

**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 4.3.1 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 378	<u>153,355</u>	*
Minimum Frontage	200	75	125
Minimum front setback <u>(to House)</u>	30	<u>29.1</u>	<u>.9</u>
Minimum side setback <u>(to House; west)</u>	25	<u>2.1</u>	<u>22.9</u>
Minimum rear setback	40	<u>*</u>	*
Minimum open space	10%	32.2% <u>33.4%</u>	none requested
Maximum Height	35	unclear <u>35</u>	<u>none requested</u>
Minimum side setback: Control Building	25	6.5	18.5 feet

Comment [BHC1]: Applicant: where is this number from and why is it less than prior number for prior Project Lot (210,000), which did not include the House Lot area (20,080)

Comment [BHC2]: Applicant: why different number? Planning: confirm

*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 111,9500 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 Parcels A and A1.

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 Lot 1 and Parcels A and A1.

The Board grants this waiver.

Zoning bylaw Section 4.3.2.6. Front Yards. Applicant seeks relief from this requirement, which specifies means of measuring distance from buildings to lot frontage. Applicant seeks "determination from the ZBA that the front lot line [of Parcel A and A1] consists of the three segments running along the northern edge of Parcel A towards which the front entrance to the Elderly Housing is oriented."

The Board declines to make the requested determinations and waives the requirements of this Bylaw section only with respect to the three story residential building approved in this Decision

Comment [BHC3]: Applicant seeks deletion of this section in its entirety and says it is no longer required.
Planning advice?

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 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 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 44,037 square feet out of ~~123,228~~ 163,684 square feet (35.7%~~26.9~~).

Comment [BHC4]: Applicant confirming with Ducharme & Dillis
Planning please review and confirm.

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 grant 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 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, 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 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 ~~fifteen-eight (158)~~ 15 feet to the lot lines.

Comment [BHC5]: Applicant: confirm

Planning: confirm

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 area 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 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 5 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.

Other Relief Sought

- 1) The Applicant requests that the Board make the following statement:

"The Board acknowledges and agrees that Plantation II Project will not be in violation of this Decision by virtue of any violation of the Zoning Bylaw or Plantation I Decision, as modified from time to time, with respect to Plantation I Project."

The Board declines to make any such declaration. The relief granted by the Board is self-evident in the permit Decision and these Waivers..

Comment [BHC6]: Applicant: was this the final language you wanted or did you come up with some other proposed language? My notes not good. The phrase "as modified from time to time" is problematic. Let's discuss.

Comment [BHC7]: For discussion.

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.