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January 9, 2024
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 and Members of the Board:

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 in response to the Response to Abutter Comments letter filed by Edgewood Development Company, LLC (the “Applicant”) and dated December 15, 2023 (the “December Letter”), and the discussion held at the public hearing of the Town of Wrentham Planning Board (the “Board”) on December 20, 2023. In our prior letter dated October 27, 2023 (the “October Letter”) and at the Board hearing on October 18, 2023, I expressed the concerns of Helping Hands and 574 Washington 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, MA (the “Property”), and provided a full zoning analysis of the Project. Please accept this letter as a response to the Applicant’s December Letter, and a supplementation of the October Letter.

First and foremost, 574 Washington and Helping Hands strongly support the concerns Chairman McKnight raised as a capstone to the discussion of the Project at the December 20, 2023

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hearing. 574 Washington and Helping Hands applaud the Chair for taking the interests of the abutters within the community to heart. These concerns are well empirically founded, and should guide the Board's deliberations and frame any decision with respect to the Project.

Both signalized left turns and, especially, enhanced traffic light queueing, resulting from the Project, will have patently negative impacts on existing and other future businesses along this portion of the Route 1 corridor. Chairman McKnight mentioned Turnpike Truck Parts ("Turnpike") and Interstate Travel Plaza ("Interstate"), but the same challenges borne by Interstate would necessarily be faced by Helping Hands and 574 Washington. The commercial properties of both Helping Hands and 574 Washington front on Route 1, north of, and – in the case of Helping Hands – adjacent to, Interstate. As put forth in the original letter of Chappell Engineering Associates, LLC dated October 27, 2023 (the "Chappell Letter"), the enhanced queues resulting from the Project that both 574 Washington and Helping Hands would suffer would be devastating, particularly at peak hours. The concerns of Chairman McKnight regarding the Project's impact on existing, successful businesses (and, in the case of 574 Washington, the viability of future development) are well-placed.

It is an aspect of the Board's explicit authority and mandate to ensure that the Project "serves to facilitate safe and adequate traffic circulation along adjoining public ways through such means as common driveways[.]" and the position taken in the Chair's exchange with the Applicant is well-noted. See Article 6.1 n.9 of the 2016 Town of Wrentham Zoning By-Laws (the "Bylaw"); see also Bylaw, Article 9.1.a ("[A use allowed by special permit] [s]hall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood"). Not only is an access drive for Turnpike a matter of concern, but the effective and safe circulation of traffic in this overall area is an impact factor for all surrounding properties and businesses, including Helping Hands and 574 Washington. The Wrentham Town Meeting accordingly saw fit to include these criteria in the Bylaw as preconditions upon the grant of the requested special permit. For these reasons, and based on these criteria, Helping Hands and 574 Washington respectfully request that the Board, should it see fit to approve the Project, insist upon the alternative non-waiver plan presented by the Applicant at the December 20, 2023 hearing.

The Applicant, in one respect, did make a good point in the exchange at the end of the December 20, 2023 hearing: eventually, the Board will need to approve or deny something concrete. If the Board were to condition the permitting of this Project upon the signalization and reconfiguration of the Route 1/Commerce Boulevard/Hawes Street intersection by MassDOT, such an outcome is not inherently legally objectionable. It is fairly routine that one land use permit may require, as a condition, the procurement of another, additional and subsequent land use permit under a different regulatory regime from a different permit-granting authority. However, Massachusetts law is clear that a special permit granting authority under the Zoning Act may not delegate its local zoning authority to some other regulatory body. See Tebo v. Board of Appeals of Shrewsbury, 22 Mass. App. Ct. 618, 624 (1986) ("permit granting authority in a zoning case . . . may not delegate to another board, or reserve to itself for future decision, the determination of an

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issue of substance, *i.e.*, one central to the matter before the permit granting authority”).¹ Therefore and for instance, the Board could not, consonant with Massachusetts law, “approve” the Project leaving the particulars of the Project’s design to MassDOT. If it is inclined to permit the Project under the Bylaw, the Board must approve a specific Project iteration design; it cannot leave to MassDOT that choice.

Understandably from its perspective, given its profit motive, the Applicant seeks approval of the Project with a condition requiring the reconfiguration and signalization of the intersection of Route 1 with Commerce Boulevard/Hawes Street. However, this profit-motivated election has legal and practical consequences, as intimated by the Chair and the Wrentham Town Planner. The Board must, if it were to approve the Project, authorize a concrete development plan. Without that authorization from the Board, the Applicant also cannot practically proceed to seek a signalization warrant from MassDOT. Nevertheless, given MassDOT’s broad jurisdiction and discretion over state highways generally, and its long-term plan for this stretch of Route 1 specifically, the Project plans could very well change through the state signal warrant process. Should MassDOT require such changes, the local zoning consequences are obvious, unavoidable and must be honored: the Applicant would need to return to the Board to modify any permitting for the Project accordingly, so that, whatever the Board has approved, such local zoning decision would be consistent with the requirements of MassDOT. These are the natural and appropriate consequences of the Applicant’s choice to develop this Property, with a signalization condition. The Applicant’s demonstrated irritation with the Board for its rightful skepticism regarding the Project, based on the permitting complexity that the Applicant itself has engendered, is unfounded. The Applicant is under no inherent compulsion to develop the commercial subdivision on Commerce Boulevard with yet another warehouse and fueling station with retail use, subject to a signalization condition.

Finally, the Applicant’s response to Helping Hands’ and 574 Washington’s concerns expressed in the October Letter were inadequate and failed meaningfully to engage with our analysis. With respect to the issue of the square footage of the convenience store component of the Project, the Applicant wishes the Board to ignore the Bylaw. The fact that the retail and service station components of the Project are “independent and interdependent” proves – aside from being wholly self-contradictory – the veracity of the analysis in the October Letter. It further proves that the Project, as presently constituted, violates the Bylaw’s explicit text. The Bylaw is a so-called prohibitive local zoning law; meaning that only those uses that are expressly authorized are permitted. See Bylaw, Article 3.5 (“No new STRUCTURE or BUILDING may be erected, constructed, established, altered, repaired, enlarged, or moved and no new premises, land, or LOT may be put to a new USE or occupied except in conformity with these ZONING bylaws”); Bylaw, Article 4.1 (“BUILDINGS and other STRUCTURES shall be erected or USED and premises shall

¹ Indeed, it is worth noting that the approval of the 15 Commerce Boulevard warehouse project may run afoul of this canon law, as construction of that project is conditioned upon approval by MassDOT of some kind of traffic signalization scheme. The Applicant seeks a similar conditional ruling for this Project.

be USED only as set forth in the ‘USE Regulation Schedule’ except as exempted by § 3.4 or by statute”). See also Tanner v. Board of Appeals of Boxford, 61 Mass. App. Ct. 647, 648 (2004), citing APT Asset Mgmt., Inc. v. Board of Appeals of Melrose, 50 Mass. App. Ct. 133, 138 (2000) (“Boxford zoning by-law is of a type we have described as ‘prohibitive’ rather than ‘permissive,’ the by-law states that ‘any use not specifically listed herein or otherwise permitted in a district shall be deemed as prohibited’”) (internal citation omitted). In other words, under the Bylaw, no applicant is free simply to invent new use categories to serve their development purposes; whatever an applicant proposes must fit the explicit definitions of what the Bylaw allows. As set forth in detail in the October Letter, the Project can only qualify as a “Service Station” under the Bylaw.

The Bylaw does not countenance the Project being comprised of two separate uses on the Property. If the uses are independent as the Applicant contends in the December Letter, then the Applicant is applying for two distinct principal uses on one property, which is expressly prohibited by the Bylaw. See Bylaw, Article 2. The Bylaw simply does not allow two principal uses on one property. Nor would the Bylaw allow the Project, as presently composed, to be permitted as one principal and one accessory use. Neither a convenience store (or retail store, for that matter), nor a service station, qualifies as an accessory use under the Bylaw’s explicit text.² See Bylaw, Article 6.1. If the uses are interdependent (which they plainly and practically are), then the only possible principal use that the Project could satisfy is a “Service Station,” with a non-automobile retail component of 3,000 SF or less, pursuant to Article 2 of the Bylaw. The Project does not conform to this standard and must, to be permitted, be modified to comply with the 3,000 SF requirement.

The Applicant’s claims that the Project conforms with similar gas station developments in Wrentham falls on deaf ears. Even if an accurate claim about this Board’s historic permitting practice, such practice cannot trump the language and requirements of the Bylaw. The Board is bound by the Bylaw and not constrained by its former decisions regarding comparable projects. See Doherty v. Planning Bd. of Scituate, 467 Mass. 560, 573 (2014). See also Ferrante v. Board of Appeals, 345 Mass. 158, 163 (1962) (“It follows that the issuance of a building permit and the erection of a building not authorized by the zoning ordinance did not entitle the plaintiffs to a variance by reason of estoppel”), quoting V.F. Zahodiakin Eng’g Corp. v. Zoning Bd. of Adjustment, 8 N.J. 386, 396 (1952) (“governmental zoning power may not be forfeited by the action of local officers in disregard of the statute and the ordinance . . . [t]he plaintiff landowner is presumed to have known of the invalidity of the exception and to have acted at his peril”). In short, past practice does not authorize illegal development today. The Project must comply with the 3,000 SF requirement.

² Accessory Uses, per Article 4.1 of the Bylaw, are as follows: “Enclosed wireless communication transmitter/receptor within a non-residential building or structure; Home occupation (See Article 4.5); Home occupation: antique shop beauty parlor, barber shop, real estate office (See Article 4.5); Bed and breakfast home (See Article 4.6); Accessory uses on the same lot such as garages, stables, barns, tool sheds, farm buildings and enclosures, farm equipment, tennis courts, and swimming pools for personal use only; common driveway; roof-mounted/building mounted solar photovoltaic installation; ground-mounted solar photovoltaic installation.”

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The Applicant's Civil Engineer, William Buckley ("Buckley"), also purported to address 574 Washington's and Helping Hands' concerns regarding the Aquifer Protection Overlay District ("APOD") and the Project's impacts thereon. Again, there was no meaningful engagement with the October Letter's analysis. Buckley simply points out that the borders of the Property do not fall within the APOD; a point which 574 Washington and Helping Hands do not contest and is readily acknowledged in the October Letter. Instead, to reiterate, the issue is that the drainage system for the Project, its literal appurtenances, necessarily includes, and passes through a conduit and drains into the stormwater basin; all within the APOD. These appurtenances—the stormwater management system infrastructure within the APOD serving the Project at the Property—brings the Project within the scope of, and subject to, the standards and requirements of the APOD. For citing references, please see page 6 of the October Letter. Merely stating the obvious, admitted and irrelevant proposition that the Property is not itself in the APOD does not engage with or address our clients' reasonable concerns about the impact on area groundwater, resulting from the Project, and its appurtenances within the APOD, that this overlay district zoning is intended to protect.

For the foregoing reasons, 574 Washington and Helping Hands continue to object to the Project as currently constituted in the Application. 574 Washington and Helping Hands do appreciate, however, the deep and thorough engagement of the Board in this process and in the review of the Project by the Board, examining all aspects of the Project, including its severe negative impacts on abutters. We look forward to further constructive dialogue about the Project, and how it may be permitted lawfully, with appropriate mitigation of its negative effects upon the community and abutters, such as 574 Washington and Helping Hands.

Sincerely,

/s/ Nicholas P. Shapiro
Nicholas P. Shapiro

NPS/sms

Cc: Client
Town of Wrentham Conservation Commission