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TOWN OF WAYLAND
MASSACHUSETTS
01778
PLANNING DEPARTMENT

TOWN BUILDING
41 COCHITUATE ROAD
TELEPHONE: (508) 358-3778

TO: Planning Board
FROM: Sarkis Sarkisian, Town Planner
DATE: July 23, 2020
RE: Staff Report – Conservation Cluster Development 105 Plain Rd: Emmeline Path

APPLICANT: Tamposi Brothers I, LLC
OWNER: Tamposi Brothers I, LLC
TITLE DEED: Derived under deed from Shaum M. McConnon and Bonita C. McConnon dated December 10, 2019 Book 73882, Page 41.
MAILING ADDRESS: 32 Pine Hill Rd, Unit A Nashua, NH 03063
SURVEYOR: Sullivan, Connors & Associates, Inc.
REQUESTED ACTION: Review and Approval of Special Permit Conservation Cluster
PROPOSED USE: Division of land into four (4) total lots with access through a proposed shared driveway.
LOCATION: 105 Plain Rd West Plain Street; Assessor's Map 51A-Lot 071,
PARCEL SIZE: 5.5 acres
EXISTING LAND USE: Single Family Residence
SURROUNDING LAND USE: Residential and Mass Central Rail Trail
EXISTING ZONING: Property located in the Residential 60,000 square feet, 210 ft frontage and Residential 40,000 sqft. With 180' of frontage.

Total tract area is 239,315 sf.
The total area in R-60 is 68,040 sf. And the total tract in the R40 is 171,275 sf.

SPECIAL PERMIT Zoning Bylaw Chapter 198 Article 18 Conservation Cluster Development District and Chapter 301 Conservation Cluster Development Regulations.

**CONSERVATION CLUSTER
DEVELOPEMNT**

DEADLINE FOR DECISION: 90 days from August 4, 2020 or November 2, 2020

PROJECT NARRATIVE

The applicant proposes to subdivide the property by use of a Conservation Cluster Development consisting of four (4) total lots. The proposal would maintain the existing house and add three additional single family homes. The existing house at 105 Plain Road has historical significance in that it is one of six homes constructed by Dr. Frank W. Draper Family. (See enclosed Historical context in application). The three new houses would be provided access off plain Road with a 500 foot long common driveway. 105 Plain

Road is 5.5 acres and meets the minimum 5 acre requirement. The property abuts Plain Road to the north which is designated as a scenic road and the Mass Central Rail Trail to the south. The frontage along Plain Road has a beautiful stone wall the lines the property frontage. There are town curb cuts: one for the driveway of the existing 1889 home on the site and one for a gravel path used to access the rear of the property. The land is flat and contains no wetlands or wetland buffer zones and is not located in a Zone II Aquifer Protection District or Flood Plain.

STATUTORY REQUIREMENTS

The project has been submitted as a Conservation Cluster Development under Article 18 of the Zoning Bylaw, not a Definitive Subdivision. The project requires a Special Permit from the Planning Board. Mass. Gen L. Ch. 40A, Section 9 provides communities with special permit granting authority, stating that:

“zoning ordinances or by-laws shall provide specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit.”

In general, special permits are designed to provide a community with discretionary review over certain uses that are deemed necessary or desirable in certain districts, but if left unregulated may be detrimental to the community. Within the Town of Wayland, special permits are granted if the proponent shows “the use of the premises for which application is made shall not be against the public interest, shall not derogate from the character of the neighborhood in which such use is to occur and shall not be detrimental or offensive because of noise, vibration, smoke, gas, fumes, odor, dust or other objectionable features and that such use shall not otherwise be injurious to the inhabitants or their property or dangerous to the public health or safety.”

Special permits are not the same as variances, since variances are used to loosen zoning requirements based on the proof of a specific hardship. Nor is a special permit the same as site plan review, because site plan review provides a limited power to the permit granting authority to regulate the use rather than prohibit the use. A special permit is not the same as a zoning change. A special permit considered a “quasi-judicial” decision, not a legislative decision like a zoning change.

Decision Making Criteria

In reviewing a special permit, the permit granting authority is limited to considering the criteria detailed in a municipality’s zoning ordinance. The Town of Wayland’s Zoning Bylaw outlines the following a criteria to be used in the issuance of a special permit:

- ◆ shall not be against the public interest,
- ◆ shall not derogate from the character of the neighborhood in which such use is to occur
- ◆ and shall not be detrimental or offensive because of noise, vibration, smoke, gas, fumes, odor, dust or other objectionable features and
- ◆ that such use shall not otherwise be injurious to the inhabitants or their property or dangerous to the public health or safety.

The permit granting authority has full discretionary power in reviewing a special permit, but must act fairly and reasonably on the evidence presented. There are very few cases where the discretion of a special permit granting authority has been overturned by the courts.

The board may deny a special permit, and it need not provide detailed findings as to the reason for a denial.

In connection with the granting or denying of a special permit for a Conservation Cluster Development under article 18, the Planning Board shall issue to the applicant and shall file with the Town Clerk a written decision that shall include, at a minimum the following:

1805.1.1.

A determination of the maximum number of lots upon which dwellings could be constructed (without a special permit hereunder) and a determination of the area of the tract usable for residential construction in accordance with § 198-1803.1.3 herein.

[Amended 11-15-2016 STM by Art. 4]

1805.1.2.

A general description of the neighborhood in which the tract lies and the effect of the plan on the area.

1805.1.3.

The relation of the proposed development to long-range plans of the Town, if any.

1805.1.4.

The extent to which the proposed development is designed to take advantage of the natural terrain of the tract.

1805.1.5.

The extent to which the proposed open land is of such a size, shape and location and has such adequate access so as to benefit the Town.

1805.1.6.

If the Planning Board grants the special permit, the finding required by § 198-1803.1.1 above.

1805.1.7.

If the Planning Board denies the special permit, its reasons for so doing.

1805.1.8.

If the Planning Board disagrees with the recommendations of the Conservation Commission, Historical Commission, or the Board of Health, it shall state its reasons therefor in writing.

[Amended 11-15-2016 STM by Art. 4]

1805.1.9.

If, by the terms of the special permit, the Planning Board permits the open land to be used for subsurface waste disposal, the finding required by § 198-1803.2.3 above.

[Amended 11-15-2016 STM by Art. 4]

1805.2.

Such decision must be reached, filed with the Town Clerk and sent or delivered to the applicant within 90 days after the public hearing held on the application for the special permit, unless said ninety-day deadline is extended in accordance with law. Failure to so act shall be deemed approval in accordance with law.

STAFF COMMENTS

Staff does not find that the proposed plan meets the harmony and purpose of the Conservation Cluster Development. The amount and kind of open space proposed, with the number of units is not in character of the most restrictive zoning in Wayland. The proposed development is going to present a noticeably different appearance in a neighborhood with standard lots and will upset the neighborhood rhythm for the spacing of homes, driveways, and parking.

The Developer must choose and calculate the number of units as stated below in 1803.1.3. (a) or (b). Staff does not agree that the proposed subdivision plan that was submitted could be built without significant waivers. The proposal does not include a connection to the Rail Trail which is part of our long-range plan for the Town. The Applicant has calculated that the Development would yield (4) units based on section 1803.1.3 (a) below. The Subdivision plan shows (4) units and is the current proposal. However, 1803.1.3 section (b) based on the calculation would yield 3.59 units.

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 4 Units***
- (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. **3.59 Units***

Staff would also direct the board in determining section 1803.3 (see below) because the project is located in a split zone (R60) and (R40). The total area of the tract is 239,315 sf. The total area in R40 is 171, 275 sf. and the total in R60 is 68,040 sf. The tract does not contain 75% of R40. The R60 zoning district is the most restrictive zoning in Wayland. The intent of this section was to preserve and protect the existing residential areas character so that conservation cluster development would be intimately interwoven with its neighborhoods. The intent was that the number of homes or density would not increase over the traditional subdivision designs with larger lots. Staff needs to provide further research on how this was regulated in the past and other projects that were constructed under the Conservation Cluster Bylaw.

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 plan as building lots lies within one residential district, all of the land shall be considered as lying within that district.

STAFF RECOMMENDATION AND ACTION BY BOARD Staff supports the use of the Conservation Cluster Bylaw if the plan can be amended to meet the stated objectives of cluster zoning such as open space, neighborhood character and public interest. Staff recommends that the board schedule/conduct a site visit before we have the project peer reviewed and continue the hearing to the next scheduled Planning Board meeting August 18, 2020. Staff will provide Department, Boards and Commission comments as soon as they are submitted.