



Tamposi Brothers Development

32 Pine Hill Road, Unit A
Nashua, NH 03063

12/21/2020

Memo

Re: 105 Plain Road, Number of Units and Multiple Dwelling Units per Lot

Introduction:

The purpose of this memo is to demonstrate that the conceptual two building lot, five dwelling unit plan is permissible based on the nature of the tract at 105 Plain Road and the language of Article 18, the Conservation Cluster Development District Bylaw, of the Town of Wayland Zoning Bylaw. This memo does not consider whether the plan conforms specifically with all provisions of the Town of Wayland's subdivision rules and regulations, which is a separate issue. Rather, this memo seeks to prove two specific statements:

Statement I. Article 18 allows for up to 5 dwelling units to be developed on the tract of land at 105 Plain Road, and

Statement II. Article 18 allows for the construction of multiple dwelling units on a single lot (a condominium form of ownership)

Statement I: Article 18 allows for up to 5 dwelling units to be developed on the tract of land at 105 Plain Road.
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The number of dwelling units permitted under Article 18, the Conservation Cluster Development District Bylaw, is regulated by Paragraph 1803.1.3. This paragraph reads in its entirety (emphasis added):

1803.1.3.

The total number of dwelling units on the tract of land, including any affordable units required by Section 2204, does not exceed the larger of the following:

- (a) The number of building lots that could be created in the tract shown on such plan without a special permit hereunder, plus one lot for each 10 of such building lots that could otherwise be created; or
- (b) The number of building lots obtained by dividing 90% of the total area of the tract, exclusive of land identified as a protected resource area under the Wayland Wetlands and Water Resources Protection Bylaw (excluding buffer zones), by the

minimum lot size permitted in the district within which the tract is located, plus one lot for each 10 lots so arrived at from such division.

No provision of Article 18 prohibits the Planning Board or the Applicant from choosing the more advantageous of the two options to calculate the number of dwelling units. Rather, the language *“does not exceed the larger of”* clearly dictates that the Planning Board may permit the number of dwelling units to equal *the greater* of the two options.

Moving from the general to the specific, we shall apply 1803.1.3.a and 1803.1.3.b. to the proposal at 105 Plain Road to demonstrate that five dwelling units are permitted.

Sub-Statement I.A: The number of building lots that could be obtained under 103.1.3.a. is four building lots.

1803.1.3.a: The number of buildings lots that could be built at 105 Plain Road without a special permit, has been the subject of much discussion and a peer review by BETA Group Inc. The conclusion voted on by the Planning Board at its 12/15 meeting is that the number of building lots that are allowable for the purposes of 1803.1.3.a. is **four building lots**.

Sub-Statement I.B: The number of building lots that could be obtained under 103.1.3.b. is 5.38 building lots.

1803.1.3.b: This section calculates the number of building lots that could be obtained by dividing 90% of the total area of the tract, exclusive of wetlands, by the minimum lot size permitted in the zoning district. This is a relatively straightforward calculation; however, because 105 Plain Road is split-zoned between the R40 and R60 Districts, section 1803.3 must be referenced.

Sub-Sub-Statement I.B.1 : Under 1803.3, 105 Plain Road is to be treated as being entirely within the R40 District

Section 1803.3 reads in its entirety:

1803.3.

If the tract of land proposed for the Conservation Cluster development is located in two or more residential districts, the entire tract, *for all purposes of this*, shall be considered as lying entirely within the district having the largest area and frontage requirements, *except that if 75% or more of the total area shown on the plan¹ as building lots lies within one residential district, all of the land shall be considered as lying within that district.*

¹ Section 1802.1 defines “the plan” for the purposes of Article 18 as the Conservation Cluster Site Plan. Notwithstanding, the Applicant has previously sent a conventional plan (Definitive Conventional Subdivision plan dated 4/10/2020) that satisfies that satisfies 75% of building lot area in the R40.

1803.3 states that typically the more restrictive zoning district governs Conservation Cluster developments; however, it provides a clear exception that the less restrictive zoning district shall govern if “75% or more of the total area shown on the plan as building lots” lies within this less restrictive zoning district. It is important to note that the relevant area is not the total area of the tract in its entirety; rather, it is the “total area shown on the plan as building lots.”

In the case of 105 Plain Road, the proposed plan shows two building lots: Lot 1, located entirely within the R-60 district and containing 30,573 S.F.; and Lot 2, located entirely within the R-40 district and containing 92,648 S.F. The “total area shown on the plan as building lots” is the sum of Lot 1 and Lot 2:

Total area shown on plan as building lots:
 $30,573 \text{ S.F.} + 92,648 \text{ S.F.} = 123,221 \text{ S.F.}$

Now, if 75% or more of this area is within the R40 district, 1803.3 states that the R40 district shall govern.

The area of building lots within the R60 District is 30,573 S.F., or **24.8% of the total area shown as building lots.**

The area of building lots within the R40 District is 92,648 S.F., or **75.2% of the total area shown as building lots.**

Because greater than 75% of the land area shown on the plan as building lots is located within the R40 District, for the purposes of Article 18, all of the land shall be considered as being in the R40 district. Therefore, **105 Plain Road shall be treated as being entirely within the R40 District for all purposes of Article 18.**

Now, returning to the calculation of 1803.1.3.b, we shall calculate the number of building lots that could be obtained by dividing 90% of the total area of the tract exclusive of wetlands by the minimum lot size in the R40 District. In the case of 105 Plain Road, the total tract area is 239,315 S.F. and there are no wetlands. Therefore:

$90\% \text{ of Total Tract Area} = .90 \times 239,315 \text{ S.F.} = 215,383 \text{ S.F.}$

The minimum lot size in the R40 district is 40,000 S.F, so the number of building lots is:

$\text{Number of building lots} = 215,383 \text{ S.F.} / 40,000 \text{ S.F.} = 5.38 \text{ Building Lots}$

Therefore, for the purposes of 1803.1.3.b. the property at 105 Plain Road allows for **5.38 building lots.**

To conclude the proof of Statement I, the total number of “dwelling units” under 1803.1.3 shall not exceed the larger of the number of “building lots” permitted by

1803.1.3.a. or the number of “building lots” permitted by 1803.1.3.b. In this case, the number of building lots permitted by 1803.1.3.a. is four and the number of building lots permitted by 1803.1.3.b. is 5.38. The proposal for 105 Plain Road is for five dwelling units. Five is less than the larger of four and 5.38; therefore, five dwelling units are permitted.

Statement II: Article 18 allows for the construction of multiple dwelling units on a single lot (a condominium form of ownership)
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Section 1803.1.3.3 of the Conservation Cluster Development District Bylaw specifically contemplates multiple dwelling units on a single lot. This provision allows for more flexible designs and condominium forms of ownership, which are often desirable for providing maintenance free living and more diverse housing options. Section 1803.1.3.3. reads in its entirety:

1803.1.3.3.

Notwithstanding any provision of this Zoning Bylaw to the contrary, the Planning Board may permit by Special Permit attached and detached dwelling units to be erected on single lot(s).

The Planning Board has previously approved multiple detached dwelling units on a single lot in conservation cluster developments. Specifically, at least Lot #6 (containing 32 and 34 Covered Bridge Road) and Lot #10A (containing 21 and 23 Covered Bridge Road) in the Covered Bridge Conservation Cluster contain two detached dwelling units on a single lot (see Plan 705 of 2016 and Plan 235 of 2016, respectively). In sum, Article 18 allows for the construction of multiple dwelling units on a single lot as shown on the proposed plan.

Conclusion:

Although the Planning Board has broad discretion in interpreting the Zoning Bylaw to create the best possible project, the Planning Board is obligated to follow the Bylaws as they are written. In this case, the Planning Board’s preferred development outcome (the “wagon wheel” plan containing 4 new detached units on Lot 2 and preserving the existing Dr. Frank W. Draper House on Lot 1) is permitted under Article 18. The Article allows for up to 5 dwelling units on 105 Plain Road, and multiple detached dwelling units are allowed on a single lot. We look forward to moving forward with this plan to build an exceptional community.