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NORTH READING, MA

Town of North Reading
Massachusetts

Board of Appeals

MINUTES
ZONING BOARD OF APPEALS
PERFORMANC CENTER FOR THE ARTS
AUGUST 22, 2019

Present: Jim Demetri, Jennifer Plate, Matt D'Angelo, Bill Bellavance and Amy Kwesell, KP Law

Public Hearing

20 Elm St – NY Ventures, LLC by their Attorney Regnante Sterio LLP

Acting Chair, Jim Demetri, opened the Continued Public meeting for the Comprehensive Permit pursuant to MGL c. 40B and 760 CMR 56.00 for the construction of Elm St. Apartments, a 200 unit (50 affordable units), 5 building, rental apartment development to be located at 20 Elm St. The hearing was continued to discuss and possible vote to invoke safe harbor.

Danielle McKnight gave a short power point presentation on the calculations for Safe Harbor and a summary of Safe Harbor and GLAM – General Land Area – (see attached)

Earlier in the day, Attorney. Jesse Schomer of Regnante Sterio LLP, hand-delivered a two paged letter to the ZBA Board regarding General Land Area Minimum (GLAM) Calculation and how the Town is still short of the number needed. He states that even Atty Hill's presentation at the 8/8/19 hearing projected the DDS Group Homes in North Reading to be only 5 to 10 acres which would not make up the 40-acre shortfall need to reach 1.5%.

After Ms. McKnight's presentation, Atty. Regnante handed in a letter to the Board stating that late this afternoon they were informed that DHCD provided the Town with a Group Homes Acreage Calculation of 59.14 acres. They believe this calculation is materially incorrect and contrary to Chapter 40B regulations because it includes a large undeveloped portion of land that does not qualify as "directly associated" land. Because of this they asked the Town not to invoke safe harbor but continue discussion to ensure that the correct calculation is provided to the town and consent to extend the Board's time to

invoke safe harbor pursuant to 760 CMR 56.03(8) on the basis of GLAM to Monday, September 16, 2019.

Mr. Demetri stated that it is unknown if the Town can extend the time allowed to invoke safe harbor. He said if the Town doesn't invoke safe harbor, discussions can go on to get the numbers as well. Ms. Platt said today is day 14 and the Board wouldn't want to take the chance that the State wouldn't allow the time to be extended. Attorney Regnante mention another 40B in Reading that took the extension and the State had no problem allowing the extended time. Attorney Regnante said that if invoked, the process would be more formal where the extension would be on an informal basis. Members didn't want to lose the opportunity to invoke safe harbor.

Ms. Platt made a motion (see attached); seconded by Mr. D'Angelo; and it was voted 3-0 in favor and also to add that the public hearing would be continued to November 14, 2019 at the Performance Center for the Arts.

Mr. Demetri moved to adjourn, seconded by Ms. Platt; and it was voted 3-0.

James Demetri
 10/3/19

Regnante Sterio LLP

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AUG 22 2019

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August 22, 2019

VIA E-MAIL & HAND DELIVERY

Town of North Reading
Zoning Board of Appeals
Attn: James Demitri, Acting Chair
35 North Street
North Reading, MA 01864

Re: General Land Area Minimum (GLAM) Calculation
M.G.L. c. 40B Comprehensive Permit Application: Elm Street Apartments
Applicant: NY Ventures LLC

Dear Board Members:

This office is legal counsel to NY Ventures LLC, the applicant with respect to the above-noted application for a Comprehensive Permit for Elm Street Apartments, located at 20 Elm Street. As you know, at the Board's August 8, 2019 meeting, the Board voted to continue the public hearing on this application to August 22, 2019 to determine whether the Board should vote to evoke so-called "safe harbor" pursuant to Chapter 40B regulations based on a claim that at least 1.5% of the total land area of North Reading that is available for residential, commercial, or industrial development is dedicated to affordable housing. This determination is often referred to as General Land Area Minimum (GLAM).

We understand that the Town has investigated this issue in depth and recently released a report containing the findings of the Town's review, which indicates a GLAM percentage of only 0.79% – slightly more than half of the required 1.5% needed to claim this safe harbor. Notably, the Town's calculation includes a preliminary estimate of Department of Developmental Services (DDS) group homes, which the Town's report states is still awaiting confirmation by the State.¹

¹ Our understanding is that this information has not yet been confirmed because the information needed to do so was provided to the Department of Housing and Community Development (DHCD) just nine days ago. To ensure adequate processing time to be able to provide municipalities with this information in a timely fashion, DHCD guidelines provide that the Town's request should have been filed nearly 8 months ago.

Please be advised that the applicant, independently of the Town's internal review of this issue, has also conducted a GLAM study, the results of which are substantially consistent with the Town's conclusions. In particular, our preliminary results, as compared with the results of the Town's study, are as follows:

	<u>Town's Finding</u>	<u>Applicant's Finding</u>
Total Land Area	5,923.0 Acres	5,829.6 Acres
Total Affordable Land Area	46.7 Acres	48.9 Acres ²
GLAM Percentage	0.79%	0.84%
Needed for 1.5% GLAM	88.8 Acres	87.4 Acres
Shortfall	42.1 Acres	38.5 Acres

Our review was conducted by Nels Nelson, a Senior Planner and GIS expert with Stantec, Inc. Mr. Nelson has the distinction of having been the expert witness for the prevailing party in the matter of *Braintree Zoning Bd. of Appeals v. 383 Washington Street, LLC*, 14 MHACR 9 (Mass. Hous. App. Comm. June 27, 2019), which is the sole Housing Appeals Committee case applying and interpreting current DHCD guidelines with respect to the calculation of GLAM. It should be noted that Mr. Nelson's calculation is preliminary, and was designed to be as conservative as possible, both as to total land area and affordable land area. As a result, his preliminary estimate is actually more conservative than the Town's own internal review. Upon completion of a final report, our expectation is that the Town's GLAM percentage would actually come out somewhat lower than Mr. Nelson initially projected.

With respect to the issue of confirming the acreage of DDS group homes, the Board may recall that this issue was raised by Attorney Dan Hill and his clients during the Board's August 8 hearing, at which Attorney Hill urged the Board to evoke safe harbor despite the lack of evidence needed to support such a claim.³ Yet, as reported in the *North Reading Transcript*, in his presentation to the Board, Attorney Hill himself projected the acreage of DDS Group Homes in North Reading to be only "five to 10 acres". Thus, even on Attorney Hill's own projections, DDS group home acreage cannot possibly make up the roughly 40-acre shortfall needed to reach 1.5%.

² Because the acreage of DDS group homes was not available to our GIS consultant, we have adopted the Town's estimate of 13.1261 acres and included it in our calculation of affordable land area.

³ Attorney Hill represents a group of anti-development neighbors, whose leadership has been clear that their intent is to stop the 20 Elm Street development at any cost. To that end, the group, which started out as an informal online social media group, has recently re-branded itself as an environmental interest group and incorporated as a private, for-profit corporation known as Defend Ipswich River Communities, Inc.

Crucially, based on the conclusions of both the Town's report and ours, the Town is far below the required GLAM of 1.5% that is needed in order to claim this safe harbor – and, indeed, is only slightly more than halfway to that threshold. Accordingly, the applicant respectfully submits that a claim of safe harbor cannot, in good faith, be made.

In weighing this decision, it is important to bear in mind that pursuing an ill-fated claim of safe harbor would require a significant investment by the Town, both in terms of personnel hours and also monetarily, in the form of legal and consultancy fees. A conservative estimate of the cost to the Town (and its taxpayers) to pursue an appeal of this issue should be expected to be in the range of six figures, which would be a considerable waste of taxpayer funds that could be better spent elsewhere to further the community's needs and goals.

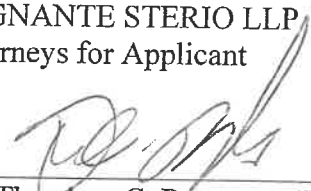
Based on the foregoing, the applicant respectfully urges the Board to decline to petition DHCD for safe harbor designation, as this would be a frivolous exercise that would prejudice the applicant, would be contrary to the best interests of the Town and its taxpayers, and would be in contravention of Chapter 40B regulations and DHCD guidelines.

With respect to the Board's August 22, 2019 hearing on this matter, because the issues to be discussed are highly technical, both factually and legally, and in view of the Board's time constraints for concluding this hearing, our view is that it would not be productive for the Board to allow public testimony on this matter.

Besides consideration of the GLAM issue this evening, our recommendation would be that the Board schedule the next hearing date for a presentation by the applicant's traffic and safety consultant. We would also recommend that a site walk be arranged between members of the development team, the Board, and Town personnel, and that the peer review process be commenced.

Very truly yours,

REGNANTE STERIO LLP
Attorneys for Applicant



By: Theodore C. Regnante, Esq.
Jesse D. Schomer, Esq.

cc. Amy Kwesell, Esq. (North Reading Town Counsel) (By E-Mail)
Michael Gilliberto (North Reading Town Administrator) (By E-Mail)
Daniell McKnight (North Reading Town Planner) (By E-Mail)

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August 22, 2019

VIA E-MAIL & HAND DELIVERY

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Re: General Land Area Minimum (GLAM) Calculation
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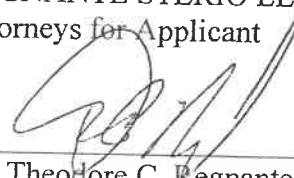
Dear Board Members:

Late this afternoon, we were informed by DHCD, and separately by the Town, that DHCD today provided the Town with a Group Homes Acreage Calculation of 59.14 acres. Based upon our conversations with DHCD, it is our strong belief that this calculation is materially incorrect and contrary to Chapter 40B regulations, as it apparently includes a large undeveloped portion of land that does not qualify as "directly associated" land.

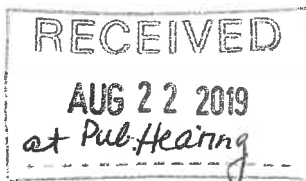
We therefore respectfully request that the Board defer taking action with respect to evoking safe harbor for a brief period to give the applicant, the Town, and DHCD the opportunity to continue discussion of this issue to ensure that the correct calculation is provided to the Town. To that end, we hereby agree and consent to extend the Board's time to evoke safe harbor pursuant to 760 CMR 56.03(8) on the basis of GLAM to Monday, September 16, 2019.

Very truly yours,

REGNANTE STERIO LLP
Attorneys for Applicant



By: Theodore C. Regnante, Esq.
Jesse D. Schomer, Esq.



MOVE THAT:

1. With regard to the comprehensive permit application filed by NY Ventures for a project located at 20 Elm Street, the Board determined, under 760 CMR 56.03(8)(a), that the Board considers that a denial, or the imposition of conditions or requirements upon the requested comprehensive permit would be consistent with local needs as a matter of law.
2. The basis for the Board's position is that the Board determined that Subsidized Housing Inventory ("SHI") eligible housing exists in the Town on sites comprising 1.55%, more than one and one-half percent or more of the total land area zoned for residential, commercial, or industrial use, per General Laws chapter 40B, §20, 760 CMR 56.03(3)(b) and (8)(a).
3. There are currently 49 units from group homes with a total acreage of 13.1261. However, DHCD has determined that there are 59.14 acres comprised of group homes. Therefore, there must be additional units that are unknown to the Town. Additionally, two rent-controlled mobile home parks, consisting of 42 units were not included on the current SHI inventory from DHCD. The addition 42 units plus the likely increase in confidential group home units will demonstrate that Subsidized Housing Inventory eligible housing exists in the Town at an amount over 10.00%, per General Laws chapter 40B, §20, 760 CMR 56.03(3)(a) and (8)(a).
4. the Town and the Board expressly reserve all of their rights with regard to safe harbor, including the right to present additional evidence, testimony, argument, analysis, exhibits, calculations and any and all other information of any kind to support a finding regarding the one and one-half percent minimum land area requirement and the 10% housing unit minimum.
5. The Board will proceed with the full local hearing, with the Board having the right to deny the Application or to grant the Application with conditions, and with the Applicant having no right of appeal to the Housing Appeals Committee from the Board's decision.
6. The Board designates member James Demetri to work with Town staff to provide written notice to NY Ventures and DHCD as proscribed by 760 CMR 56.03(8).

Town of North Reading

General Land Area Minimum calculation - August 22, 2019

DHCD ID	Profile Name	Address	SHI Units	Tenure	NumParcels	LotUnits	LotUnits	SHI Eligible Acres	Total Acres
2260	n/a	Pearbooy Court	40	Rental	1	40	40	2.79	3.01
2261	n/a	53 Ocean Pond Rd.	4	Rental	1	4	4	0.625	2.21
2262	PainView Terrace Estates	17 Argonne Rd	1	Ownership	3	1	1	0.17	0.32
2262	PainView Terrace Estates	9 Platt Ave	1	Ownership	3	1	1	0.25	0.25
2262	PainView Terrace Estates	5 Parkway Road	1	Ownership	3	1	1	0.38	0.42
2263	McLaughlin House	333 Park Street	8	Rental	1	8	8	0.8	1.43
7165	Rose Farm	193 Elm Street	7	Ownership	1	7	7	1.9	28.36
7893	Centre Plaza	63 Central Street	7	Ownership	1	7	7	0.72	4.179
7894	Edgewater Place	1-3 Pligim Rd	4	Ownership	1	4	4	0.675	2.18
7895	Mount Vernon	50 Mt Vernon St	9	Ownership	1	9	9	1.5	12.67
9060	Residences at Martin Brook	100 Lowell Road	405	Rental	1	405	405	21.801	47.78
9764	Bratford Pond Estates	153 Marshhead Street	1	Ownership	1	1	1	0.97	2.77
	DOS (as provided by the State)	Confidential	49					59.14	Unknown

TOTAL SHI UNITS	538
TOTAL UNITS (2010)	5597
SHI %	9.61%
State % Requirement:	10.00%

SHI = Subsidized Housing Inventory

Mobile Home Park	103 Main St	29	
Mobile Home Park	142 Main St	13	3.16
DOS	Unknown	?	3.4

Potential SHI Units	580 Plus
TOTAL UNITS (2010)	5597
Potential SHI %	10.36% Plus
State % Requirement:	10.00%

Total North Reading Land acres (2.1)

Categories required to be removed from calculation:

Land to be Removed:

- Water Bodies (2.2)
- Registered Inland Wetlands (2.3)
- Residential, Commercial, Industrial Prohibited (2.4)
- N/A (2.5 - 2.7)
- Public Owned Right of Way (2.8)
- Politically Owned Fees (2.9) (Government owned)

Total of Land to be removed

	221
	0
	0
	0
	537
	1957
Total of Land to be removed	2715
Updated Total North Reading Eligible Land	5924

Total SHI Acres:	91.721
Updated Total North Reading Eligible Land Acres:	5924
SHI % of Acres	1.548255071
State % Requirement:	1.50%

M_232017_925148	3.16
M_231749_925509	1.81

Potential SHI Acres:	96.691
Updated Total North Reading Eligible Land Acres:	5924
SHI % of Acres	1.632191067
State % Requirement:	1.50%

Additional questions

- The Town's records indicated 13 acres dedicated to group homes
- Information received today from the Commonwealth indicates the Town has 59 such acres
- This discrepancy raises additional questions: could there be additional SHI group home units not currently counted on our 10% inventory?
- Additionally, the Town has rent controlled mobile homes which could potentially be eligible, which warrants further exploration

North Reading GLAM Calculation

<u>Project Name</u>	<u>Address</u>	<u>SHI Units</u>	<u>Tenure</u>	<u>LotUnits</u>	<u>SHI Eligible Acres</u>
n/a	Peabody Court	40	Rental	40	2.79
n/a	53 Swan Pond Rd.	4	Rental	4	0.625
Fairview Terrace Estates	17 Algonquin Rd	1	Ownership	1	0.17
Fairview Terrace Estates	9 Pluff Ave	1	Ownership	1	0.25
Fairview Terrace Estates	5 Fairway Road	1	Ownership	1	0.38
McLaughlin House	333 Park Street	8	Rental	8	0.8
Rowe Farm	193 Elm Street	7	Ownership	20	1.9
Central Place	63 Central Street	7	Ownership	26	0.72
Edgewater Place	1-8 Pilgrim Rd	4	Ownership	16	0.675
Mount Vernon Residences at Martin Brook	50 Mt Vernon St	9	Ownership	36	1.5
	100 Lowell Road	406	Rental	406	21.801
Bradford Pond Estates	153 Marblehead Street	1	Ownership	1	0.97
DDS (as provided by the State)	Confidential	49			59.14
Total SHI Eligible Acres:					91.721

GLAM Numerator (SHI Sites)

- Calculating the land area for affordable housing:
 - Sites listed on the Town's Subsidized Housing Inventory (SHI)
 - Only land dedicated to units on the SHI is counted – building area for those units listed on the SHI + developed portions of sites that are accessory to those units (parking, utility, etc.)
 - Sites on the confidential list of DDS group homes
 - Sites are identified by the Assessing department, which ensures the number of units on their list matches the SHI number listed for DDS sites
- This list is sent to Mass GIS to perform a calculation of which portions of these sites the Town may count

Land Excluded from Total Town Acreage



GLAM

- 1.5% of land area must be dedicated to SHI housing to achieve safe harbor
- Portion of SHI sites dedicated to affordable housing, divided by the total land area potentially available for development (as defined by the Commonwealth)

Safe Harbor

- Communities can achieve Safe Harbor by:
 - Having 10% subsidized housing (as recognized by DHCD on the Subsidized Housing Inventory)
 - Having a state- approved Housing Production Plan showing how the community will reach 10% affordable housing AND making annual progress toward creation of a certain number of units yearly (minimum .5% of total housing)
 - Having 1.5% land area devoted to affordable housing (General Land Area Minimum)