

Town of Franklin



Conservation Commission

February 8, 2024

Zoning Board of Appeals (the "**Board**")
355 East Central Street
Franklin, MA 02038
Attn: Bruce Hunchard, Chair

RE: 121 Grove Street

Dear Chair Hunchard, and Members of the Board,

This letter is being delivered on behalf of the Franklin Conservation Commission (the "**Commission**") with respect to the proposed development of 121 Grove Street, Franklin, MA (the "**Property**") as a so-called Friendly 40B project (the "**Project**"). This letter sets forth the Commission's recommendations with respect to the Board's review of requested bylaw and regulation waivers for the Project.

The Commission recommends that the Board adopt the Commission's recommendations set forth below as it pertains to the requested waivers of Chapter 153 Franklin Stormwater Management Bylaw, Chapter 300-11 Franklin Subdivision of Land Stormwater Management Regulations, Chapter 181 of the Town of Franklin Wetlands Protection Bylaws, and Chapter 271 Conservation Commission Bylaws, and Town of Franklin Conservation Commission Regulations in regards to the Project.

The Commission's recommendations set forth below are based on (1) presentations made by the applicant, Fairfield Residential (the "**Applicant**") and its consultants; (2) testimony provided by Breeka LI Goodlander, Conservation Agent/Natural Resource Protection Manager (the "**Conservation Agent**"); (3) testimony provided by Jonathan Niro, Senior Wetland Scientist with BETA; and (4) the Commission's review and deliberation of the Project Waiver Requests submitted by the applicant in their Notice of Intent (NOI) application.

As you know, the Project will be subject to the Commission's review as it pertains to the application of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and corresponding regulations at 310 CMR 10.00 et seq. (the "**Act**"), to the Project. Please note, the Project's Notice of Intent is open and actively being reviewed by the Commission.

Requested Waivers

- Please see the attached document listing full waiver requests.

Commission's Recommendations

1. **General Statement:** The Commission feels strongly that Bylaws and Regulations, with the exception of those listed below in this section, **should not be waived**. The Bylaws and Regulations are written to allow the Commission to protect the Town's natural resources and the Town's interests. Upholding the Bylaws and Regulations will allow the Commission to not only protect these resources and interests but also to have oversight on the Project. As the Project is large in size and impact potential, with multiple wetland complexes being impacted, as delineated in the approved ORAD and as shown on the Project plan NOI submission, the Commission feels oversight on the Project is imperative.

The Commission does recommend the following Bylaw waivers:

- a. **Bylaw Section 153-12 & 14:** *The Applicant is requesting waiver from the submittal of a Soil Erosion & Sediment Control Plan to DPW. The Commission recommends waiving of this section with the understanding that the Soil Erosion & Sediment Control Plan will be submitted internally by the Conservation Agent to DPW for review and comment.*
- b. **Bylaw Section 153-15 & 17:** *The Applicant is requesting waiver from submittal of their Stormwater Management Plan to DPW. The Commission recommends waiving this section with the understanding that the Stormwater Management Plan will be submitted internally by the Conservation Agent to DPW for review and comment.*
- c. **Bylaw Section 153-15.A(9):** *The Applicant is requesting waiver from groundwater determination between November and April as groundwater determination was completed between October 24 and October 27. The Commission recommends waiver of the section. The Applicant completed groundwater determination using soil analysis, as is current standard practice, rather than subjective analysis during probable high groundwater elevation periods. The Commission is satisfied with the Applicant's current analysis.*
- d. **Bylaw Section 300.11.B(2)(a):** *The Applicant is requesting waiver from the minimum cover of 42 inches above the top of pipe. After consult with the Town Engineer, the Commission recommends waiver of this Bylaw so long as the Applicant follows MassDOT standards of a minimum cover of 18" for standard Class III RCP and a 6" minimum cover for heavy duty Class IV RCP.*

2. Although the Commission does not recommend waiving Bylaws and Regulations with the exception of those listed above, the Commission is willing to work with the Applicant to find successful ways to implement the Project while protecting the interests of the Town on the following Bylaws and Regulations:

- a. **Bylaw Section 300.11.B(2)(b):** *The Applicant is requesting a waiver from using a Type B winged headwall of reinforced concrete at each outfall of a drain line. The Commission recommends **not waiving** this Bylaw, but is willing to review variance requests in regard to the design of concrete headwall construction used at the outfall of each drain line individually on a case by case basis, based on buffer zone resource area, grade, and required erosion control measures specific for the area.*
- b. **Conservation Commission Regulation Section 4.2.1, 4.3.1, and 4.4.1:** *The applicant is requesting a waiver from the defined 0 to 25 Foot, 25 to 50 Foot, and 50 to 100 Foot Buffer Zone Resource Areas. The Commission recommends **not waiving** these Buffer Zone Resource Area Regulations as doing so would not be in the best interest of the Town, but the Commission is willing to review Variance requests for proposed work in these areas.*
- c. **Conservation Commission Regulation Section 7.18.1.5:** *The Applicant is requesting a waiver from showing existing vegetation on site plans. The Commission has historically required this Regulation for all projects. The Commission recommends **not waiving** this Regulation, but the Commission is willing to permit quantification of woody vegetation for plants larger than 3 inches (rather than 1 inch) using a transect sampling method.*

3. **Additional comments:**

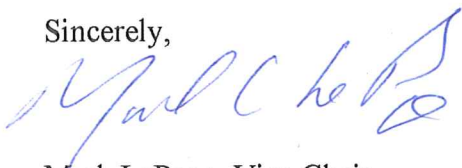
- a. **Section 153-16.B:** *The Applicant is seeking waiver from compliance with the Town of Franklin's Subdivision of Land Stormwater Management Regulations and the Town of Franklin's Best Development Practices Guidebook. Aside from this section containing best practice development for the Town, it also include the MS4 stormwater permit. Waiver from the MS4 stormwater permit would put the Town at undue risk by not being in compliance with the Town's permit and could be held liable for fines or other enforcement action by the EPA for any illicit discharge from the Project.*
- b. **Section 153-32.E:** *The Applicant is requesting waiver from the Stormwater Utility Fee. Waiver of the Stormwater Utility Fee is not in the best interest of the Town. This would not be equitable as all Town residents, the Town, State, and Federal governments, and businesses, both for-profit and non-profit, are required to pay the Stormwater Utility Fee. As the Town has one of the highest requirements for phosphorus removal from water resources, proper stormwater management and payment of Stormwater Utility Fees are imperative to meet EPA goals. The Town of Franklin must pay the EPA \$30.5 million over the next five years. Allowing*

Franklin Zoning Board of Appeals
February 8, 2024

exemption from the Stormwater Utility Fee is not in the best interest of the Town meeting these required goals.

Please feel free to reach out to me with any questions or to discuss any of the above recommendations further.

Sincerely,



Mark LePage, Vice Chair
On Behalf of the Franklin Conservation Commission

Cc: Bryan Taberner, Director of Planning & Community Development
Amy Love, Town Planner
Breeka LI Goodlander, Conservation Agent/Natural Resource Protection Manager