

THE VILLAGE AT SUDBURY STATION  
COMPREHENSIVE PERMIT APPLICATION  
LIST OF WAIVERS REQUESTED

As Modified July 21, 2016

**GENERAL REQUEST**

Pursuant to 760 CMR 56.05, the Applicant hereby submits this list of waivers requested with its Application for Comprehensive Permit to the Sudbury Zoning Board of Appeals. The applicant has endeavored to be as fully inclusive of all waivers specifically needed to construct the project as proposed on the site plans of record, as most recently amended during the public hearing process, and

In accordance with 760 CMR 56.05(7), the Applicant hereby requests waivers from the local requirements listed below, and any and all other local requirements which are required in order to construct the project as proposed, or as modified by the applicant through the public hearing process or before any vote by the Sudbury Zoning Board of Appeals on the application, or by the Housing Appeals Committee, if applicable.

**A. ZONING**

Zoning waivers are required solely from the “as-of-right” requirements of the zoning district where the project site is located; there shall be no requirement to obtain waivers from the special permit requirements of the district. 760 CMR 56.05(7). The original list of zoning waivers requested included all Special Permit requests, and therefore may be overly broad under the HAC Regulations, but for the sake of completeness is repeated here.

The Proposed development is located in a Residential “A” Zoning District governed by the Town of Sudbury Zoning By-law (hereinafter the “By-law”). Absent approval under a Comprehensive Permit, the development would be required to conform to all local by-laws including the Sudbury Zoning By-law. Based upon the most recent Subsidized Housing Inventory, it appears that these local requirements are not consistent with the local need for affordable housing in Sudbury.

Therefore, the applicant requests waivers from the following sections of the Town of Sudbury Zoning By-law:<sup>1</sup>

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<sup>1</sup> The reasons for each request are not intended, and are not, exclusive reasons for requesting each waiver, but are instead good faith efforts to identify for the

1. Section 1210—Requires all uses and structures to conform to the By-law;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed.

2. Section 1220—Requires the By-law to control in the event of a conflict between its provisions and those of any other applicable law, regulation, permit, restriction, easement, covenant, or agreement;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

3. Section 1230—Requires construction or operations to conform to any subsequent amendment of the By-law;

**Reason for Request:** Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

4. Section 2210—Requires all uses to conform to the By-law;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

5. Section 2220—Requires all uses to conform to the most restrictive classification if a use may be susceptible of more than one classification;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

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Board why the applicant is requesting each specific waiver. All waivers requested are requested because application of the local by-law in question would be inconsistent with local needs and would hinder or preclude construction of the project as proposed.

6. Section 2230—Table of Principle Use Regulations (Appendix A)—limits uses in Residential A Zoning District to those enumerated;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

7. Section 2310—Limits accessory uses to those customarily incidental to the principal use and requires Special Permits for certain accessory uses.

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

8. Section 2314—Requires a Special Permit from the Board of Appeals for accessory uses to an allowed principal nonresidential use.

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

9. Section 2325—Requires Site plan approval for swimming pools and requires that all requirements for set-back, side yard, front and rear yard clear distances be the same as for a principal building.

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

10. Section 2326—Limits accessory structures in residential districts to the rear yard, one story in height, 16 feet in length on any side and maximum floor area of 200 square feet, whichever is less, and requires a five foot setback for such structures.

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

11. All subsections under Section 2400 (Non-Conforming Uses and Structures) to the extent that approval of the plans will thereby render any existing lot or structure non-conforming under the Zoning By-law.

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

12. Section 2610—Limits any structure to the Dimensional Requirements contained in the Zoning By-law and in Table B, Dimensional Requirements;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

13. Section 2620—Limits any structure in a Residential A Zone to the dimensional requirements contained in Table B;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

14. Section 2632—Limitations and exceptions on Height Requirements;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

15. Section 2641A—Limits the lot perimeter to no more than one foot of lot perimeter for every 50 square feet of lot area and no less than 50 feet in width at any location within the lot, to the extent that this Section is applicable to the lots upon which the project is proposed;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

16. Section 2641B—Limits the minimum front yard to that existing under the By-law at the time of its amendment;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

17. Section 2643—Establishing Open Space Requirements required by the Table of Dimensional Requirements, Appendix B;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

18. Section 2647—Requiring a lot having frontage on two or more streets to have the minimum frontage required on one street and half the minimum frontage required on the other street, to the extent applicable to the lots upon which this project is proposed;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

19. Section 3100 and all subsections including the Table of Parking Requirements—Parking Standards, to the extent the same are extent inconsistent with the parking shown on the plans;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

20. Section 3200 and all subsections, to the extent inconsistent with the signage shown on the plans submitted by the applicant.

**Reason for Request:** Application of these sections of the By-law are inconsistent with G.L. c. 40B sec. 20-23 which require one Comprehensive Permit from the Zoning Board of Appeals.

21. Section 3300—Limiting common driveways or access to serving no more than two dwellings or other principal structures except as allowed by Special Permit, to the extent that this section applies to the project as proposed;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

22. Section 3400—Limiting any activity within the Zoning District to conformance with the standards for environmental protection and development included in the By-law;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

23. Section 3420 and all subsections—The Standards established for compliance with Section 3400 to the extent necessary to construct the development shown on the plans.

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

Notwithstanding the foregoing request, the project will comply to the maximum extent possible with Section 3420—3426. Waivers are requested from Sections 3427, 3430, 3440, 3500, and all subsections thereof to the extent necessary to construct the project as proposed as follows:

Section 3430 and all subsections—Erosion Control, limiting grades, slopes, and vegetation removal;

Section 3440—Limiting excavation and grades within 50 feet of any road boundary abutting the site;

Section 3500 and all subsections (Screening and Landscaping) to the extent inconsistent with the plans;

Section 5100 and all subsections (Cluster Development) to the extent that these sections would be applicable to the development proposed in the plans;

Section 5300 and all subsections, to the extent that the same are applicable to the proposed development;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

24. Section 6130—Limitations on granting of variances;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

25. Section 6140—Limitations on Use Variances;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

26. Section 6200 and all subsections—Special Permits, to the extent required to approve the project shown on the plans;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

27. Section 6300 and all subsections—Site Plan Review, to the extent required to approve the project shown on the plans, including landscaping, lighting, signage, and retaining walls as proposed;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed.

G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

28. Section 6500 and all subsections—Design Review Board, to the extent required to approve the project shown on the plans;

**Reason for Request:** Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

### **B. OLD SUDBURY HISTORIC DISTRICT**

No portion of the construction for the project is within 300 feet of the centerline Hudson Road or Concord Road. To the extent that any signs, roadway, utility, or construction falls under the jurisdiction of the Old Sudbury Historic District, waiver is sought from any guideline, specifically including any guideline limiting alterations to stone walls or limits on bituminous surface that would limit or preclude the installation of such roadway, utilities, or other appurtenances as necessary to construct the project as proposed, and from the Historic Commission's "guidelines" relative to architectural features and materials, style, scale and setting of the proposed project, to the extent applicable to the proposed project.

Waiver is specifically sought from the Old Sudbury Historic District permit requirement for the proposed signs, as the statute and regulations, G.L. c. 40B sec. 20-23 and 760 CMR contemplate one comprehensive permit from the Zoning Board of Appeals for the project.

### **C. SUDBURY WETLANDS BY-LAW AND REGULATIONS**

The applicant has received from the Sudbury Conservation Commission an ORAD and Determination of Applicability under G.L. c. 131 sec. 40 determining the boundaries of all wetland resource areas on-site under the Massachusetts Wetlands Act and the Regulations at 310 CMR 10.00 et. seq.

With the exception of a portion of the access road off Concord Road (Peter's Way) no portion of the construction falls within the jurisdiction of the Sudbury Conservation Commission.



The applicant has received a Superseding Negative Determination of Applicability from MassDEP for the construction of Peter's Way from Concord Road, and for the discharge from the proposed Stormwater system.

To the extent that any of the construction of Peter's Way falls within the jurisdiction of the Sudbury Conservation Commission under the Sudbury Wetlands By-law and the Sudbury Conservation Commission Regulations, waivers are sought from the following:

1. Any requirement to file a Notice of Intent for work within the buffer zone to any resource area;
2. Any jurisdiction under the local by-law or regulations for isolated vegetated wetlands smaller than the ¼ acre-foot threshold for isolated land subject to flooding under the Wetlands Act and Regulations at 310 CMR 10.57;
3. Any jurisdiction under the Sudbury Wetlands By-law or Regulations for any intermittent stream within a culvert which does not border on any resource area protected by G.L. c. 131 sec. 40 or the Regulations at 310 CMR 10.00 et. seq.;
4. Without limitation to any of the foregoing, waivers are requested from the following sections of the Sudbury Wetlands By-law and Regulations:

By-law Sections:

Section 2.1 (Jurisdiction)  
Section 2.3 (Intermittent Streams)  
Section 4.7 (Subdivision Roadway Fees) to the extent applicable to this project;  
Section 4.8 (Drainage structure fees);  
Section 4.10 (Fees for consultants);  
Section 4.11 (Additional Fees);  
Section 7.2 (Adjacent Upland Resource Areas);  
Section 7.3 (Significant Adverse Effect on Wildlife Habitat)  
Section 7.6 (Subdivision Roadways) to the extent applicable to this project;  
Section 7.11 (Stormwater Runoff)  
Section 7.14 (Tree Removal Standards)

Regulations Sections:

10 -Security;

#### **D. SUDBURY STORMWATER BY-LAW AND REGULATIONS**

The proposed stormwater management system has been designed in accordance with applicable State and Federal standards. Waivers have been requested from the Stormwater Management By-law and Regulations where the local By-law and regulation requirements exceed the State or Federal requirements as inconsistent with local needs. The project has been designed to prevent off-site impacts by maintaining the off-site peak rate of runoff to be at or below pre-development levels for the 2-, 10-, and 100-year design storms. The rainfall intensities utilized in the design comply with those listed in 310 CMR 10.57(2)(a)3 and 4.

The proposed project qualifies for coverage under the NPDES Construction General Permit. The permit conditions include preparation of a construction period Stormwater Pollution Prevent Plan (SWPPP), performing regular site inspections, and maintaining supporting documentation and/or reporting throughout construction. These conditions are more than adequate for public safety and disposal and management of stormwater.

Therefore, without limitation, waivers are requested from the following sections of the Sudbury Stormwater Management By-law and Regulations:

Article V(F) Stormwater Management Bylaw:

1. Section 5.0 Applicability

Stormwater Management Bylaw Regulations:

1. Section 7.0 Permit procedures for Stormwater Management Permits
2. Section 8.0 Stormwater management permit standards and requirements
3. Section 9.0 Inspections
4. Section 10.0 Surety
5. Section 11.0 Certificate of completion

#### **E. SUDBURY PLANNING BOARD DECISION AND COVENANT**

Peter's Way and Peter's Way Extension have the benefit of a Decision of the Sudbury Planning Board dated September 19, 2012. That decision, to the extent legally binding on the applicant (and from which a full reservation of rights is taken) requires that any modification to the location or specifications of the driveway serving as access to Lot 2A as shown on the approved subdivision plan shall require approval of the Planning Board. This condition is not set forth in the Covenant recorded at Middlesex South Deeds in Book 60688 Page 161.

The requirements of the Sudbury Planning Board in the Decision dated September 19, 2012 and the Covenant recorded at Middlesex South Deeds in Book 60688 Page 161 are inconsistent with local needs and inconsistent with G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. Seq. all of which mandate that approval of the project be through one Comprehensive Permit granted by the Zoning Board of Appeals. Therefore, to the extent that any requirement of the Sudbury Planning Board in its Decision and Covenant are legally binding (from which a full reservation of rights is taken) the applicant requests the same be waived to permit the construction of Peter's Way as shown on the plans.

#### **F. SUDBURY PLANNING BOARD PERMITS**

1. **Sudbury Scenic Road By-law, Article VIII(B) of the General By-laws**
2. **Sudbury Public Access Permit, Article XXVI of the General By-laws**

These by-laws purport to regulate access from Concord Road and Hudson Road, the two access point ways into the proposed development. Application of these by-laws separately to the project is inconsistent with the provisions of G.L. c. 40A sec. 20-23, which mandates that approval of the project be through one Comprehensive Permit granted by the Zoning Board of Appeals, which has had extensive expert testimony and peer review of access into and out of the proposed development.

#### **G. EARTH REMOVAL BOARD PERMIT**

Article V(A) of the Town's General By-laws suggests that a permit from the earth removal board of the Town is required for the removal of any earth material from any land in Sudbury, other than in connection with the construction of a single family dwelling. This requirement is inconsistent with the provisions of G.L. c. 40A sec. 20-23, which mandates that approval of the project be through one Comprehensive Permit granted by the Zoning Board of Appeals.

#### **H. SUDBURY WATER DISTRICT / BOARD OF HEALTH REGULATIONS**

**Article XXVII (Board of Health and Sudbury Water District) In Ground Irrigation Systems:** Application of these sections of the By-law are inconsistent with G.L. c. 40B sec. 20-23 which require one Comprehensive Permit from the Zoning Board of Appeals. Therefore waiver of these sections is requested and approval of irrigation systems is requested from the Zoning Board of Appeals pursuant to this application for Comprehensive Permit.

**Sudbury Board of Health Supplemental Title V Regulations:** To the extent that the Town's local Title V Supplementary Regulations apply (which is denied by the applicant, whose wastewater treatment plant will be constructed and permitted

pursuant to the MassDEP General Programmatic permit established pursuant to 314 CMR 5.03 and 314 CMR 5.13(1))<sup>2</sup>, waiver is sought from any approval required by the Board of Health thereunder in order to construct the project as shown and designed on the plans. In particular, to the extent that they may lawfully apply to the wastewater plant design, Sections I (Requirement for local permit), III (Leaching area requirements), IV (Minimum Design Flow for Multifamily Units) VI (Pumps) X (Retaining Walls) and XVI (Variances) are both inconsistent with local needs and inconsistent with G.L. c. 40B sec. 20-23 which require one Comprehensive Permit from the Zoning Board of Appeals.

The applicant, as stated during the public hearings, recognizes that the number of bedrooms must be limited to those as proposed, and agrees to a permit condition to that effect.

**Board of Health Fees:** On March 15, 2016, while this application was pending, the Board of Health instituted a new schedule of fees, which included new fees for small wastewater systems of \$1.00 / gallon up to 10,000 gpd, as well as various additional fees including new fees for new systems. To the extent that these fees are applicable to the present project, they are inconsistent with local needs, contribute substantially to rendering the project more uneconomic, and are inconsistent with G.L. c. 40B sec. 20-23 which require one Comprehensive Permit from the Zoning Board of Appeals, for which the applicant has already paid very substantial filing and peer-review fees.

### **I. BOARD OF APPEALS 40B APPLICATION REGULATIONS**

Section 3.6 of the Board's "Supplemental Rules for Comprehensive Permits" specify a \$2,000.00 base fee plus \$100.00 per unit proposed. To the extent that a filing fee of \$27,000.00 for this project is inconsistent with 760 CMR 56.05(2) or in excess of the Town's actual cost to review this application, the Applicant requests a waiver of any excess fee and that it be remitted to the applicant.

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<sup>2</sup> The Sudbury Board of Health's comments to the ZBA dated May 18, 2016 concede that "the wastewater plant is not in the jurisdiction of the Board of Health".