LAW OFFICES OF

SCAN - NJ

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February 13, 2015

By Hand
Denis Nadeau, Bldg. Comm./Zoning Comp. Officer
City of Amesbury
9 School Street
Amesbury, MA 01913

FEB13 15 11:55

RE: Project: Village at Bailey's Pond – Residential Planned Unit Development
Properties: 24 Pond View, 0 Summit Avenue (Maps 87 and 88, Lots 1 and 50)
Applicant: Fafard Real Estate and Development Corp. (by and through its agent/contractor FRE Building Co., Inc.)
Owner: City of Amesbury

Application and Requests:

(1) Application for Building Permit (Building No. 31) and Associated Challenge to Conditions Imposed in Planning Board Site Plan Approval

(2) Request for Related Zoning Determinations

Dear Mr. Nadeau:

This letter and the accompanying materials are submitted on behalf of Fafard Real Estate and Development Corp. ("Fafard") and relate to Fafard's proposed 136-unit residential Planned Unit Development known as "The Village at Bailey's Pond" (the "Project") at the above-referenced properties off of Summit Avenue and Route 150 (the "Property"). Specifically, through this submittal, Fafard is (1) applying for a building permit for Building No. 31 within the Project and, through that application, challenging certain conditions imposed in the Planning Board's related Site Plan Approval decision, and (2) requesting certain formal zoning determinations, as discussed further below, including a determination that the Project is governed by the Zoning Bylaw in effect in July, 2005.

Given the lengthy history and pending judicial appeals associated with this Project, Fafard is requesting the opportunity to meet with you and the City's counsel (John Goldrosen) to discuss this submittal, to identify any other materials or information that you may desire in connection with your review of the application and zoning requests, and to discuss possible alternatives to the Site Plan Approval conditions to which Fafard is objecting. Fafard anticipates supplementing this submittal after those discussions. Please call me, or have attorney Goldrosen call me, to schedule a time to meet.

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I. ENCLOSED MATERIALS

Enclosed in support of Fafard's building permit application, associated appeal of the Planning Board's related Site Plan Approval, and request for zoning determinations are the following materials:

BOUND SET OF EXHIBITS 1-17:

Ex. 1 Completed Building Permit Application – with Appendix 1, "REScheck Software Version 4.5.0 Compliance Certificate," Worker's Compensation Insurance Affidavit, and copy of Michael Harrington's Construction Supervisor License

Ex. 2 Letter of Authorization from Mayor, authorizing Fafard to apply for all permits and approvals associated with the Project

Ex. 3 Aerial Locus Figure and Overall Site Plan

Ex. 4 Zoning Overview

Ex. 5 Project Narrative – prepared by Fafard's consultant, Oak Consulting Group ("OCG")

Ex. 6 Procedural History – prepared by OCG

Ex. 7 Various Documents from Planning Board Site Plan Approval Process:

- 9/28/2012 Letter from BSC Group (Board's consultant) providing "Transportation Study Peer Review" – generally concurring with the traffic analysis conducted by Fafard's consultant
- 11/12/2012 Letter from Oak Consulting Group ("OCG") describing Project revisions and responding to comments from various City officials and Board's peer review consultant
- 12/7/2012 Letter from OCG describing further Project revisions and responding to comments from various City officials and Board's peer review consultant
- 1/31/2013 BSC Group Peer Review – "Site Plan Review Application"
- 1/31/2013 BSC Group Peer Review – "Stormwater Design"
- 2/08/2013 Letter from OCG responding to BSC Letter
- 7/22/2013 Letter from Counsel objecting to lengthy process
- 8/21/2013 Letter from OCG regarding Open Space requirements
- 8/22/2013 Letter from Benchmark Engineering (architectural details)
- 9/18/2013 Letter from OCG responding to various issues/comments

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Ex. 8 Planning Board's 2013 Site Plan Decision

Ex. 9 Amended Complaint filed in Land Court[1] (without Ex. A)

Ex. 10 Table Summarizing Fafard's Objections to 2013 Site Plan Decision

Ex. 11 Land Court's Notice of Docket Entry dated 12/29/2014

Ex. 12 MassDOT Access Permit issued August 14, 2014 (Permit # 4-2014-0184)

Ex. 13 Lowe's Home Centers, Inc. v. Town of Auburn Planning Bd., No. 09 PS 393505-AHS, 2010 WL 2853883 (Mass.Land Ct. July 21, 2010) ("Lowe's II") (reviewing site plan approval with conditions for use proposed as-of-right and concluding that numerous conditions imposed in the site plan approval were beyond the Board's authority, unreasonable and/or otherwise invalid)

Ex. 14 M.G.L. c. 40A, § 6 (annotated)

Ex. 15 Excerpts from June 2004 Amesbury Master Plan

Ex. 16 Certificate of Town Clerk – Approval of Definitive Subdivision Plan, issued April 26, 2006

Ex. 17 Purchase and Sale Agreement between Fafard and Amesbury and subsequently recorded Sports Park Restriction

SUPPLEMENTAL EXHIBITS (INDIVIDUALLY COMPILED)

- Building Permit Plans – for Building No. 31
- Site Plans – as referenced in the Planning Board's Site Plan Decision (oversized and 11x17 versions)[2]
- 2005 Zoning Bylaw – the version that Fafard believes governs this Project

[1] The Land Court action was initially designated as Permit Session No. 13 PS 480831 (GHP), but was later transferred to the Land Court's regular session and is now identified as 14 MISC 484322 (GHP).

[2] See plan sheets referenced on Page 31 of the Site Plan Decision (Exhibit 8 hereto). Sheets C-013A through C-013D relating to proposed Riverfront Area work are not enclosed, but can be provided upon request. The plan set submitted here also includes Sheets C-002 (Overall Site Plan) and C-015 (Open Space Plan), although those are not referenced in or attached to the Site Plan Decision.

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II. INTRODUCTION AND FAFARD'S REQUESTS

This submittal is made pursuant to an order issued by the Massachusetts Land Court (Exhibit 11 hereto) in Fafard Real Estate Development Corp. v. Amesbury Planning Board, et al., Land Court Case No. 14 MISC 484322 (GHP). Through that action, Fafard appealed a decision of the Amesbury Planning Board (the "Board") conditionally approving Fafard's application for Site Plan Approval for the Project filed with the City Clerk's office on November 18, 2013 ("Site Plan Decision," Exhibit 8 hereto). Fafard also sought certain declaratory relief in that action, including (1) a declaration that the Bylaw's earth removal/filling special permit provisions are unlawful as applied to Fafard's as-of-right Project, and (2) a declaration that the Project is subject to the Zoning Bylaw in effect as of July 2005.

In the Land Court action, the municipal defendants argued that the Court lacked jurisdiction over Fafard's appeal of the Board's Site Plan Decision, arguing that Fafard must first apply for a building permit and, if denied, then pursue an appeal to the Zoning Board of Appeals prior to seeking judicial review. The Court agreed with that view and, on December 19, 2014, dismissed Fafard's appeal of the Site Plan Decision. The Court retained jurisdiction over Fafard's claim related to whether the Project is subject to the 2005 Zoning Bylaw or the current Zoning Bylaw. The Court stayed the litigation related to that issue "to Allow Plaintiff to Pursue Administrative Remedies with [the] Town" and noted that it would be receptive to a continued stay of the litigation so long as further local administrative process was underway – that is, the process initiated through this filing.

In essence, this filing constitutes Fafard's local appeal of the Planning Board's Site Plan Decision. More specifically, through this filing, Fafard is requesting the following:

1. A determination that the "Contested Findings/Conditions" imposed in the Board's Site Plan Decision and as identified in Exhibit 10 hereto are unreasonable, beyond the Board's authority to impose and/or are otherwise invalid;

2. A determination that the Board's Site Plan Decision without the Contested Findings/Conditions (or with mutually agreed-to alternative conditions) constitutes final Site Plan Approval for Fafard's Project and that, therefore, the requested Building Permit may issue upon Fafard's submittal of any additional information that may be necessary to demonstrate compliance with the State Building Code and any other requirements you deem to be applicable;[3]

3. A determination that the 2005 Zoning Bylaw governs Fafard's Project and, as such, that the Affordable Housing Regulations of the current Zoning Bylaw are inapplicable; and

[3] Note that Fafard has been pursuing approvals under the local and state wetlands protection regulations and there are related administrative and judicial appeals currently pending. Fafard is also willing to apply for any required earth removal or filling special permit if determined to be applicable and once all Site Plan Approval issues have been resolved.

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4. Issuance of the requested Building Permit (conditioned upon subsequent submittal of any additional information/approvals that you determine to be required).

III. FACTUAL BACKGROUND

The Project and Permitting History

The Property and Project details are set forth in the materials submitted in this package, including Exhibit 3 (locus figure and overall site plan), Exhibit 5 (project narrative), Exhibit 7 (various Planning Board submittals), and the detailed and comprehensive set of Site Plans submitted separately from the bound set of Exhibits.

Fafard's Amended Complaint (Exhibit 9 hereto) also summarizes Fafard's Project and certain aspects of the lengthy permitting history related to Fafard's Project, organized as follows:

Pages	Facts Described
4 – 6	Describing the Property and Fafard's Project.
6 – 7	2003 – 2004: Describing the Amesbury master planning effort leading to the Terrasphere Plan (calling for 200-units at the Property), the City's Request for Proposals, Fafard's Purchase and Sale Agreement with the City, and Fafard's commencement of permitting efforts.
7	2005 Zoning Freeze: Describing the subdivision process that led to a zoning freeze pursuant to M.G.L. c. 40A, § 6 – freezing the Zoning Bylaw in effect on June 27, 2005 (the "Freeze Date").
7 – 8	2005 – 2010: Describing local challenges to and renegotiation of the Purchase and Sale Agreement, which stalled permit proceedings.
8 – 10	2010 – 2013: Describing Fafard's additional lengthy permitting efforts before the Planning Board and Conservation Commission.
11 – 19	Describing Fafard's challenges and objections to the Findings and Conditions set forth in the Board's Decision.

Following is a chronology of additional relevant background facts:

2001 Terrasphere Plan: Developed by City based on public master planning process
- recommends 200 units

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2002 RFP: Issued by City "for the purpose of redeveloping the properties in accordance with the [Terrasphere Plan]."

2003 City selects Fafard as developer of the Terrasphere Plan. City officials inform Fafard of concerns related to the proposed adult entertainment complex at the Sports Park, the related litigation, and the likelihood of losing litigation. They suggest that the issue could be addressed by Fafard buying the Sports Park and imposing a restriction precluding its use as adult entertainment. City expressed that the City could not impose the restriction and needed a private party to do it.

2003 P&S Agreement

- Fafard accepts obligation to buy Sports Park parcel and impose restriction
- $2.4 million base price, plus $20,000 per unit > 120 units
- "Buyer shall seek permits and approvals for a number of multi family housing units for the Premises in excess of 120 units."
- P&S requires Town to confirm in writing, prior to closing on Sports Park Parcel, that "Town will cooperate to expedite Bailey's Pond Project approval process in accordance with Terrasphere Plan."

2003 Fafard buys Sports Parcel for $1.4 million and imposes adult entertainment restriction after Mayor signs letter confirming that "Town will cooperate to expedite Bailey's Pond project approval process in accordance with the Terrasphere Plan"

2004-5 First Planning Board process

- Submitted plan for 200 units, consistent with Terrasphere Plan. Planning Board insists on significant reduction in # of units and threatens denial. Number reduced to 176.
- Fafard withdraws Site Plan application and works with subcommittee, which requests further significant reductions.

2005 Municipal Council questions P&S Agreement: Solicits Inspector General's input on RFP process and P&S.

2005 Zoning Amendments: Planning Board and other City officials pursue Zoning Bylaw amendments requiring 15% affordable units for multifamily developments. Fafard seeks subdivision approval and freezes zoning to the 2005 version.

2005-10 Amended P&S: Several years taken to address City/IG issues and to renegotiate P&S Agt, executed in 2010. Amended P&S Agt executed in 2010 – unanimous support by City Council.

- Requires Fafard to "diligently pursue" all project permits (Para. 18)
- Future performance security (Para. 10(b)(5)) – requiring Fafard to post security "to secure construction of all offsite and onsite infrastructure that process essential access to those units for which Purchase seeks Certificates of Occupancy".
- Phasing: Agreement contemplates phasing of Project development (Para. 14(d)).

2010-13 Second Planning Board process

- Extended proceedings with peer review 2010 through 2013

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- Current project reduced to 136 units, with significant changes requested by Board

2013 Planning Board "approval with conditions" (the challenged conditions effectively rendering it a denial)

Freezing the 2005 Zoning Bylaw for the Project

After Fafard entered into the 2003 agreement with the City and commenced permit proceedings, City officials began efforts to amend the City's Zoning Bylaw with the aim of requiring Fafard to restrict at least 15% of its proposed units to being "affordable" units.[4] In order to freeze the Zoning Bylaw in effect when it agreed to purchase and develop the Property, Fafard filed a preliminary subdivision plan (on June 27, 2005 – the "Freeze Date") and subsequently obtained approval of a definitive plan for the Property. See the "Certificate of Town Clerk, Approval of Definitive Subdivision Plan" issued on April 26, 2006 included in Exhibit 16 hereto. A copy of the applicable 2005 Zoning Bylaw is submitted with this filing.[5]

Although the definitive plan approval resulted in an initial 8-year statutory zoning freeze period pursuant to M.G.L. c. 40A, § 6 (Exhibit 14 hereto), the running of that 8-year period has been tolled (or, viewed differently, the period has been extended) as a result of Fafard's continued efforts to secure the approvals required for the Project, the actions of municipal officials unreasonably prolonging those efforts, administrative and judicial appeals related to the site plan and wetlands permitting decisions, and other legal and equitable considerations (as discussed further below).

IV. OBJECTIONS TO PLANNING BOARD'S SITE PLAN APPROVAL CONDITIONS

Amesbury's Zoning Bylaw identifies Fafard's proposed multi-family residential use as one allowed by right in the underlying "Planned Unit Development" ("PUD") district (see Table of Uses and Section XI.L of the applicable 2005 Amesbury Zoning Bylaw). The Zoning Bylaw requires Site Plan Approval for the Project, but, in that context, the Planning Board's authority to regulate the Project is constrained.

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[4] The Affordable Housing Regulations ultimately adopted requires all multi-family residential developments that require a Special Permit or Site Plan Approval to set aside "a minimum of fifteen percent (15%) of the total number of dwelling units" to be provided as affordable housing units. It also sets forth a litany of onerous requirements associated with the required affordable units. The Affordable Housing Regulations, if applied to Fafard's Project, would significantly impact the configuration and viability of the Project – which is why Fafard's request for a declaratory judgment related to the tolling of the zoning freeze is a central claim in its Land Court action.

[5] The enclosed Zoning Bylaw is dated March 2005. There was one amendment adopted in April 2005, before the June 27, 2005 Freeze Date), but that amendment is not relevant to Fafard's Project or the issues presented here.

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The Appeals Court in Dufault v. Millennium Power Partners, L.P., 49 Mass.App.Ct. 137 (2000) described the general rule related to appeals of site plan decisions as follows (footnotes omitted):

> The Zoning Act, G.L. c. 40A, does not specifically *139 recognize site plans as an independent method of regulation. See G.L. c. 40A, §§ 1 et seq.; *Osberg v. Planning Bd. of Sturbridge*, 44 Mass.App.Ct. 56, 57, 687 N.E.2d 1274 (1997). However, the use of site plan approval as a permissible regulatory tool for controlling the aesthetics and environmental impacts of land use has been recognized since *Y.D. Dugout, Inc. v. Board of Appeals of Canton*, 357 Mass. 25, 31, 255 N.E.2d 732 (1970). See *Osberg*, 44 Mass.App.Ct. at 57, 687 N.E.2d 1274. A town zoning board of appeals or planning board generally conducts site plan review. *Ibid.* Site plan review may be attached either to a special permit process for uses that are not as of right or to the issuance of a building permit for uses that are as of right. *Id.* at 58, 687 N.E.2d 1274. In the latter instance, as here, site plan review involves the regulation of a use and not its outright prohibition. The scope of review is thus limited to imposing reasonable terms and conditions on the proposed use. See *SCIT, Inc. v. Planning Bd. of Braintree*, 19 Mass.App.Ct. 101, 107-110, 472 N.E.2d 269 (1984). "[W]here the proposed use is one permitted by right the planning board may only apply substantive criteria consistent with *Prudential Ins. Co. v. Board of Appeals of Westwood*, 23 Mass.App.Ct. 278, 502 N.E.2d 137 (1986) (i.e., it may impose reasonable terms and conditions on the proposed use, but it does not have discretionary power to deny the use)." *Osberg*, 44 Mass.App.Ct. at 59, 687 N.E.2d 1274, quoting from *Quincy v. Planning Bd. of Tewksbury*, 39 Mass.App.Ct. 17, 21, 652 N.E.2d 901 (1995). The site plan approval process for uses as of right is linked to the building permit process under the Charlton by-law. The by-law requires that one who proposes a use permitted as of right submit a site plan to the planning board in order that such board might assure compliance with the by-law. After the planning board approves a site plan, the planning board informs the zoning enforcement officer and the inspector of buildings of the approval **90 as directed by the by-law, thereby rendering site plan approval a condition precedent, as it were, to the issuance of a building permit.

See also Osgood v. Planning Bd. of Sturbridge, 44 Mass.App.Ct. 56 (1997) (in cases involving site plan approval for a use allowed by right, the board has no discretionary power to deny the use, and may only impose reasonable terms and conditions on the proposed use); see also Y.D. Dugout, Inc. v. Bd. of Appeals of Canton, 357 Mass. 25 (1970).

Conditions that fundamentally undermine or adversely affect the fundamental use of a site have been held invalid because these issues were previously decided "in a legislative sense" when the city or town enacted a zoning ordinance allowing fundamental use of the site. Castle Hill Apartments Ltd. P'ship v. Planning Bd. of Holyoke, 65 Mass.App.Ct. 840, 847 (2006). A

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planning board may not impose conditions that grant the board "unfettered discretion to determine after the fact whether the details [of certain conditions] are satisfactory" after the board has rendered a site plan decision. Castle Hill, 65 Mass.App.Ct. at 844 n.7 (affirming the Land Court's order striking conditions related to a planning board's attempts to require an applicant to seek additional approvals related to landscaping).

As an example of how Court's have applied these restrictive standards in the context of site plan approvals for as-of-right uses, see Lowe's Home Centers, Inc. v. Town of Auburn Planning Bd., No. 09 PS 393505-AHS, 2010 WL 2853883 (Mass.Land Ct. July 21, 2010) ("Lowe's Decision 2"), where the Court held that numerous conditions imposed in the site plan approval were beyond the Board's authority, unlawful and/or unreasonable. A copy of that decision is included in Exhibit 13 hereto.

Fafard's project is an as-of-right use (see the attached "Zoning Overview," Exhibit 4 hereto). Consistent with the applicable judicial precedent and the City's Zoning Bylaw, the Board's authority is constrained to either approving the site plan, approving it with reasonable conditions, or denying it only "for the reasons of an incomplete application" (in which case applicants may resubmit the Site Plan at their discretion). ZBL § XI.C.10.b. (p. 96).

Here, through the Planning Board's Site Plan Decision, the Board purportedly "approved" the Project, but it imposed certain conditions that effectively rendered the decision a denial of Fafard's Project. See Exhibit 10 hereto. Fafard contends that the Board acted in excess of its authority by, among other things, failing to properly apply the site plan review criteria set forth in the applicable 2005 Zoning Bylaw, failing to adhere to the limits on its site plan review authority as set forth in the Zoning Bylaw and applicable case law, imposing requirements for further review and approval by the Board, and imposing conditions that are otherwise unreasonable, beyond its authority and, in some cases, in direct conflict with the Zoning Bylaw. The Site Plans and other information submitted to the Board related to the Project sufficiently described the Project and demonstrate its compliance with the applicable Site Plan Approval requirements.

Paragraph 42 of the Amended Complaint and the Table included in Exhibit 10 hereto identify the particular findings and conditions to which Fafard objects (the "Contested Findings/Conditions") and describe, generally, the basis for plaintiff's objections. Fafard requests that you strike those conditions from the Board's Site Plan Decision.

V. 2005 ZONING BYLAW GOVERNS THE PROJECT

There are several different legal grounds for extending the 8-year freeze period (or for tolling or staying the running of that period) – including (A) the litigation tolling provision in G.L. c. 40A, § 6, para. 8, (B) the interaction and combined benefits of the 8-year "plan freeze" provisions of G.L. c. 40A, § 6 and the "nonplan freeze" provisions of G.L. c. 40A, § 6, and (C) the broader "equitable tolling" principles established through judicial precedent. G.L. c. 40A, § 6 ("Section 6") provides for a variety of different zoning freezes – including "nonplan freezes," such as the freeze triggered by the issuance of a building permit (Para. 1), and "plan freezes."

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See *Massachusetts Zoning Manual*, § 7.1 (Mass. Cont. Legal Educ. 4th ed. 2007) (discussing different types of freezes and legislative history) and Bobrowski, *Massachusetts Land Use and Planning Law* § 5.01 at pp. 153-54 (2011, 3rd ed.).

The zoning freeze provisions of Section 6 have been broadly interpreted and applied to achieve the legislative purposes behind those provisions "to afford broad protection to developers." Heritage Park Dev. Corp. v. Town of Southbridge, 424 Mass. 71, 76 (1997). For example, in Massachusetts Broken Stone Co. v. Town of Weston, 430 Mass. 637, 640-641 (2000), the Supreme Judicial Court ("SJC") stated as follows:

> We have opined that the intent of the statute was to protect landowners and developers "from 'the practice in some communities of adopting onerous amendments to the zoning by-law after submission of a preliminary plan which is opposed by segments within the community.'" [Heritage Park Dev. Corp. v. Town of Southbridge, 424 Mass. 71, 76 (1997)], quoting 1972 House Doc. No. 5009, at 38, Report of the Department of Community Affairs Relative to Proposed Changes and Additions to the Zoning Enabling Act. [Other citations omitted].

There is an abundance of case law supporting the extension of the 8-year freeze period in the circumstances presented here. See, for example, Heritage Park Dev. Corp. v. Town of Southbridge, 424 Mass. 71, 77 (1997) (extending the 8-year zoning freeze after plaintiff prevailed in litigation related to a modified subdivision plan); Cape Ann Land Dev. Corp. v. Gloucester, 371 Mass. 19, 23 (1976) (suspending running of the 3-year zoning freeze obtained through approval of an Approval Not Required ("ANR") perimeter plan under former G.L. c. 40A, § 7A from the date of improper building permit denial until the disposition of all bona fide appeals from the denial or granting of a special permit); Samson v. San-Land Development Corp., 17 Mass. App. Ct. 977, 978 (1984), rev. denied 391 Mass. 1104 (1984) (where abutting property owners commenced litigation during the zoning freeze period in an attempt to overturn a board of appeals permit decision, the litigation suspended running of the three-year period acquired upon endorsement of a perimeter plan); Pasqualino v. Board of Appeals of Wareham, 14 Mass. App. Ct. 989, 990 (1982) (the freeze period under G.L. c. 40A § 6 may be tolled "if litigation, appeals or actions by municipal officials make the legality of the construction or plans questionable so as to impede work on or completion of the project."); McCaffrey v. Board of Appeals of Ipswich, 4 Mass. App. Ct. 109, 110, n.1 (1976) (the 3-year zoning freeze on an ANR plan was extended from the date of the building inspector's denial of the building permit application until the termination of the ensuing litigation); DeMatteo Construction Co. v. Hingham, 3 Mass. App. Ct. 446, 458 (1975) (the zoning freeze period stopped running when the building commissioner ordered plaintiff to cease its excavation operations (based upon his view that a special permit was required, later determined by the Court to be incorrect) and would be tolled during the period from the order to cease (rather than the later date when the appeal was filed) to the date of a final judgment in the declaratory judgment action); Mass Composting Grp., Inc. v. Morrissey, 277267, 2004 WL 2801184 (Mass. Land Ct. Dec. 7, 2004) (the 3-year zoning freeze under G.L. c. 40A, § 6 based on an ANR plan endorsement was tolled during the

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pendency of the town's lawsuit opposing the project); Green v. Bd. of Appeal of Norwood, 2 Mass. App. Ct. 393, 396-97 (1974) (zoning freeze secured under the former G.L. c. 40A, s. 7A (now Section 6) extended, noting that it would be inconsistent with the purpose of G.L. c. 40A, s. 7A if the protection of the zoning freeze could be lost through a local official's delay or inaction); see also Cornell v Board of Appeals of Dracut, 453 Mass. 888, 893 (2009) (discussing "equitable tolling" authority and principles in the context of a variance and noting that "[c]ircumstances beyond a variance holder's control may make obtaining a building permit within one year of the grant of a variance impossible and thus warrant equitable tolling of the one-year period where delays are attributable to others).

VI. CONCLUSION

Based on the foregoing and the enclosed materials, Fafard requests the following:

1. A determination that the "Contested Findings/Conditions" imposed in the Board's Site Plan Decision and as identified in Exhibit 10 hereto are unreasonable, beyond the Board's authority to impose and/or are otherwise invalid;

2. A determination that the Board's Site Plan Decision without the Contested Findings/Conditions (or with mutually agreed-to alternative conditions) constitutes final Site Plan Approval for Fafard's Project and that, therefore, the requested Building Permit may issue upon Fafard's submittal of any additional information that may be necessary to demonstrate compliance with the State Building Code and any other requirements you deem to be applicable;

3. A determination that the 2005 Zoning Bylaw governs Fafard's Project and, as such, that the Affordable Housing Regulations of the current Zoning Bylaw are inapplicable; and

4. Issuance of the requested Building Permit (conditioned upon subsequent submittal of any additional information/approvals that you determine to be required).

Sincerely,

Jeffrey L. Roelofs

Enclosures

cc: John Goldrosen, Esq. (with Bound Exhibits and PDF versions of Building Plans)
Nipun Jain (with Bound Exhibits and PDF versions of Building Plans)
Paul Beattie, Esq. (w/o exhibits)
James McLoughlin (with Bound Exhibits only)

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