [BHC1]: Applicant: what is this for? Is it changing?

Project Lot

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

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

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

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

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

The sewage disposal area for the wastewater treatment facility intended to serve Plantation I and Plantation II is located outside the WRPD boundary. The Plantation I buildings (as well as the proposed Plantation II building), and thus the "use," lie within the WRPD boundary. Interpreting the Bylaw conservatively, which the Board believes it must, the Board

finds this section of the Bylaw applicable to the Project. Based on the advice of consultant, the Board finds that to the extent a waiver of these Bylaw provision is necessary, such provisions may be waived consistent with health and safety. The Board grants this waiver.

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

The Board grants this waiver.

Zoning Bylaw Section 6.2.6. Applicant seeks relief from this section which requires that and 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 denies this waiver. The Erosion Control and Sedimentation Plan shall be submitted to the Planning Department.

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

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

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

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

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

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

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

The Board grants this waiver.

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

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

Other regulations

Subdivision Control regulations

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

The Board grants this waiver.

2) A waiver is sought from the requirement of Section 7.4.1 of the Subdivision Control Regulations regarding performance guarantees. Developer proposes to provide a guaranty 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.

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.