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October 27, 2023
BY EMAIL

Michael McKnight, Chairman
Town of Wrentham Planning Board
79 South Street
Wrentham, MA 02093

Re: Edgewood Development Company, LLC
Application for Special Permit/Site Plan Application
10 Commerce Boulevard, Wrentham, MA

Dear Chairman McKnight:

As you are aware, this office represents Helping Hands of America Foundation, Inc. ("Helping Hands"), and 574 Washington Street, LLC ("574 Washington"). This letter is submitted pursuant to the discussion held at the last public hearing of the Town of Wrentham Planning Board (the "Board") on October 18, 2023. At that hearing, I spoke on behalf of Helping Hands and 574 Washington, voicing their concerns with regards to the Special Permit and Site Plan Application to build a gas station and convenience store (the "Project") on the parcel located at 10 Commerce Boulevard in Wrentham (the "Property"), submitted by Edgewood Development Company, LLC (the "Applicant"). Please accept this letter in satisfaction of our commitment to provide a written memorialization of the issues disclosed by our review of the zoning of the Project.

The Project, in multiple respects, does not conform with and/or violates the requirements of the Town of Wrentham Zoning Bylaw (the "Bylaw").[1] The meaning of any zoning bylaw is determined by "the ordinary principles of statutory construction." Framingham Clinic, Inc. v.

[1] As the Applicant is proceeding pursuant to the Bylaw as of 2017 due to a zoning freeze, "Bylaw" shall refer to the Bylaw as last amended on June 13, 2016, which was operative at the time of the freeze.

Zoning Bd. of Appeals of Framingham, 382 Mass. 283, 290 (1981). Boards must "first look to the language of the bylaw and, where that language is plain and unambiguous, . . . enforce the bylaw according to its plain wording." Plainville Asphalt Corp. v. Town of Plainville, 83 Mass. App. Ct. 710, 712-713 (2013), citing Shirley Wayside Ltd. P'ship v. Bd. of Appeals, 461 Mass. 469, 477 (2012). As indicated in my oral presentation at the last hearing, and substantiated below, the Project (1) includes a retail use incidental to a "service station" in excess of the 3,000 SF permitted by the Bylaw; (2) does not meet a key criterion for the grant of the requested front-yard setback waiver; and (3) implicates the Bylaw's Aquifer Protection District, without any concomitant request for relief, nor compliance with the same. Unless and until these infirmities are remedied, the Application must be denied.

I. 574 Washington's and Helping Hands' Properties

574 Washington and Helping Hands are neighbors to the Property; each owning properties across Route 1/Washington Street ("Route 1") from the Property. 574 Washington is a Massachusetts Limited Liability Company, which owns the property located at 574 Washington Street (the "574 Property"). Helping Hands is a Massachusetts Domestic Profit Corporation, which owns the property located at 600 Washington Street (the "Helping Hands Property"), where Helping Hands has operated a used vehicle lot for many decades. Both 574 Washington and Helping Hands make use of Route 1 for primary access to their respective properties. Helping Hands also utilizes a curb cut on Hawes Street for the purpose of moving vehicles across Hawes Street to another Helping Hands-owned lot for storage. 574 Washington likewise has the right to a curb cut on Hawes Street and Hawes Street provides additional access to the 574 Property.

II. The Project Exceeds the Floor Area for a Service Station with Retail Sales.

The Applicant proposes use of the Property as a "Convenience store and fuel filling station (single retail store Section 4.2.C.1)[.]"[2] The retail store portion of the Project, per the plans submitted with the Application, is proposed to be 4,500 SF in gross floor area. This proposed square footage is prohibited by and violates the Bylaw. The Bylaw definition of a "service station" includes the incidental use of a convenience store, as follows:

> **SERVICE STATION:** Any building or premise which provides for any of the following or a combination thereof: (a) the retail sale of gasoline, oil, tires, batteries, and accessories for motor vehicles…[a] service station may include the retail sale of non-automobile goods; ***provided, however, no more than 3,000 square feet of floor area shall be devoted to the sale of such goods***.

[2] Indeed, the Application identifies the use as a "[c]onvenience store and fuel filling station (single retail store Section 4.2.C.1)", which, together, conflates two different uses (convenience store and retail store) under the Bylaw, and combines those two discrete uses with one that does not exist (fuel filling station); thereby creating a compound use, which too does not exist.

Article 2 of the Bylaw (emphasis added). The foregoing, emphasized language, starting with the phraseology, "provided, however," as a matter of grammar and syntax, imposes a limitation on the overall use of "retail sale of non-automobile goods" under the Bylaw. See Plainville Asphalt Corp., 83 Mass. App. Ct. at 713, quoting Russell v. Boston Wyman, Inc., 410 Mass. 1005, 1006 (1991), ultimately quoting from United States v. Ven-Fuel, Inc., 758 F.2d 741, 751 (1st Cir. 1985) (applying "rule of the last antecedent, which holds that 'qualifying phrases are to be applied to the words or phrase immediately preceding and are not to be construed as extending to others more remote'"); Kaplan v. Ramsdell, 23 LCR 698, 702-703 (Nov. 16, 2015) (Misc. Case No. 488186) (Foster, J.) ("phrase[]'provided however' [is] a qualification, limitation or exception"). Therefore, any "retail sale of non-automobile goods[,]" associated with a "filling station" otherwise engaging in "the retail sale of gasoline[,]" must be "no more than 3,000 square feet of floor area . . . devoted to the sale of such [non-automobile] goods[.]"

No other use or category of uses under the Bylaw permits the "retail sale of gasoline" and, thus, the Project, other than a "service station[.]" And, as a structural matter, and like most local zoning laws in Massachusetts, the Bylaw prohibits multiple primary uses, *i.e.*, a "service station" and "convenience store," on the Property, *i.e.*, a single lot. See Bylaw, Article 2 (Definitions). As such, there can be no argument that the Project proposes anything other than a "service station[,]" with associated retail sales, as defined above. Thus, the Project is unlawful as it proposes an associated retail area greater than the maximum 3,000 SF allowed.

The Bylaw does not countenance any other interpretation than provided above. Article 2 defines a "convenience store", in relevant part, as follows: "Any retail store with a ***gross floor area of 3,000 square feet or less***, generally open expanded hours, selling a limited selection of groceries, beverages and snacks to be consumed primarily off the Property, lottery tickets, newspapers, magazines, tobacco products, household products and personal items." (emphasis added). A "convenience store", like the allowed retail component of a "service station", must be 3,000 SF or less, and such use also does not permit the "retail sale of gasoline" as primarily contemplated by the Project. Therefore, the Project cannot qualify as a "convenience store" use under the Bylaw.[3]

Likewise, a "retail establishment/store", as set forth in Article 2 is defined in relevant part as "[a]n establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods." Though this definition does not expressly limit the overall gross floor area for such use, it also does not permit or contemplate the "retail sale of gasoline" – the primary component of the Project. Moreover, this Board must "'endeavor to interpret a statute to give effect "to all its provisions, so that no part will be inoperative or superfluous."'" Shirley Wayside Ltd. P'ship, 461 Mass. at 477,

[3] In addition and any event, such use would be limited to 3,000 SF of floor area and would similarly be violative of the Bylaw, even if the Project could be characterized as contemplating the permitting of a "convenience store."

quoting Connors v. Annino, 460 Mass. 790, 796 (2011), ultimately quoting Wheatley v. Massachusetts Insurers Insolvency Fund, 456 Mass. 594, 601 (2010). And, based on this super canon of construction, "retail establishment/store" cannot grasp or cover the "convenience store" use directly defined above, because, otherwise, the more specifically defined "convenience store" classification would be surplusage. As such, the Project cannot be deemed a "retail establishment/store" either.

In the end, a service establishment engaged in the retail sale of gasoline for motor vehicles, with an attendant retail store engaged in the sale of non-gasoline goods, can only fall under and within the definition of a "service station" pursuant to the Bylaw. Indeed, the more specific must always trump or supersede the more general, as a matter of statutory construction. See Doe v. Attorney General, 425 Mass. 210, 215-216 (1997). Here, the Bylaw's definition of both "retail store" and "convenience store" are generalized to include retail sales of goods only. The definition of a "service station", however, is more specific and expressly contemplates the retail sale of gasoline – the primary purpose of the Project – as well as a limited retail sales component, consistent with the definition of a "convenience store" under the Bylaw. As the Project perfectly fits into the more specific definition of a "service station[,]" under the foregoing, binding principles of bylaw interpretation, it must be construed as such and must satisfy the criteria for that specific use under the Bylaw. The Application, thus, must be denied, as the associated retail component of the proposed Project is in excess of 3,000 SF of gross floor area.

III. The Project Does Not Meet the Waiver Criterion for the Front Yard Setback as the Current Proposed Design Negatively Affects Traffic Circulation.

The Applicant has requested that the front yard setback required by Article 6.1 of the Bylaw be reduced from 100' to 50'. However, the Project does not meet the standard for such a waiver. Footnote 9 of Article 6.1 of the Bylaw provides the criteria the Board must assess when considering setback waivers for uses adjoining state highways:

> The provisions of this footnote shall apply only to those lots that adjoin a Massachusetts Highway Department numbered route. In the C-2 Zoning District, setback requirements may be reduced by means of a special permit issued by the Planning board (Special Permit Granting Authority "SPGA") provided the front yard setback shall not be less than 50 feet, the side yard setback shall not be less than 25 feet, and the rear yard setback shall not be less than 10 feet. In considering the reduction in setback requirements the SPGA shall consider:
> A. The effect on public infrastructure and services;
> B. The effect on sensitive environmental lands;
> C. The proposed appearance of the buildings and structures as well as the landscaping features on the lot from adjoining public ways; and,
> D. Whether the site layout serves to facilitate safe and adequate traffic circulation along adjoining public ways through such means as common driveways.

As depicted on page 10 of the revised site plan in support of the Application, the Project, with the requested front yard waiver, would result in a conflict between entering fuel trucks and vehicles at the proposed gas pumps, in order to refill the gasoline storage tanks. Specifically, entering fuel trucks are required to turn under the canopy and through the first two fueling positions at the northernmost fuel pumps. In the likely event that a vehicle is already parked at one of the first two gas pumps when a fuel tanker truck arrives, the truck would block traffic entering from Commerce Boulevard until the conflict between the fueling car and truck would be abated, and the tanker could then proceed to enter the filling area. This vehicular backup on Commerce Boulevard, due to lack of proper circulation on the Property, is the direct opposite of "facilitat[ing] safe and adequate traffic circulation" contemplated by subsection D, set forth above.

The Applicant could alleviate this traffic circulation issue by removing the set of four gas pumps closest to Commerce Boulevard. With such modification, the Applicant may not need a setback waiver at all, or at the very least would not need one of as great a distance. And, with the elimination of the first set of four gas pumps, there would be adequate space for tractor trailer maneuverability, and the relevant waiver criterion would be met.[4]

Also affecting ingress/egress and traffic into the Property is the driveway width at the proposed entrance for the Project. While the proposed eastern driveway has a 24-foot-wide access point, the western driveway, most proximate to Route 1, is only 22 feet wide. Such a limited entrance, and the immediate proximity of the filling tanks to this entrance, leave limited room for large trucks, like fuel trucks, to maneuver onto the Property; thereby failing to facilitate safe and adequate traffic circulation for trucks and vehicles accessing the same. This configuration creates a more difficult and narrow allowed turn radius that would worsen the foregoing issues when refilling the storage tanks. There does not appear to be any particular reason for the smaller width for the western driveway into the Property.

In addition, on page 10 of the site plans submitted with the Application, the path and flow of a tractor trailer will be forced to take a right-hand turn and pull into the opposite lane of traffic on Commerce Boulevard. This is an obvious safety concern that has a negative effect on traffic circulation. The Project should be revised to better promote traffic flow and the safety of pedestrians and/or customers, and 574 Washington and Helpings Hands otherwise rely on the companion letter submitted by Chappell Engineering Associates, LLC for the traffic engineering particulars of these problems and potential solutions for the same.

[4] The only other alternative would be to remove the two pumps on the Commerce Boulevard-side of the pumping station. While such an incremental curative amendment would leave the adjacent travel lane likely still too narrow for safe tractor trailer maneuvering, it would at least eliminate the potential for conflict with other motor vehicles refueling in the same area. However, as discussed in Section IV *infra*, with the addition of above-ground petroleum storage tanks, as required by the Bylaw's Aquifer Protection District's provisions, the relevant area would remain overly crowded for tractor trailer maneuverability, even with this modification. Therefore, only the complete elimination of the first set of four gas pumps would allow the Project to comply with the Bylaw.

IV. The Stormwater Drainage System Places the Project under the Requirements of the Aquifer Protection District in the Bylaw.

While the Property is not technically located within the Aquifer Protection District (the "APOD"), the stormwater management system, infrastructure and appurtenances serving the Project are substantially located in that district. The Project's current stormwater plan utilizes a two-fold system to deal with runoff. The roof runoff from the convenience store will be treated and infiltrated through its own system. The parking lot runoff, however, will be caught and treated through deep sump catch basins and a water quality structure underground at the Property before flowing into a drainage easement under Commerce Boulevard that terminates at an expansive infiltration basin behind the Supercharged racing facility at the property at 40 Commerce Boulevard (the "Supercharged Property"). This massive infiltration basin, to hold substantial storm water runoff from a gas station, is in close proximity to or in a jurisdictional wetland. The infiltration basin, thus, falls within the APOD under the Bylaw. The Project's impact on sensitive hydrological areas should require the Applicant to proceed pursuant to the appropriate requirements under Article 15 of the Bylaw and take additional steps to protect those same areas.

The doctrinal reasons why the Applicant must be required to submit to the requirements of the APOD are simple and well-established: appurtenances necessary to principal uses are subsumed within such primary uses; both have to comply with the zoning applicable to each in different districts. See Tracer Lane II Realty, LLC v. Waltham, 489 Mass. 775, 779-780 (2022); Beale v. Planning Bd. of Rockland, 423 Mass. 690, 694 (1996) (access road in one zoning district leading to another zoning district "is considered to be in the same use as the parcel to which the access leads"). The APOD's applicability to the Project creates an immediate problem in that below ground petroleum storage tanks, such as proposed as part of the Project, are prohibited under the Bylaw.

Article 15.5.b.14 prohibits such tanks, as follows:

> [s]torage of petroleum products, liquid under ambient conditions, except the following:
>
> (a) Normal household use, outdoor maintenance, and heating of a structure;
>
> (b) Waste oil retention facilities required by statute, rule of (sic) regulation;
>
> (c) Emergency generators required by statute, rule or regulation;
>
> (d) Treatment works approved under 314 CMR 5.00 for treatment of ground or surface waters;
>
> provided that storage, listed in items a. through d. immediately

> above, is in free-standing containers within buildings or above ground with secondary containment adequate to contain a spill the size of a minimum of 125% of the container's total storage capacity.

The Project features the storage of petroleum products, liquid under ambient conditions, in underground tanks. This is prohibited without the possibility of a special permit (or variance) pursuant to the Bylaw (as it expressly prohibits use variances, see Article 2, Definitions, "Use, Principal").

At a minimum, the Applicant must revise the Project to include above-ground fuel storage tanks and apply for a special permit under the APOD requirements. As a threshold matter, and as addressed above, this standard of the APOD mandates the elimination of the set of four gas pumps closest to Commerce Boulevard because there would thereby be insufficient area for tractor trailer maneuverability with the otherwise-required above-ground petroleum storage tanks. Article 15.5.c.4 prohibits the following use, except by special permit: "[t]hose activities that involve the handling of toxic or hazardous materials[5] in quantities greater than those associated with normal household use, which are permitted in the underlying zoning, except as prohibited under §B." Also prohibited, except by special permit, is the following:

> Any use that will render impervious more than 15 percent of any lot. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by stormwater infiltration basins or similar systems covered with natural vegetation and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate the removal of contamination. All recharge areas shall be permanently maintained in full working order by the owner.

Article 15.5.c.5. The Project renders impervious ±25% of the Property.

Accordingly, the Applicant must amend the Project to include above-ground gasoline tanks, and the Application also to seek special permit relief under, and to comply with, the APOD provisions of the Bylaw. In particular, under the APOD, the Board must make additional findings before granting a special permit for any use or activity, as follows:

[5] Toxic or Hazardous Materials are specifically defined in Article 2 of the Bylaw as: Any substance or mixture of such physical, chemical or infectious characteristics in sufficient quantity as to pose a significant actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this town. TOXIC or hazardous materials include, without limitation, organic chemicals, petroleum products, heavy metals, radioactive or infectious WASTES, acids and alkalines, pesticides, herbicides, solvents, thinners, including the 129 Priority TOXIC Pollutants established by the U.S. Environmental Protection Agency.

> The [Board] may grant a special permit only upon finding that the proposed use or activity meets the standards of this bylaw. The proposed use or activity must:
> 1. In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of Groundwater that is available in the AQUIFER Protection DISTRICT;
> 2. Be designed to avoid substantial disturbance of the soils, TOPOGRAPHY, drainage, vegetation, and other water-related natural characteristics of the site to be developed;
> 3. Be in harmony with the purpose and intent of this bylaw, as well as its specific criteria.

Without substantial modifications, the Project would "adversely [affect] the existing or potential quality or quantity of Groundwater" in the APOD by dint of the drainage of all runoff from a gas station parking lot into the infiltration basin. Further, beyond filling it with stormwater from a gas station parking lot, it will increase the pressure on the infiltration basin, and the APOD area within and around it, which, in turn, includes multiple jurisdictional wetland areas. Any application for special permit relief related to this Project should include studies and plans to account for taxing the capacity of the infiltration basin, which currently serves the Supercharged Property alone.

For the foregoing reasons, 574 Washington and Helping Hands object to the Project as currently constituted in the Application. 574 Washington and Helping Hands, as neighbors and members of the community, seek to engage in a constructive dialogue to ensure that any such Project proceeds in a manner that protects and serves the needs of the community, the zoning districts, and all stakeholders.

Sincerely,

/s/ Nicholas P. Shapiro
Nicholas P. Shapiro

NPS/sms

Cc: Client
Town of Wrentham Conservation Commission