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March 26, 2024

Groton Zoning Board of Appeals
Town Hall
173 Main Street
Groton, MA 01450

RE: HERITAGE LANDING/COMPREHENSIVE PERMIT APPLICATION

Dear Members of the Board:

This office represents Heritage Landing LLC, a limited divided organization, and a Massachusetts Limited Liability Company, regarding the application materials submitted in accordance with MGL ch 40B s 21 and in accordance with your Rules and Regulations applicable to Comprehensive Permits, at Section 338-34.

As requested by Nitsch Engineering in their letter of March 19, 2024, please accept the attached as an updated list of the waiver requests associated with said application.

Thank you for your attention to this matter.

Very truly yours,
Alphen & Santos, P.C.



Paul F. Alphen, Esq.

HERITAGE LANDING/COMPREHENSIVE PERMIT APPLICATION

A.(9) A list of requested Waivers (updated March 26, 2024)

As described previously, the Zoning Board's Rules and Regulations applicable to Comprehensive Permit applications specifies that the plans will be "preliminary site development plans".

As provided by 760 CMR 56.05 (7), an applicant for a Comprehensive Permit may request waivers from local "as-of-right" requirements and regulations, and where a project does not include subdivision approval, waivers from the subdivision requirements are not required and there shall be no requirement to obtain waivers from the special permit requirements of the district:

"(7) Waivers from Local Requirements and Regulations. The Applicant may request Waivers, as listed in its application or as may subsequently arise during the hearing, and the Board shall grant such Waivers as are Consistent with Local Needs and are required to permit the construction and operation of the Project. Zoning waivers are required solely from the "as-of- right" requirements of the zoning district where the project site is located; there shall be no requirement to obtain waivers from the special permit requirements of the district. If a Project does not request a subdivision approval, waivers from subdivision requirements are not required (although a Board may look to subdivision standards, such as requirements for road construction, as a basis for required project conditions, in which case the Applicant can seek Waivers from such requirements)." 760 Mass. Code Regs. 56.05

1. ZONING BYLAW

§ 218-2.5. Site Plan Review.

B. Applicability. (1) Any application for a building permit, special permit or certificate of occupancy (for a change of use) involving a commercial, office, industrial, institutional, or multifamily use, or structure for such use shall be subject to site plan review.

As a Comprehensive Permit application, the applicant has submitted "a single application to build such housing in lieu of separate applications to the applicable local boards." (MGL ch. 40B s 21) and separate Site Plan Review by the Planning Board is not applicable or should be considered a waiver request. The following is a list of the Site Plan Review requirements from Section 218-2.5 that the applicant is seeking specific waivers. Site Plan Review is customarily applicable to commercial development and certain of the materials customarily required for commercial developments do not apply to residential developments. Additionally, the Zoning Board's Rules and Regulations do not require the submission of many of the materials listed under Section 218-2.5. Nevertheless, below please find a list of details that the within application may not include:

Section 218-2.5. D. Procedures

The applicant anticipates that through the ZBA, the application materials will be shared with and reviewed by the Land Use Departments and other departments .

Section 218-2.5.G. (2) Site Plan submission requirements

The applicant is seeking waivers of the following (the paragraph lettering below coincides with the subparagraphs with in said Section of the Bylaw):

- (b) The plans may not show the locus plan at 1"= 200'
- (b) The zoning requirements chart may not include all the data specified, but this memo describes the dimension standards that will vary from the requirements.
- (d) The submission may not include all the "calculations of storm drainage to demonstrate and assure compliance with the requirements of all applicable federal, state and local regulations and guidelines, including, but not limited to, the Department of Environmental Protection Stormwater Management Policy, as it may be amended", but it will meet the requirements of the ZBA Rules and Regulations, and more detailed stormwater calculations will be submitted for the Stormwater Management Permit.
- (e) The submission will not include "An assessment of traffic impacts and safety conditions shall be prepared by a traffic engineer." Reference is made to the ZBA's Rules and Regulations wherein the ZBA may require a traffic impact report during the hearing process. Board may require.
- (f) General landscaping information will be shown on the preliminary plan, but the submission will not include "A landscaping plan shall be prepared by a registered landscape architect that shows the location of plantings around the perimeter of the building, any buffer landscaping between parcels, and landscaping of the parking area", some of which requirements are more applicable to commercial developments. .
- (h) The submission will not include "A photometric lighting plan shall be submitted that indicates the illuminations throughout the site and onto abutting ways and properties. The plan shall indicate the lighting hours of operation, especially shutoff times", which information is customarily applicable to commercial, not residential, developments.
- (i) Although not specifically required by the Bylaw nor the Rules and Regulations, the submission will not include "...a development impact report that may include, but not be limited to, analysis of the impacts of the proposed project on the environment (i.e., wetlands, water resources, open space), and infrastructure and services (i.e., roadways, wastewater, schools)", and such standards are more applicable to commercial projects.
- (j) The submission will not include an existing conditions plan showing all land within 500 feet of the subject property. The regulations require "Existing structures on adjacent properties within 150 feet of the property", and we do not believe that there are any with the possible exception of the solar panel equipment on abutting Town land.
- (l) The application will not include an "Analysis of the consequence of the proposed development, evaluating the following impacts at a level of detail appropriate to the scale of the development proposed:
[1] Natural environment: groundwater and surface water quality, groundwater level, stream flow, erosion and siltation, vegetation removal (especially unusual species and mature trees) and wildlife habitats.

[2] Public services: need for water or sewer system improvements, need for additional public recreational facilities.

[3] Economics: municipal costs and revenues, local business activity and local jobs.

[4] Visual environment: visibility of buildings and parking and visual consistency with existing development in the area.” Certain of those criteria are applicable to commercial projects. The ZBA Rules and Regulations do not require the submission of such an analysis, but, subject to the limitation contained within 760CMR 56.05. 4.(a) [“Consistency with Local Needs is the central issue in all Comprehensive Permit applications before the Board. Not only must all Local Requirements and Regulations applied to the Applicant be Consistent with Local Needs, but decisions of the Board must also be Consistent with Local Needs. The Board shall not address matters in the hearing that are beyond its jurisdiction under M.G.L..C. 40B, §§20 through 23 and 760 CMR 56.00 and that lie solely within the authority of the Subsidizing Agency”] the Board may require the submission of particular analyses during the hearing process in accordance with Section 338-34 (4).

(m) The application will not include “A physical or digital three-dimensional site model..”

Refence is also made to the criteria applicable to the Planning Board’s Site Plan Review process at Section 218-2.5 (H) (1), and to the degree applicable, waivers are being sought from the following items:

(a) “Preserve trees twelve-inch caliper or larger unless it can be demonstrated that such removal is necessary for the location of structures, roads, driveways, and utilities, and it can be further demonstrated that there were no alternatives to said removal.” Development is confined to the northerly portion of the previously disturbed site in order to address the requirements of the Natural Heritage and Endangered Species Program, and if there are larger caliper trees within the development area, they may not be able to be preserved.

(b) “Provide for landscaping around the perimeter of all structures and the parcel as a whole, including parking areas, to the satisfaction of the Planning Board”; which standard is more applicable to commercial developments.

(c) “Meet the requirements of Chapter 198 of the Code of the Town of Groton relating to stormwater management, soil erosion and sedimentation control, including any land disturbance activities”, which will be addressed later as part of the stormwater management permit process.

(e) [3] “Soil logs must be submitted with the application for site plan approval. The testing should be done in accordance with Title Five, 310 CMR 15.000, for seasonal high groundwater soil mottling and infiltration rates. The testing must be witnessed by a Town representative.” Soil logs are not required by the ZBA Regulations, but the applicant expects that soil data will be part of the review by the Board of Health for the septic systems and part of the review of the Stormwater Management Permit.

(i) “Minimize lighting intrusion onto other properties and public ways with proper arrangement and shielding, while providing for security and public safety”, which standard is applicable to non-residential developments.

Other Use and Dimensional Requirements:

As a Comprehensive permit application for a multifamily development in the RA District, and partly in the Official Open Space District, waivers are requested from the follow provisions:

218-4.2. Intention of districts.

A. R-A Residential-Agricultural District is intended as a district of single-family homes and for continuance of forestry and agricultural activities. Land shown as institutional properties on the Zoning Map is so shown for descriptive purposes only and is a part of the R-A District.

G. O Official Open-Space District is intended to include areas which have already been dedicated or used for public or semipublic uses.

Waivers are requested whereas the proposed project calls for 40 units of residential housing (more recently reduced to 28), some of which will be within duplex/multifamily buildings (12 units per the revised proposed plan), all within a single lot with ownership to be in the form of a MGL ch 183A condominium.

218-5.1 Basic Requirements

A. No building or structure shall be erected, altered or used and no premises or land shall be used for any purpose or in any manner other than as regulated by § 218-5.8 and as permitted and set forth in § 218-5.2, Schedule of Use Regulations, and in accordance with the following notations:

218-5.2 Schedule of Use Regulations

R-A Residential-Agricultural District

34 Single-family detached dwelling: Y

36. Two-family attached dwelling, provided that its external appearance is not significantly different from a single family dwelling: Y

38. Multifamily use, as allowed by the provisions of § 218-9.3A through C: PB

O Official Open-Space District

34 Single-family detached dwelling: N

36. Two-family attached dwelling, provided that its external appearance is not significantly different from a single family dwelling: N

38. Multifamily use, as allowed by the provisions of § 218-9.3A through C : N

Waivers are requested whereas the proposed project calls for 40 units of residential housing, some of which will be within duplex/multifamily buildings (10 units per the proposed plan), all within a single lot with ownership to be in the form of a MGL ch 183A condominium. The appearance of the duplex units will be residential in character, but not necessarily similar to single family. Also, the criteria for multifamily uses in § 218-9.3A through C cannot be met.

218-6.2 Schedule of Intensity Regulations

Minimum Lot Dimensions

The lot will meet the minimum lot area dimensions, except that all the dwellings will be on a single lot, as follows:

RA Min Area: 80,000 sq ft

OOSD Min Area n/a

Proposed: 675,180 sq ft

RA Min frontage: 225 feet

OOSD Min Frontage: na

Proposed: 428 feet

The yard setback requirements are typically measured within a single lot containing a single dwelling. Waivers are requested whereas Unit 1 will be 38' from the front lot line (and 50 feet is required), the dwellings will be closer than 50 feet from the common driveway, the buildings may be closer than the usual 15' plus 15' side yard setback (with 25' being proposed between buildings) and there will be multiple buildings on a single lot.

218-6.3.A. Frontage

(1) A building lot in any district shall have frontage on and rights of access to one or more of the following for the distance required under § 218-6.2, Schedule of Intensity Regulations.

Waivers will be required to the degree that all the dwellings will be on a single lot with a shared

218-6.3. B. Appurtenant open space

No building setback area or other open space required for a building by this chapter shall, during the life of such building, be occupied by or counted as open space for another building.

Waivers will be required to the degree that all the dwellings will be on a single lot with a shared driveway.

218-6.3. E. Density

No more than one dwelling with accessory buildings customarily incidental thereto shall be located upon any single lot in any district, except as provided in § 218-9.1F(2), Flexible development, § 218-9.3, Multifamily use, or § 218-7.3, Town Center Overlay District. A waiver will be required whereas all the dwellings will be on a single lot.

Waivers are requested whereas the proposed project calls for 28 units of residential housing, some of which will be within duplex/multifamily buildings (12 units per the proposed plan), all within a single lot with ownership to be in the form of a MGL ch 183A condominium, and the criteria for other multifamily uses do not apply.

218-8.1.F. Shared driveways

A shared driveway shall not be adequate access except that, by special permit from the Planning Board, a shared driveway may be authorized to provide access to parking spaces on no more than three lots, provided that vehicular access to the buildable portion of each lot is possible from the street providing legal frontage to the lot without reliance on the shared driveway.

Waivers are requested whereas all the dwellings will be on a single lot with shared access/egress via a single private drive.

Subdivision Rules and Regulations

As no new lots are being created by the plan, and the dwellings are proposed to be served by a private common driveway, the proposed project is not a "Subdivision" as defined by MGL ch41 s 81M. However, the applicant wishes to point out certain access drive standards that will be unique to the project. For example:

Section 381-10. E. Dead-end streets.

(1) A dead-end street, whether temporary or permanent, shall not serve more than 10 lots nor have a pavement center-line length longer than 1,000 feet from the edge of pavement of the intersecting street to the dead-end street's most distant point unless, in the opinion of the Board, a greater length is necessitated by topography or other local conditions. A dead-end street shall not access from an existing way that is a dead-end street unless the total number of lots on the existing way and the proposed subdivision road does not exceed 12. See the Determination of Dead-end Street Length Detail.

The units will be served by a common driveway that is in excess of 1,000 feet in length and will serve 28 units. The shared driveway will be more akin to a "Lane" as defined in the Subdivision Regulations at Section 381-3, however, it will serve more than 12 dwelling units. The construction of the common driveway will be in accordance with the standards for a Shared Driveway within Chapter 345.

Section 318.10.D(4).

Rosie Lane is proposed as a Private Way that will be part of the Common Area of the Condominium and owned and maintained by the Condominium Association. We do not anticipate that it will be considered to be a “shared driveway” whereas the regulations limit a shared driveway as access to three (3) lots. As such, it would likely fit the definition of a “Lane” or “Minor Street”. As provided by Section 381-10. D. of the Subdivision Rules and Regulations (to the degree that they are applicable to the subject project which, technically, is not a subdivision) the maximum grade of a Lane or Minor Street is 10%. The current plans show a grade of 10% at a point. To the degree that waivers are required, the applicant is requesting a waiver of Section 381.10. D (2) to allow a maximum grade of 12%, and a waiver from Section 318.10.D(4) to allow a leveling area for not more than 4% at a distance of 20 feet from the nearest edge of the intersecting traveled way.

Section 381.10.D (5).

The applicant is also requesting a waiver from Section 381.10.D (5), to the degree that a waiver from the Subdivision Rules and Regulations are applicable, to permit the grades within the right-of-way to exceed seven feet above or below existing grade, because of the unusual existing topographic conditions of the site.

Section 381-10, Streets

A waiver is requested where the radii at the cul – de – sac is less than 150 feet. A Fire Truck Turning Template was submitted showing that fire trucks (and buses) can make the full turnaround.

Section 381-13, Other Improvements

A waiver is requested for construction of sidewalk on one side of the street because the project is private, the sidewalk does not connect, and it is more sustainable to limit impervious areas

Section 381-10.E2

A waiver is requested for a different cul-de-sac geometry. A Fire Truck Turning Template was submitted showing that fire trucks (and buses) can make the full turnaround. The waiver is requested for the diameter of the closed end of at least 150 feet, a radius at the outside edge of traveled way of 62 feet, and a minimum pavement width of 24 feet within the cul-de-sac with 20' being provided.

The following are new waivers requested from the Groton Stormwater Permit regulations (Chapter 352 EARTH REMOVAL STORMWATER ADVISORY COMMITTEE)

Section 352-11.C.(5)

To utilize an infiltration basin as a treatment BMP in soils with an infiltration rate greater than 2.4 inches per hour (8.27 inches per hour). This is a local requirement and not in the Mass. Stormwater Handbook.

Section 352-11.C.(7)

For removing less than 80% of the TSS prior to discharge to an infiltration structure used for recharge if the discharge is within an area with a rapid infiltration rate greater than 2.4 inches per hour. This is a local requirement and not in the Mass. Stormwater Handbook.

Section 352-11.C.(15)

To allow recharge in one area due to the fact that the site was once a gravel pit and has excessively drained soils. This is a local requirement and not in the Mass. Stormwater Handbook.

Section 352-13.G.

To allow for certain CN numbers to be consistent with TR 55 but not Table 2 and to use “good” conditions for established lawns / grass cover and woods. This is a local requirement and not in the Mass. Stormwater Handbook.

Section 352-24.D.(1)

To allow High Density Polyethylene (HDPE) for all drain pipes since this is the current drain pipe standard and that this project is private. Reinforced concrete pipe is rarely used nowadays.

The Rules and Regulation of the Town of Groton Board of Health, specifically: Chapter 315 Subsurface Sewage Disposal Regulations (Amended May 15, 2023). Waivers requested:

Section 315-3.J. – Pump Systems: (1) All force main sewer lines used for effluent pump and grinder pump systems shall be 160 pounds flex or equal. The force main, once installed, must be pressure tested at least 15 p.s.i. for 15 minutes prior to backfill. The force main must be bedded in a minimum of six inches of sand.

This may be appropriate for a single family dwelling type system but the Heritage Landing systems will comply with Title 5 and standard engineering practice concerning the force main pipe type and sizing since it is a commercial sized system.

Section 315-3.J. – Pump Systems (3) Rail systems for pumps up to one horsepower shall consist of 3/4-inch PVC pipe with steel rebar within for support, or approved equal. The ends of the pipe are to be sealed to prevent effluent infiltration.

All rail systems will be as supplied by the manufacturer for the specific pumps as designed and installed.

Section 315-3.J. – Pump Systems (4) Rail systems for pumps greater than one horsepower shall consist of two-inch stainless-steel pipe.

All rail systems will be as supplied by the manufacturer for the specific pumps as designed and installed.

Section 315-3.J. – Pump Systems (6) For effluent pump systems, there shall be a drain hole to allow effluent to drain back from the force main. The drain hole shall be installed after the check valve.

This may be appropriate for a single family dwelling type system but we will comply with Title 5, 310CMR15.221(6) concerning this item since it is a commercial sized system. This section of Title 5 states:

“All pressurized pipes shall be designed and installed to meet the following requirements:

- (a) to prevent freezing by being installed below the frost line, by being adequately insulated if installed above the frost line, or be self-draining;
- (b) to specify the appropriate class or schedule of pipe to withstand maximum pressure and/or anticipated vehicular loads; and
- (c) to specify appropriate thrust blocking at all angles, bends, branches, plugs and wherever else necessary to prevent disruption of proper functioning of the line.”

Section 315-3.L. - No component of a sewage disposal system, including but not limited to the leach area, sewer line, distribution box, distribution line, septic tank, clean-out or manhole, shall be located under any portion of a public or private road right-of-way.

A portion of the piping will be required to be located under the private roadway within this site.

Section 315—5.A. - Leaching facilities (including the proposed expansion area) must be located at least 100 feet from any wetland, watercourse, wetland vegetation, seasonal streams and drainage ditches.

Drainage ditches as mentioned above is a vague term. This could be construed to include drainage swales which may be part of the storm water design. We will maintain or exceed Title 5 setback requirements

Section 315-5.F. - A minimum of 20 feet must be available between the edge of any street right-of-way, passageway or road line and the entire exterior perimeter of any proposed leach areas. Passageway and road line as mentioned above are vague terms. At this point we don't know the exact location of the leaching systems versus any entrance drives which may be construed as passageways or road lines.

Section 315.6 – Square Footage Requirements

This section requires a 50% increase over the square footage requirements of Title 5 for conventional systems. Considering the size of the systems for this site, this is an enormous increase. This may be appropriate for a single family dwelling, but these systems will be commercially sized with pressure dosing which provides for a more complete and uniform method of applying effluent to a leach area.

