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**TO:** Town of Wayland Planning Board  
Louise Miller, Town Administrator  
Sarkis Sarkisian, Town Planner  
Geoff Larsen, Building Commissioner

**FROM:** Amy Kwesell, Esq.

**RE:** 105 Plain Road  
Proposed Conservation Cluster Development District

**DATE:** March 15, 2021

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You have asked for an opinion on the applicability of the Town of Wayland Zoning Bylaw (the “Bylaw”), Article 18, Conservation Cluster Development District, to the proposed development at 105 Plain Road (the “Property”). The Property consists of 239,315 sf (5.49 acres) and is located partially in the R-60 zoning district and the R-40 zoning district.

The Applicant, pursuant to Bylaw §1803.1.3(a) has submitted a lotting plan depicting 4 dwelling units. Additionally, the Applicant has provided a proposed plan (dated December 10, 2020) depicting 5 dwelling units on 2 Building Lots; Lot 1, consisting of 30,573 sf located in the R-60 zoning district with one dwelling unit (the existing dwelling); and Lot 2, consisting of 92,648 sf located in the R-40 zoning district with 4 dwelling units.

Section 1803.1.3. states:

*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.*

In my opinion, the Applicant may chose §1803.1.3(a) or §1803.1.3(b) to determine how many dwelling units may be placed on the Property. Here, §1803.1.3(a) resulted in 4 dwelling units and §1803.1.3(b) resulted in 5 dwelling units.

As the Property is located in 2 zoning districts, §1803.3 applies which states:

*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.*

Here, the Applicant has chosen to depict two Building Lots with Lot 1 in the R-60 zoning district and Lot 2 in the R-40 zoning district. The Applicant has also provided information that more than 75% of the area shown as building lots lies within the R-40 zoning district.<sup>1</sup> Therefore, in my opinion, the R-40 lot area and frontage requirements apply to the entire tract of land (both Lot 1 and Lot 2). By utilizing the R-40 requirements with §1803.1.3(b), the Applicant has determined that 5.38 dwelling units are allowed and therefore 5 dwelling units are proposed.

While §1801 provides that a special permit is required for a Conservation Cluster Development, §1803.1.3.3. further provides that a special permit is also required to erect “attached and detached dwelling units” on a single lot such as the four dwelling units proposed on Lot 2. Therefore, in my opinion, the Planning Board may allow the 4 dwellings units on Lot 2 by special permit.

The Bylaw, §203.1 provides that the Planning Board, as the Special Permit Granting Authority may grant a special permit provided:

*The applicant shall show to the satisfaction of the special permit granting authority that the use, building, or structure 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, building, or structure 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, building, or structure shall not otherwise be injurious to the inhabitants of the Town or their property or dangerous to the public health or safety. When not so satisfied, the special permit granting authority shall deny the application. When the special permit granting authority determines that a special permit may be granted if accompanied by conditions specially designated to safeguard the neighborhood and the Town, it shall impose such conditions and make them a part of the decision, and they shall be made a part of the building permit issued by the Building Commissioner.*

Additionally, §1801.1 also provides:

*For the purpose of promoting the more efficient use of land in harmony with its natural features; encouraging the preservation of open land for conservation, agriculture, open space and recreational use; preserving historical and archaeological resources; and protecting existing or potential municipal water supplies, all in accordance with the general intent of this Zoning Bylaw to protect and promote the health, safety, convenience and general welfare of the inhabitants of the Town of Wayland, an owner or owners of a tract of land within a Single Residence District, or an authorized agent or*

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<sup>1</sup> Please note that a memorandum from the Applicant dated December 21, 2020 was reviewed. The lot sizes and calculations were taken from the memorandum and were not independently calculated.

*agents of such owner or owners, may submit an application for a special permit exempting such land from the lot area and frontage, yard, setback and width of lot requirements of Article 7.*

And §1803.1.1. provides:

*It finds that the proposed plan is in harmony with the purposes and intent of this Zoning Bylaw and this article.*

I recommend that §203.1, §1801.1, and §1803.1.1. be taken into consideration when contemplating the special permit relief required for the Property.

I note that the Conservation Cluster Development Regulations (the “Regulations”) somewhat conflict with §1803.1.3.3. in that the definition of “Building Lot” at §301-5 of the Regulations states:

*BUILDING LOT -- A parcel of land on which a single dwelling can be erected in conformance with Article 18 of the Zoning Bylaws. (emphasis added)*

However, §301-8 of the Regulations, “Relation to Zoning Bylaws”, states:

*The Wayland Zoning Bylaws shall apply to the development insofar as they are applicable and shall control if there is any inconsistency between the Zoning Bylaws and these regulations.*

Therefore, in my opinion, while the definition of Building Lot in the Regulations appears to limit one dwelling unit per Building Lot, the Bylaw at §1803.1.3.3. allows multiple dwelling units on a single Building Lot by special permit and §1803.1.3.3., as part of the Bylaw, controls.

Further, in my opinion, the December 10, 2020 plan does not conform with §1803.1.4. which states:

*Each of the building lots shown on the site plan shall have adequate frontage, but no less than 50 feet, on a public or private way.*

The 50 foot required frontage for both Lot 1 and Lot 2 appears to be from the newly created “Emmeline Path”. However, as Emmeline Path was not laid out and constructed in accordance with the provisions the Subdivision Control Law, G.L. c. 41, Sections 81K-81GG, it cannot be used to constitute frontage for zoning purposes. Therefore, in my opinion, Emmeline Path must be laid out in accordance with the Subdivision Control Law or the configuration of Lots 1 and 2 must change to allow each lot 50 feet of frontage on Plain Road. Currently neither Lot 1 nor Lot 2 has frontage on Plain Road as open space runs along the frontage of Lot 1.

Moreover, §301-17(E) of the Regulations states:

*Each principal building shall have access from a street:*

- (1) Contained within the conservation cluster development; and*
- (2) Not in existence prior to the development of the cluster.*

Based on the above, the Applicant would need to seek a waiver from §301-17(E) of the Regulations or, in my opinion, file for subdivision approval for Emmeline Path as the Bylaw, §104 defines “Street” as:

*“Any public way used for vehicular traffic, or any private way used as a public way for such traffic.”*

Please let me know if you need anything further.