

Town of Franklin

355 East Central Street
Franklin, Massachusetts 02038-1352



Phone: (508) 520-4907
www.franklinma.gov

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

May 2, 2024

William F. O'Connell Jr., Chair
Bellingham Planning Board
Municipal Center
10 Mechanic Street
Bellingham, MA 02019

RE: Proposed Prospect Hill Village, Special Permit and Development Plan

Dear Chair O'Connell:

I am writing as a follow-up to my letter dated January 25, 2024 (Attachment A) regarding the proposed Prospect Hill Village townhouse development. The Town of Franklin has major concerns with the proposed project, and wishes to convey its firm opposition to the Prospect Hill Village project.

The proposed project will negatively impact Franklin residents located at the Bellingham-Franklin Town line and throughout the Prospect Street corridor. By utilizing two locations on Prospect Street in Franklin for access, the impacts from this Bellingham project will be mostly felt in Franklin.

Alternative Access Alternatives & Traffic and Safety Issues. In my previous letter I requested that the Board have the applicant look at project access alternatives. Utilizing the applicant's frontage along Lake Street in Bellingham, instead of Prospect Street in Franklin, may lessen impacts to Franklin residents along Prospect Street. However, after further analysis of the proposed project, based on the proximity of the site and easy access to both I-495 interchanges in Franklin, the proposed project will substantially increase traffic on Franklin roadways regardless of where the proposed development is accessed.

Franklin's Town Engineer Michael Maglio reviewed the project's Traffic Impact and Access Study and has provided a letter outlining several concerns (Attachment B). The Traffic Impact and Access Study is very limited in scope and underestimates the level of potential service and safety impacts. The Study also underestimates the use of Prospect Street south of the project area where the roadway is narrow and has a couple significant curves limiting visibility. And the proposed mitigation of putting traffic signs on Prospect Street is not going to do anything to mitigate the increases in traffic.

A proposed development of this size, especially with the potentially significant traffic and safety issues, should always have a peer review by third party consultants. If the Board continues to consider the applicant's special permit application, please require the third party peer review.

Definitive Subdivision. The Town of Franklin is aware of the approved Prospect Hill Estates Definitive Subdivision and did expect that access to the subdivision would be from Prospect Street.

In October 2022 Wall Street Development filed a Definitive Subdivision Plan for Prospect Hill Estates with Franklin Planning Board. The proposed Subdivision was an eleven lot single family development with access from Prospect Street. Franklin Planning Board held a public hearing and determined the project would be denied for access through the Town of Franklin for development.

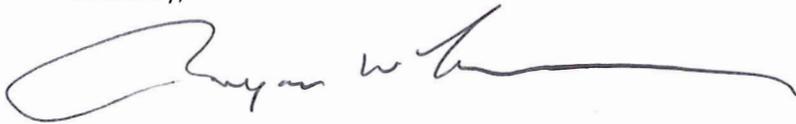
The proponent then filed an appeal of the decision. After discussion with both parties, Franklin Planning Board and proponent came to an agreeable judgment. Please see Attachment C, a court decision (Stipulated Judgement) dated January 5, 2023. The Judgment was for a "proposed 11 lot residential development"; also, the October 2022 Subdivision Plan showed one egress through the Town of Franklin onto the property. The new plans before Bellingham Planning Board show two points of egress in Franklin, and 156 housing units.

The Town of Franklin would not likely be writing at this point in opposition to the Prospect Hill Village project if the applicant were working to permit an 11 lot residential development with one access road off of Prospect Street. The currently proposed project is substantially larger, and will have much larger impacts to Franklin residents. Given the substantial increase in project size and the addition of another access point on Prospect Street, we are not dealing with the same project, and therefore the Town of Franklin must insist the special permit application be denied.

I hope the above documentation is sufficient to convince the Board it should deny the proposed 156 unit multifamily development, but if not please carefully consider one additional issue. In an April 24, 2024 letter to the Bellingham Planning Board (Attachment D), Franklin's Town Attorney provided reasoning/legal analysis for why utilizing single family zoned parcels along Prospect Street in Franklin to access the proposed multifamily development should not be permitted.

We request that the Bellingham Planning Board vote to deny the subject project. Thank you for consideration.

Sincerely,



Bryan W. Taberner, AICP, Director

Cc: Jamie Hellen, Town Administrator/CEO
Gregory Rondeau, Chair, Franklin Planning Board
Amy Frigulietti, Deputy Town Administrator
Mark Cerel Franklin Town Attorney
Michael Maglio, P.E., Franklin Town Engineer
Amy Love, Franklin Town Planner
Breeka Li Goodlander, Franklin Conservation Agent

Attachments:

- A. DPCD Letter to Bellingham Planning Board, January 25, 2024
- B. Franklin Town Engineer Letter, February 12, 2024
- C. Court Decision/Stipulated Judgement, January 5, 2023
- D. Franklin Town Attorney Letter to Bellingham Planning Board, April 24, 2024

Town of Franklin

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DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

January 25, 2024

William F. O'Connell Jr., Chair
Bellingham Planning Board
Municipal Center
10 Mechanic Street
Bellingham, MA 02019

RE: Proposed Prospect Hill Village, Special Permit and Development Plan

Dear Chair O'Connell:

I am writing in regards to the Prospect Hill Village townhouse development proposed to be located near the Bellingham-Franklin Town line. The Town has several concerns with the proposed project, but in this first letter I'd like to focus on two or three. Our main concern is how this proposed project will impact Franklin residents along Prospect Street, and current users of Prospect Street.

Traffic & Safety Issues.

Potential traffic impacts associated with the proposed development are substantial. I did a quick review of the project's traffic study. I believe the study underestimates the project's level of service and safety impacts. South of the site Prospect Street is narrow, and in two locations roadway curves negatively impact visibility. The proposed "mitigation" of putting traffic signs on Prospect Street is not going to mitigate the increases in traffic.

Based on the proximity of the site and easy access to both I-495 interchanges in Franklin, the proposed project will substantially increase traffic on Franklin roadways. With the increases in traffic from this proposed 156 unit townhouse project, combined with impacts from four other proposed or permitted Bellingham housing developments (and their 500+ housing units), traffic and safety issues need to be taken very seriously.

The Town of Franklin's Engineering Department will take a look at the project's traffic study and provide comment before the next meeting, but a peer review of this project by third party consultants, especially traffic and safety issues, is obviously necessary.

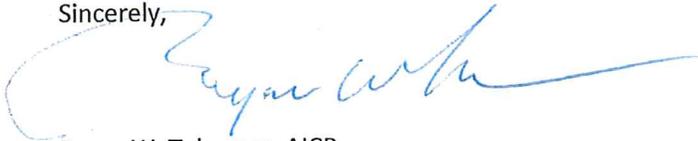
Project Size. The Town of Franklin is aware of the approved 19 lot Prospect Hill Estates Definitive Subdivision and did expect that access to the subdivision would be from Prospect Street. However, a substantially larger 156 unit townhouse project is a whole other thing. Obviously impacts would be significantly higher.

Project Site Access. In addition to the three parcels within Bellingham shown on the development plans, the proposed project utilizes at least two parcels within the Town of Franklin which would be used to access the site. By accessing in those locations the impacts from this Bellingham project will be mostly felt by Franklin.

Alternatives Development Scenarios. We are respectfully requesting that the Board have the applicant look at project access alternatives. The Applicants have frontage on Lake Street and appears to have access over Lakeview Ave and easement over Town of Bellingham owned property. Utilizing their frontage along Lake Street in Bellingham, instead of Prospect Street in Franklin, will likely lessen impacts to Franklin residents along Prospect Street.

The purpose of this letter is to put on record the Town of Franklin's opposition to the Prospect Hill Village project as proposed. I recommend not reaching a decision on the subject project until Franklin Conservation Commission and other Franklin Town officials have provided additional input. Thank you for consideration.

Sincerely,



Bryan W. Taberner, AICP
Planning & Community Development Director

Cc: Gregory Rondeau, Chair, Franklin Planning Board
Jamie Hellen, Town Administrator/CEO
Amy Frigulietti, Deputy Town Administrator
Mark Cerel Franklin Town Attorney
Michael Maglio, P.E., Franklin Town Engineer
Amy Love, Franklin Town Planner
Breeka Li Goodlander, Franklin Conservation Agent



TOWN OF FRANKLIN
DEPARTMENT OF PUBLIC WORKS
Franklin Municipal Building
257 Fisher Street
Franklin, MA 02038-3026

February 12, 2024

Mr. Bryan Taberner
Planning & Community Development Director
Town of Franklin
355 East Central Street
Franklin, MA 02038

**RE: Proposed Prospect Hill Village - Bellingham,
Traffic Impact and Access Study**

Dear Bryan,

As requested, I reviewed the November 2023 Traffic Impact & Access Study for the proposed 156 unit housing development off of Prospect St. As you noted in your January 25th, 2024 letter to the Bellingham Planning Board, I fully agree that a peer review of the traffic study by a third party traffic consultant is warranted and necessary. After reviewing the study, I offer the following comments:

1. The study area is limited to the Prospect St and Lake St intersection, and the two proposed site drives on Prospect St, all of which are located within the Town of Franklin. At a minimum, the study should also include an analysis of impacts to the signalized intersection of Route 140 at Maple St in Bellingham, and the unsignalized intersection of Prospect St at Washington St in Franklin.
2. Crash data was only evaluated for the intersection of Lake St at Prospect St. In addition to including the above noted intersections of Maple St at Route 140 and Prospect at Washington St in the analysis, there are two sharp 90 degree turns along Prospect St in Franklin near house #283, and #215. These two curves should also be evaluated from a safety standpoint.
3. While the sight distance analysis addresses the minimum required Stopping Sight Distance (SSD), the report also refers to Intersection Sight Distance (ISD) however no analysis of the ISD was provided. While the SSD is the absolute minimum sight distance needed for vehicles entering the roadway in order to avoid collisions, the ISD is the desirable sight distance in order to accommodate operations and to help avoid near misses. The ISD should also be evaluated in the analysis.

4. In regards to background traffic growth and other vicinity developments, the study references the new distribution warehouse under construction at the intersection of Maple St and Route 140, however no trips from this development were included on Prospect St, the reason for which was given as its proximity to Route 140 and I-495. It's been witnessed that significant traffic from other nearby distribution warehouses, specifically delivery vehicles from the Amazon Distribution Center on Maple St, regularly use Prospect St and as such it seems that it would be appropriate to include additional trips as part of the background growth trip distribution.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Michael Maglio, P.E.
Town Engineer

cc: Gregory Rondeau, Chair, Franklin Planning Board
Jamie Hellen, Town Administrator/CEO
Amy Frigulietti, Deputy Town Administrator
Mark Cerel, Town Attorney
Amy Love, Franklin Town Planner

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

LAND COURT DEPARTMENT
DOCKET NO. 22 MISC 000622

WALL STREET DEVELOPMENT
CORP.,

Plaintiff,

v.

FRANKLIN PLANNING BOARD,

Defendant.

*Approved as an Agreement
for Judgment pursuant to Land
Court Rule 10.
By the Court,*
[Signature]
Howard P. Speicher
Justice 1/5/23

STIPULATED JUDGMENT

Pursuant to a stipulation of the parties, it is hereby ORDERED, ADJUDGED, and
DECREED as follows:

Case shall be remanded to the Franklin Planning Board which shall grant waiver(s) and approve roadway in Franklin to access Wall Street Development Corp.'s proposed ten lot residential subdivision which, with exception of access roadway, is to be constructed entirely within Bellingham, subject to Franklin Town Engineer's determination that proposed design and construction of roadway is adequate to provide safe vehicular ingress and egress, and further subject to two conditions:

- (1) Roadway will always remain private and be maintained by homeowners and Town of Franklin will never have any responsibility to maintain it.
- (2) To implement condition # 1, Developer will execute a private road covenant with Town and establish a homeowners association, both documents to be recorded.

Dated: Jan 5, 2023

By the Court (Speicher, J)

[Signature]
Deborah J. Patterson, Recorder

#PL eleven

Mark G. Cerel, Town Attorney
Tel: (508) 520-4964

Town of Franklin



355 East Central Street
Franklin, Massachusetts 02038-1352

Attachment D

E-Mail: mcerel@franklinma.gov
Fax: (508) 520-4903

April 24, 2024

Town of Bellingham Planning Board
c/o Bellingham Planning Office
10 Mechanic St
Bellingham, MA 02019

By USPS First Class Mail
and Electronic Transmission:
planningboard@bellinghamma.org

Re: Application of Wall Street Development Corp for Approval of 156 Unit Multi-Family:
Town of Franklin's Opposition

Dear Bellingham Planning Board Members,

The undersigned is Town Attorney for the Town of Franklin. Reference is made to the pending application of Wall Street Development for approval to construct 156 units of multi-family housing in Bellingham, with primary access to be provided over abutting land in Franklin. Bellingham's zoning apparently allows multi-family housing on the land which is proposed to be developed; however, Franklin's zoning does not allow multi-family housing in the zoning district where the land which the developer proposes to use for access is located. It is the Town of Franklin's legal position that, since land located in this zoning district cannot be used for multi-family housing, it cannot be used for access to multi-family housing in Bellingham. Town submits that its legal position is fully supported by established caselaw, Town of Brookline v. Co-Ray Realty Company, Inc. 326 Mass. 206 (1950); see also: Pinecroft Development, Inc. v. Zoning Board of Appeals of West Boylston 101 Mass App. Ct. 122 at 122-123 (2022); see also: M. Bobrowski Handbook of Massachusetts Land Use and Planning Law Fifth Ed. (2022) Chapter 12.07 [D] [I] and [3], copies attached. In the Town of Brookline case cited above, Boston's zoning permitted multi-family zoning but Brookline's did not, in the subject area. A developer obtained approval for a multi-family housing project to be constructed on land in Boston, but with access and other active use of abutting land in Brookline. The Supreme Judicial Court held that Brookline could enforce its zoning prohibition on multi-family housing to prevent use of the Brookline land for access and other active purposes. The Town of Franklin submits that the Town of Brookline case governs the Bellingham Planning Board's disposition of the pending application and requires that the application for approval to construct multi-family units in Bellingham with roadway access from Franklin be denied.

I have taken the liberty to provide a copy of this letter to Bellingham Town Counsel Attorney Amy E. Kwesell of KP Law; I strongly urge the Bellingham Planning Board to consult with her to confirm that the Town of Franklin's legal analysis contained herein is legally correct.

Very Truly Yours,

Mark G. Cerel, Franklin Town Attorney

HANDBOOK OF MASSACHUSETTS LAND USE AND PLANNING LAW

Zoning, Subdivision Control, and
Nonzoning Alternatives

Fifth Edition

Mark Bobrowski



Wolters Kluwer

of authorizing by special permit the extension of permitted uses in one district into the other district for a distance of 100 feet or to the property line, whichever is less. Although this proposal was not included in the final draft of the Zoning Act, many cities and towns have adopted regulations pertaining to split lots.²¹¹

[1] Lots Split by Zoning District Boundaries

A recurring problem in lots split by two or more zoning district boundaries²¹² is the determination of a proper reference point for the measurement of required yards or setbacks.

The leading case on point is *Tofias v. Butler*.²¹³ The plaintiffs owned 34 acres of land in Waltham, located partially in a limited commercial district and partially in a residential district. Plaintiffs proposed to construct a large building located entirely on that portion of the property in the limited commercial district.²¹⁴ The defendants, abutters situated in the residential district, sought revocation of the building permit issued for construction because the footprint exceeded the lot coverage requirement of the Waltham zoning ordinance. The ordinance prescribed that the footprint not exceed 20 percent of the ground area of the lot. The board of appeals revoked the permit, using a computation based solely on the portion of the lot in the limited commercial district.

Plaintiffs argued that the entire lot should be available to compute the lot coverage ratio, and the Appeals Court agreed. The Court reasoned that where the land in the more restrictive district was used in an "abstract" fashion (i.e., merely to supply space for a yard requirement), its inclusion in the computation was not inconsistent with the requirements of the district.²¹⁵

On the other hand, where use of the portion of the lot in the more restrictive district is for an active purpose, the regulations of that district may be invoked to preclude or condition the use. In *Town of Brookline v. Co-Ray Realty Co.*,²¹⁶ the Supreme Judicial Court examined the proposed use of a lot split by the boundary of Boston and Brookline. The owner intended to construct an apartment building on the Boston side and to use the Brookline portion, zoned for single residences, as the rear yard required by the Boston ordinance. However, the rear area was also proposed as a service entrance—a use not allowed in Brookline. The Court held that the Brookline portion of the lot could not be used in computing the required rear yard.

²¹¹ Indeed, the Appeals Court has expressly sanctioned this approach. *Tofias*, 26 Mass. App. Ct. at 96-97 n.14.

²¹² Municipalities may properly draw district lines so as to split lots. *Moss v. Town of Winchester*, 365 Mass. 297, 299-300 (1974).

²¹³ 26 Mass. App. Ct. 89 (1988). The decision contains a collection of earlier cases.

²¹⁴ The footprint of the proposed structure amounted to 5.21 acres or 226,850 square feet.

²¹⁵ *Tofias*, 26 Mass. App. Ct. 89, 94-96. See also *Tambone v. Bd. of Appeal of Stoneham*, 348 Mass. 359 (1965).

²¹⁶ 326 Mass. 206 (1950).

Thus, as a general rule, a yard or setback should be measured from the boundary of the split lot and not the boundary of the zoning district, unless the local ordinance or bylaw clearly states a different standard²¹⁷ or unless the portion of the lot in the more restrictive district is used for an active and violative purpose.²¹⁸

[2] Access Within Lots Split by Zoning District Boundaries

In *Harrison v. Building Inspector of Braintree*,²¹⁹ the Supreme Judicial Court reviewed access within split lots. The lot in question was primarily zoned for industrial purposes, but a small portion extended into an adjacent residential district.²²⁰ The owner constructed a factory on the industrially zoned portion of the lot. The only access to public ways from the factory was via the residentially zoned portion of the lot. When 400 employees and service vehicles began using the residential portion to enter the premises, neighbors complained that use of the residentially zoned portion to access the interior, industrially zoned portion was a violation of the more restrictive district's use limitations.

The Court held that "[t]he use of land in a residential district, in which all aspects of industry are barred, for access roadways for an adjacent industrial plant violates the residential requirement."²²¹ In essence, the Court ruled that the access strip assumed the character of its destination. Since "all aspects of industry" were prohibited in the residential district, industrial access was tantamount to a precluded industrial use.

The courts have applied the *Harrison* rule in a variety of contexts. Access across restricted residential districts to reach multifamily apartments,²²² industrial plants²²³ in a neighboring community,²²⁴ and commercial operations²²⁵ have been barred or restricted. Similarly, an access road to a multi-family housing project across a business district²²⁶ and an access road to a retail use across an industrial district²²⁷ have been prohibited.

²¹⁷ See, e.g., *Goldlust v. Bd. of Appeals of N. Andover*, 27 Mass. App. Ct. 1183, 1184 (1989).

²¹⁸ See *Tambone*, 348 Mass. 359; *Burlington Sand & Gravel v. Town of Harvard*, 26 Mass. App. Ct. 436, 438 (1988).

²¹⁹ 350 Mass. 559 (1966).

²²⁰ The lot contained 340 acres. The industrial portion was entirely surrounded by a residential strip zone 200 feet wide and adjacent to public streets.

²²¹ 350 Mass. at 561 (citing *Town of Brookline v. Co-Ray Realty Co.*, 326 Mass. 206, 211-212 (1950)).

²²² See, e.g., *Richardson v. Zoning Bd. of Appeals of Framingham*, 351 Mass. 375 (1966).

²²³ See, e.g., *Shea v. Town of Danvers*, 21 Mass. App. Ct. 996 (1986).

²²⁴ See, e.g., *Town of Chelmsford v. Byrne*, 6 Mass. App. Ct. 848 (1978).

²²⁵ See, e.g., *Bldg. Inspector of Dennis v. Harney*, 2 Mass. App. Ct. 584 (1974).

²²⁶ *DuPont v. Town of Dracut*, 41 Mass. App. Ct. 293, 295-296 (1996).

²²⁷ *Beale v. Planning Bd. of Rockland*, 423 Mass. 690, 693 (1996).

It is important to note the limitations of the *Harrison* rule. First, it only applies where the access way in question is privately held, not publicly provided.²²⁸ Second, the doctrine bars access only where “all aspects” of the destination use are prohibited in the more restrictive district. In *McGinley v. Morehouse*,²²⁹ the town of Harvard attempted to bar access to a golf clubhouse across a lot split by municipal boundaries. The clubhouse was in Ayer; the course was in Harvard. The Land Court held that access across the private Harvard ways could not be prohibited because a clubhouse was an accessory use to the golf course, a permitted use in the Harvard zoning district. Similarly, if the use is available by special permit in the more restrictive district, *Harrison* suggests that access should be available by special permit.²³⁰ Finally, the Court has suggested that the rule should be more leniently applied where it would result in a deprivation of all practical use.²³¹

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[3] Lots Split by Municipal Boundaries

A lot split by municipal boundaries is subject to the zoning requirements of both municipalities.²³² For example, in *Town of Brookline v. Co-Ray Realty Co.*,²³³ the Supreme Judicial Court examined the proposed use of a lot split by the boundary of Boston and Brookline. The owner intended to construct an apartment building on the Boston side and to use the Brookline portion, zoned for single residences, as a service entrance to the apartment building. This use was not allowed in the Brookline residential district. The Court applied the relevant Brookline bylaw to bar the use.

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In *Boulter Brothers Construction Co., Inc. v. Zoning Board of Appeals of Norfolk*,²³⁴ the Appeals Court ruled that, absent a contrary local rule, passive use of land in another municipality may be used to meet the area requirements of a bylaw or ordinance.

²²⁸ See *Harrison v. Textron*, 367 Mass. 540 (1975) (dictum). It is unclear whether access via an approved subdivision roadway not yet dedicated to the municipality constitutes a public or a private access way.

²²⁹ Misc. Case No. 141347 (Land Ct. 1990).

²³⁰ On the other hand, the specificity requirement of Mass. Gen. L. ch. 40A, § 9 may be invoked to argue that such access must be specifically authorized by the local ordinance or bylaw. See § 9.03[B].

²³¹ See, e.g., *Town of Chelmsford v. Byrne*, 6 Mass. App. Ct. 848 (1978). In such circumstances the lack of access may be a critical fact in challenging the zoning classification of the district. See *Nahigian v. Town of Lexington*, 32 Mass. App. Ct. 517, 524-526 (1992).

²³² See, e.g., *DuPont v. Town of Dracut*, 41 Mass. App. Ct. 293, 295-296 (1996); *Burlington Sand & Gravel v. Town of Harvard*, 26 Mass. App. Ct. 436, 440 (1988); *Town of Chelmsford v. Byrne*, 6 Mass. App. Ct. 848 (1978).

²³³ 326 Mass. 206 (1950). See also *Lapenas v. Zoning Bd. of Appeals of Brockton*, 352 Mass. 530 (1967).

²³⁴ 45 Mass. App. Ct. 283, 285-286 (1998). See also *Petrillo v. Zoning Bd. of Appeals of Cohasset*, 65 Mass. App. Ct. 453, 460-461 (2006).

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