

# MANN & MANN, P.C.

COUNSELLORS AT LAW

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March 8, 2021

Groton Planning Board  
Attention: Takashi Tada, Town Planner  
Town Hall  
Groton, MA 01450

RE: Village at Shepley Hill,

Dear Mr. Tada and Members of the Planning Board:

Please accept this letter in rebuttal to the statements set forth in a letter from Bob Pine, dated March 3, 2021, and in continued support of Applicant's request for Subdivision Approval and for a Major Residential Special Permit including but not limited to the associated request for a waiver to allow filling in excess of 7' above existing grade in those the areas as shown on the Plans.

1. The Property possesses unusual topographic features that support the request for a waiver to allow filling in excess of 7' above the existing grade. It is the combination of onsite wetlands, intermittent streams and steep slopes along with (x) the shape and orientation of such land features and (y) the topographical conditions of the existing public ways that create the unusual set of circumstances that affect the Property. Substantially all of the upland/developable areas of the Property are located in the center of the Property and are surrounded and bifurcated by a series of wetlands. The occurrence of all of the above-mentioned conditions are not typical even for Groton.

The only way to access the onsite upland (in compliance with the Board's directive to maintain two (2) means of ingress and egress) is to enter the Property over Longley Road and Sand Hill Road and then to cross two (2) intermittent streams and associated bordering vegetated wetlands (the "BVW"). Each of the two (2) intermittent stream crossings are characterized by slopes with steep depressions that are approximately twelve (12') feet to thirty (30') feet lower than the paved surfaces of adjoining existing roadways. Additionally, there is an elongated depression between the two (2) interior BVW that ranges from approximately twelve (12') feet to thirty-two (32') feet. The depressions within the proposed roadway layout need to be filled to match the grades at both intersections and along the interior BVW. The Applicant's pending request for a waiver from the 7' fill regulation is justified and can be differentiated based on the unusual topographic features affecting the Property coupled with the fact that the only way to access the onsite upland areas is to fill the steep slopes at the wetland crossings and elongated depression. Accordingly, the waiver is necessary in order to develop the onsite upland areas.

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2. In order to minimize impacts, the Applicant undertook the following:
  - eliminated all but one area of wetland alteration (The project received unanimous approval from the Groton Conservation Commission on February 23, 2021)
  - redesigned the wetland crossings to substantially reduced the area of alteration (The area of alteration has been reduced to 1,107 sf of alteration and 3,321 sf of replication)
  - eliminated all cuts that would change the proposed grade of the street by more than 7'
  - created a balanced site that will not require the import or export of any fill materials
  - reduced the length of the cul de sac by more than 220'
  - eliminated 2 units
  - designed a fully compliant stormwater management system (The project received unanimous approval from the Earth Removal Stormwater Advisory Committee on March 2, 2021)
  
3. All waivers from subdivision regulations require that the Board conduct an independent analysis of the facts and circumstances as well as the rationale for granting and or denying the waiver. Based on legal precedent, it is clear that a Board once having granted a waiver is not bound in the future to grant all such requests but rather is required to treat each request for a waiver independently based on the particulars of the specific request. Mr. Pine's assertion that Groton's cut and fill regulation will become unenforceable if the waiver is granted is unsupported and contrary to existing caselaw.
  
4. The Property is being developed in the spirit of an open space/flexible development with many of the benefits and without many of the adverse economic impacts:
  - 80% of the Property or 38.6 acres (which includes 30.8 acres of upland) is being dedicated as open space
  - The number of housing units is limited to 26 age-restricted dwellings and therefore will not place any demands on the Town's school system
  - The roadway and all infrastructure will remain private in perpetuity and will be managed by a condominium association and therefore will not place any demands on the Town's infrastructure
  - Sidewalks are proposed within the development along with nature trails, all of which will be open to the public and maintained by the condominium association and therefore will not place any demands on the Town's infrastructure
  - Applicant is donating \$150,000 to the Town for Affordable Housing
  
5. The wetland resource areas and the onsite wildlife habitat are being preserved through the creation and preservation of open space. While the Property is within the Petapawag ACEC, which overlays the majority of the land in Groton, this section of the Town has not been mapped by Massachusetts Division of Fisheries and Wildlife as either Priority or Estimated Habitat for any state-listed rare or endangered species. Notwithstanding the Applicant has agreed that the open space will be subject to a conservation restriction that will prevent any future development and activities (other than passive activities) for the purpose of protecting the natural and recreational resources, water supply, wildlife habitat and trails provided in the open space.

6. While the list of waivers was not finalized until the Definitive Subdivision Plan was submitted to the Planning Board in November 2020, the Applicant and its engineer were aware that the development of the Property would require substantial re-grading based on the grade differential between Sand Hill and Longley Roads, the two existing public ways, and the steep slopes along the frontage for the Property. When asked to reduce the severity of these cuts and fills, the Applicant complied in good faith and at considerable expense to redesign the original design. The need to fill in the steep slopes along the roadway is not a choice but rather a requirement in order to mitigate a completely resolvable topographical condition at the Property.

Very truly yours,

*Jill Elmstrom Mann*

Cc: Larry Smith, Principal