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November 13, 2025

Franklin Zoning Board of Appeals
c/o Casey Thayer, ZBA Administrator
Town of Franklin
Municipal Building
355 E Central Street
Franklin, MA 02038

Re: Request for Minor Modification
ZBA-2016-0021, 21 Peck Street and 180 Cottage Street
MV Cottage Development, LLC

Dear Sir or Madam:

On behalf of the Applicant, MV Cottage Development, LLC (“Applicant”), we respectfully submit this request for a finding of a minor modification to the Comprehensive Permit issued March 30, 2017 and upheld after appeal by the Superior Court on April 7, 2020 for a Chapter 40B development (“Project”). The modification is proposed as a result of discussions with the Department of Environmental Protection (“DEP”) during the ongoing adjudicatory hearing proceedings. It is our opinion that the proposed modification meets the definition of a minor or insubstantial project change pursuant to the Comprehensive Permit and 760 CMR 56.05(11). The attached project plan entitled “Modification Plan, Madalene Village Cottage Street 40B Development Plan” in Franklin, Massachusetts, prepared by Guerriere & Halnon, Inc., dated November 10, 2025, depicts the proposed modifications. Also attached is a site plan demonstrating the turning radius of the Town’s largest fire truck as it would pass over and through the proposed modified project.

Summary of Project History

The Applicant filed a Comprehensive Permit Application on March 24, 2016 to the Zoning Board of Appeals (“ZBA”), for a Chapter 40B development comprising of a total of forty residential units and associated parking, landscaping, and other improvements, including the proposed relocation of an existing stream channel on the property. After several public hearings, peer review of the project, and submitted comments from town boards, the ZBA issued a Comprehensive Permit for the construction of 32 residential units and associated infrastructure and improvements, filed with the Franklin Town Clerk on April 13, 2017. The Comprehensive Permit was subsequently appealed by abutters to the Norfolk County Superior Court. After

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motion practice and a non-jury trial, the Superior Court issued a Memorandum and Order on April 3, 2020 affirming the ZBA's Comprehensive Permit and dismissing the abutters' appeal.

On March 26, 2021, the Applicant filed a Notice of Intent application with the Franklin Conservation Commission ("Commission") seeking an Order of Conditions approval for the Project under the state Wetlands Protection Act. The Commission issued a denial Order of Conditions on August 19, 2021, which the Applicant appealed to the DEP on September 1, 2021. After the Project underwent MEPA review in 2022 through 2023 and received a Certificate in 2023, the DEP continued its review in 2024 into 2025. The DEP ultimately issued a denial Superseding Order of Conditions on July 16, 2025. The Applicant has appealed that denial to the Office of Appeals and Dispute Resolution ("OADR").

The Applicant, as required by the DEP's rules of adjudicatory proceedings at 310 CMR 1.01, entered into settlement discussions with the DEP. As a result of those discussions, the Applicant has proposed and DEP has indicated it would approve a plan amendment. The Applicant, before proceeding to enter into a settlement with DEP and issuance by DEP of a Final Order of Conditions approving the project, seeks confirmation from the ZBA that this plan amendment will constitute a minor modification to the project design.

Summary of Project Modification and its Compliance with the Comprehensive Permit and 760 CMR 56.05(11)

The purpose of the proposed modification is to address the DEP's concerns about the original proposed relocation of the stream channel on the property. The proposed plan amendment eliminates the relocation of the stream channel entirely, instead proposing two stream crossings for the road, therefore substantially reducing the proposed impact to regulated wetlands under the state Wetlands Protection Act. The stream crossings will be compliant with DEP's Stream Crossing Standards, with the use of box culverts over the stream channel. The modification results in the following changes in addition to the preservation of the stream channel in its existing location:

1. Reduction in impervious surfaces with the elimination of 8 visitor parking spaces;
2. Reduction in proposed residential unit count from 32 units to 27 units;
3. Reduction in the width of proposed pavement from 24 feet to 22 feet, with the exception of the two access roads onto the property from Cottage Street and Peck Street, where the pavement will remain 24 feet wide; and
4. Redesign of the design and location of the stormwater facilities.

Pursuant to the Comprehensive Permit, Condition A7, a minor change to the approved plans is defined as changes that do not materially affect the location of, or increase the height or massing of the structures, or increase the number of units contained in the residential buildings. The Conditions require the Applicant to submit the minor plan changes to the ZBA for review and approval as insubstantial changes. Consistent with Condition L5, the Applicant is required where there is a change in the approved plans between the plans approved in the Comprehensive Permit and under a Final Order of Conditions to submit the amended plan to the ZBA for

approval accompanied by a letter setting forth any and all changes from the submitted plan of record and shall include revised drainage calculations, if applicable.

Pursuant to the Regulations at 760 CMR 56.05(11), the Applicant must notify the ZBA in writing describing proposed plan changes. Within 20 days the ZBA must determine and notify the Applicant whether the ZBA deems the change substantial or insubstantial, with reference to the factors set out in 760 CMR 56.07. The Regulations at 760 CMR 56.07(4) provide the definition of the term “substantial changes” to a project. Examples of Substantial changes are identified in subsection (c) as:

- 1) an increase of more than 10% in the height of buildings;
- 2) an increase of more than 10% in the number of housing units proposed;
- 3) a reduction in the size of the site of more than 10% in excess of any decrease in the number of housing units proposed;
- 4) a change in building type; or
- 5) a change from one form of housing tenure to another.

Examples of insubstantial changes are identified in subsection (d) as:

- 1) a reduction in the number of housing units proposed;
- 2) a change in number of bedrooms within individual units (with qualifications);
- 3) a change in the color or style of material used; or
- 4) a change in the financing program under which the applicant plans to receive a subsidy.
(emphasis added).

It is our opinion that the Comprehensive Permit regulations do not consider changes to project layout, such as that proposed to the DEP to resolve the state Wetlands Protection Act permitting issues, a substantial change. The proposed revised project plan would reduce the number of proposed residential units from 32 to 27 units, consistent with 760 CMR 56.07(4)(d)’s factors indicating an insubstantial change. This qualifies as an insubstantial change that the ZBA has the authority to approve as a minor change or modification of the Comprehensive Permit. With the ZBA’s approval, the Comprehensive Permit shall be deemed modified to incorporate the changes.

We respectfully request that the ZBA approve this plan as a minor modification to the Comprehensive Permit. After the Applicant receives a Final Order of Conditions approval of the revised project the Applicant will provide the ZBA with the final revised plan and associated drainage calculations.

Please place this matter on the agenda for the next scheduled meeting of the ZBA for review and discussion.

Sincerely,

A handwritten signature in black ink that reads "Matthew Watsky". The signature is written in a cursive, slightly slanted style.

Matthew Watsky

cc: Client (By Email)
Town of Franklin Conservation Commission (by email)
Counsel to DEP-Central Regional Office (by email)