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February 21, 2023

Town of Topsfield
Zoning Board of Appeals
Attn: Robert Moriarty, Chair
Topsfield Town Hall
8 West Common Street
Topsfield, MA 01983

Re: M.G.L. c. 40B Comprehensive Permit Application
Applicant: Emerson Homes, LP
Property Location: 10 High Street, Topsfield, MA
Response to Beals + Thomas February 3, 2023 Peer Review Report

Dear Board Members:

I am legal counsel to Emerson Homes, LP, the Applicant with respect to the above-referenced proposed Chapter 40B development. On behalf of the Applicant, I write in response to the February 3, 2023 peer review feedback letter from Beals + Thomas (B+T) to the Board with respect to this Project.

The responses in this letter will be limited to matters pertinent to application materials prepared by me in support of the Project – principally, the Applicant’s list of requested waivers dated September 22, 2023 (Tab 18 of the Project application binder) (“Waiver List”). Feedback relating to traffic, access, and safety are addressed in an accompanying letter of project traffic engineers of record, Vanasse & Associates, Inc., filed herewith. Other topics addressed in B+T’s letter (most pertaining to various technical aspects of Project civil engineering) will be responded to in a separate, forthcoming letter by Project civil engineers of record, DeVellis Zrein, Inc.

As a general matter, please note that the Waiver List is intended to address both (1) provisions of local laws, rules, regulations, and bylaws where the Applicant requests that the Board **approve** various aspects of the project in accordance with M.G.L. c. 40B, § 21, and (2) provisions of local laws, rules, regulations, and bylaws where the Applicant requests that the Board **waive** specific legal requirements in accordance with 760 CMR 56.05(7). In many instances, particularly those where B+T has taken issue with requests for “blanket” waivers, the Applicant’s request is in fact that the Board approve the Project under the cited provisions of local law – not necessarily that the Board grant specific waivers. I will endeavor to clarify this below.

With respect to requests for waivers of local performance standards, it should be noted that such requests can be denied or conditioned only where there is evidence of a “valid health, safety, environmental, design, open space, or other Local Concern”, as well as a finding that “such Local Concern outweighs the Housing Need.” 760 CMR 56.07(2)(b)(3); *see also River Stone LLC v. Hingham Zoning Board of Appeals*, 17 MHACR 54 (2022). Additionally, where the affordable housing production requirements of Chapter 40B are not met, there is a strong presumption that the regional Housing Need outweighs all Local Concerns and thus that the requested waivers shall be approved. *See Zoning Bd. of Appeals of Lunenburg v. Housing Appeals Committee*, 464 Mass. 38, 42 (2013).

Notwithstanding the foregoing, please note that the Waiver List will be revised during the course of the Board’s review to ensure that the final waivers requested are narrowly tailored to align with B+T’s comments, as is typical in Chapter 40B hearings.

With these preliminary comments noted, B+T’s comments are reproduced below, followed by the Applicant’s responses:

By-Law Waiver Requests

1. B+T performed a review of the Applicant’s List of Requested Waivers prepared by Regnante Sterio LLP in the context of the Site Development Plans and the findings of our January 12, 2023 site visit. Our evaluation and associated commentary are provided in the following table:

Topsfield Zoning Bylaw Section 3.01 Applicability of Use Regulations

B+T Comment: A multifamily development in the Central Residential (CR) zoning district is not permissible pursuant to the referenced By-Law; therefore, a waiver from this section would be required for the Project to proceed. B+T does not take exception to the waiver being requested in the context of the Project as proposed.

Response: The Applicant concurs. No further response is called for.

Topsfield Zoning Bylaw Sections 3.01 & 3.04 Applicability of Use Regulations & Table of Use Regulations

B+T Comment: B+T Comment: A multifamily development in the CR zoning district is not permissible pursuant to referenced By-Law; therefore, a waiver from this section would be required for the Project to proceed. B+T does not take exception to the waiver being requested in the context of the Project as proposed.

Response: The Applicant concurs. No further response is called for.

***Topsfield Zoning Bylaw Section 3.13
Parking of Automobiles***

B+T Comment: Parking of more than 20 automobiles on a single lot at any time requires a Special Permit from the Zoning Board of Appeals (ZBA). As noted herein, the Project as proposed includes 48 parking spaces in compliance with the number of parking spaces required per the underlying zoning for its residents and not as an auxiliary use. It is unclear why this waiver is being sought by the Applicant. We request that the Applicant clarify the need for the waiver to be granted.

Response: This provision of the Zoning Bylaw would appear to require that the Project secure a special permit to authorize the parking of more than 20 vehicles. Pursuant to M.G.L. c. 40B, § 21, the Comprehensive Permit for the Project shall include and encompass all local approvals required for all aspects of the Project. As such, approval of the parking of more than 20 vehicles is requested under this Section.

***Topsfield Zoning Bylaw Sections 4.01 & 4.02
Applicability of Dimensional and Density Regulations &
Table of Dimensional and Density Regulations***

B+T Comment: The Project appears to adhere to the requirements of the underlying zoning. Therefore, it is unclear why this waiver is being sought by the Applicant. We request that the Applicant clarify the need for the waiver to be granted. We further note for the Administrative Record that the frontage depicted within the plans is 100-ft and not the 106.4-ft reported herein by the Applicant. The 100-ft dimension does however comply with the underlying zoning.

Response: The inclusion of this information was for informational purposes only. The Applicant concurs that the Project complies with the dimensional requirements of these Sections. This Section will be removed in the final version of the Waiver List.

With respect to the measurement of frontage, the 106.4' refers to a surveying discrepancy shown on the Project survey plan, which shows a distance of 6.40' from the record lot corner to a located survey monument. The Applicant concurs that zoning-compliant 100' of frontage is available. This detail will be corrected in final Project plans.

***Topsfield Zoning Bylaw Section 4.12
Parking***

B+T Comment: The number of parking spaces provided (48 total) adheres to the underlying zoning requirements of 1 per unit with less than two bedrooms (40 total units) and 2 per unit with two or more bedrooms (4 units). Therefore, it is unclear why this waiver is being sought by the Applicant. We request that the Applicant clarify the need for the waiver to be granted.

Response: This waiver request is intended to authorize Project parking not only for the proposed residential units, but also for any/all portions of the proposed building that might be deemed subject to additional minimum parking requirements, such as subsections (C)(4) (office space), (C)(6) (place of assembly), and/or (C)(9) (accessory uses).

***Topsfield Zoning Bylaw Section 5.01
Enforcement Officer and Duties***

B+T Comment: This waiver request is generally administrative. B+T does not take exception to the waiver being requested in the context of the Project as proposed.

Response: The Applicant concurs. No further response is called for.

***Topsfield Zoning Bylaw Section 5.02(A)(6)
Permit Granting Authority and Special Permit Granting Authority***

B+T Comment: This waiver request is generally administrative. B+T does not take exception to the waiver being requested in the context of the Project as proposed.

Response: The Applicant concurs. No further response is called for.

***Topsfield Zoning Bylaw Section 7.01
Site Preparation***

B+T Comment: The Project as proposed will result in a net fill of material and proposed excavation appears to be minimal. B+T does not take exception to the waiver being requested in the context of the Project as proposed.

Response: The Applicant concurs. No further response is called for.

***Topsfield Zoning Bylaw Article IX (all sections),
including guidelines set forth at Appendix ZA:1 (all sections)***

B+T Comment: The Applicant is seeking a blanket waiver from the Topsfield Wetlands By-Law (Article IX), its implementing regulations, and administrative filing components thereunder. While we recognize the need for waivers from filing components (review under the By-Law is consolidated to the ZBA as part of the comprehensive permit), we caution against blanket waivers from general bylaws. We request that the Applicant either list or tabulate which sections of the By-Law are required for this project. We note that the Applicant has the burden of demonstrating which waiver requests are necessary to construct the Project. Relative to this waiver we note the following:

- Section 9.06(7) requires information regarding the lighting design (heights, details, etc.) and photometric coverage to review the adequacy of the lighting design. The location of light poles are noted, but no other design information has been provided. We request that the Applicant further clarify the intent of the lighting design to the satisfaction of the Board when considering the waiver requested.
- Section 9.06(9) requires the location of electrical, telephone and communication (ETC) service to be detailed on the plans. This information has not been included. We request that the Applicant further clarify the intent of the ETC design to the satisfaction of the Board when considering the waiver requested.

Response: Initially, it appears that the reference in this comment to the Topsfield Wetlands By-Law and its implementing regulations and administrative filing components thereunder appears to be a typographical error. It is presumed that this comment refers to Section IX of the Zoning Bylaw, which pertains to site plan review.

The Applicant concurs with B+T's comment that site plan review under this Section of the Zoning Bylaw is consolidated with the Board's review as part of the comprehensive permit process. Consistent therewith, the Applicant requests waivers from the procedural, filing, and administrative requirements of Sections 9.05, 9.06, and 9.08(2), which are superseded by 760 CMR 56.05(2). Similarly, the standards of review as set forth in Section 9.07 are superseded by 760 CMR 56.07(2)(b)(3).

Specifically with respect to B+T's comments regarding Sections 9.06(7) and 9.06(9), although not required by 760 CMR 56.05(2), the Applicant will agree to provide a photometric study and supplement the existing utility plan to provide the additional details requested here.

***Topsfield Zoning Bylaw Article XIII
Sign Regulations (all sections),
including Permit Granting Authority's Rules & Regulations for Sign Regulations***

B+T Comment: Though a rendering is not provided, the Project sign as proposed appears to meet the intent of the underlying zoning. Therefore, it is unclear why this waiver is being sought by the Applicant. We request that the Applicant clarify the need for the waiver to be granted.

Response: Section 13.5(A)(2) of the Zoning Bylaw (as well as Chapter 359 of the Topsfield General Bylaws) would require that the Project secure a special permit to authorize the proposed signage. Pursuant to M.G.L. c. 40B, § 21, the Comprehensive Permit for the Project shall include and encompass all local approvals required for all aspects of the Project. As such, approval of the Project sign is requested under this Section and related Bylaw. As noted in the Waiver List, the Applicant has proposed that the dimensions of the Project sign will have a sign area of not more than 25 square feet and a maximum height of 8', which is consistent with the requirements applicable to freestanding signs in the Business Village and Business Park districts.

***Town of Topsfield Bylaws Chapter 63
Purchasing and Contracts,
Section 63-6 Site Qualifications***

B+T Comment: This waiver request is generally administrative. B+T does not take exception to the waiver being requested in the context of the Project as proposed.

Response: The Applicant concurs. No further response is called for.

***Town of Topsfield Bylaws Chapter 153
Historic District (All sections)
and Topsfield Historical Commission Rules, Regulations, & Procedures
and Design Guidelines***

B+T Comment: We note our previous commentary relative to concerns regarding blanket waivers from entire sections of the By-Law. We request that the Applicant specify which aspects of the referenced By-Law are not being met in terms of technical specification and performance standards. We recommend that the Board solicit feedback from the Historical Commission on the Applicant's submission prior to considering the waiver requested.

Response: This Bylaw would require that the Project secure a certificate of appropriateness from the Topsfield Historic Commission approving the construction of the proposed building. Pursuant to M.G.L. c. 40B, § 21, the

Comprehensive Permit for the Project shall include and encompass all local approvals required for all aspects of the Project, including the approval required under this Bylaw. Consistent therewith, the Applicant requests waivers from the procedural, filing, and administrative requirements of THC's Bylaw, Guidelines, Rules, Regulations, and Procedures, each of which are superseded by 760 CMR 56.05(2).

As discussed above, all specific local performance standards are subject to waiver unless there is evidence of a valid Local Concern that would occur if such local requirements were to be waived. More specifically, the Applicant seeks waivers from all performance standards of the THC's Guidelines that would require the proposed building to imitate period architecture or utilize non-standard building materials as specified in Project plans. Notably, most of these provisions apply to work on existing buildings, which is not proposed. However, some provisions would appear to apply to the construction of new buildings, including, without limitation, the THC's Trim & Siding Guideline 5, and their Guidelines pertaining to doors, fences, solar panels, and windows.

Finally, the Applicant concurs with B+T's recommendation that the Board solicit feedback from THC and notes that THC has in fact filed a written feedback letter dated February 15, 2023. The Applicant will respond separately to that letter.

***Town of Topsfield Bylaws Chapter 203
Soil Removal (All Sections)***

B+T Comment: The Project as proposed will result in a net fill of material and proposed excavation appears to be minimal. B+T does not take exception to the waiver being requested in the context of the Project as proposed.

Response: The Applicant concurs. No further response is called for.

***Town of Topsfield Bylaws Chapter 220
Stormwater Management (All Sections), including
Stormwater and Erosion Control Regulations of the Planning Board***

B+T Comment: We note our previous commentary relative to concerns regarding blanket waivers from entire sections of the By-Law. We recommend that the Applicant specify which components of the Topsfield Stormwater Management By-Law and Stormwater and Erosion Control Regulations of the Planning Board require a waiver for the Project rather than a blanket waiver to this entire section of the By-Law or regulations thereunder.

Response: Section 220-6 of this Bylaw would require that the Project secure a separate local stormwater management permit from the Topsfield Planning Board

to authorize the proposed stormwater management systems. Pursuant to M.G.L. c. 40B, § 21, the Comprehensive Permit for the Project shall include and encompass all local approvals required for all aspects of the Project. As such, approval of the Project's stormwater management systems is requested under this Section. Consistent therewith, the Applicant requests waivers from all procedural, filing, and administrative requirements of this Bylaw and Regulations, which are superseded by 760 CMR 56.05(2).

As discussed above, all specific local performance standards are subject to waiver unless there is evidence of a specific matter of Local Concern that would occur if such local requirements were to be waived. All such requirements are therefore waived to the extent they exceed the requirements of applicable state and federal laws, including the Massachusetts Stormwater Management Standards (MSWMS) and NPDES/MS4 requirements. The Applicant notes that B&T has also been retained by the Topsfield Conservation Commission to perform a peer review of the Project under the Wetlands Protection Act and its implementing regulations, which will include review for compliance with the MSWMS. Although distinct from this peer review process, B+T's review of the Project under these (unwaivable) state requirements will directly relate to the issues under review here.

As the Board's review advances (as well as that of the Topsfield Conservation Commission), the Applicant will seek to supplement the Waiver List with greater specificity as to which of the exact local performance standards set forth in this Bylaw and its implementing regulations will be waived and which will be complied with. To that end, this response will be supplemented by future filings.

***Town of Topsfield Chapter 250
Wetlands (All Sections), including
Rules and Regulations of the Topsfield Conservation Commission***

B+T Comment: We note our previous commentary relative to concerns regarding blanket waivers from entire sections of the By-Law. The Applicant is seeking a blanket waiver from the Topsfield Wetlands By-Law (Chapter 250).

We request that the Applicant either list or tabulate which sections of the Wetlands By-Law are required for this project. We note that the Applicant has the burden of demonstrating which waiver requests are necessary to construct the Project.

We request that the Applicant specify why waivers are necessary, what alternatives have been considered, and what the implications of granting the requested waiver would be.

Response: This Bylaw and its implementing regulations would require that the Project secure a separate local permit from the Topsfield Conservation

Commission to authorize the proposed stormwater management systems. Pursuant to M.G.L. c. 40B, § 21, the Comprehensive Permit for the Project shall include and encompass all local approvals required for all aspects of the Project. As such, approval of the Project is requested under this Bylaw, including its implementing regulations. Consistent therewith, the Applicant requests waivers from all procedural, filing, and administrative requirements of this Bylaw and Regulations, which are superseded by 760 CMR 56.05(2).

As discussed above, all specific local performance standards are subject to waiver unless there is evidence of a specific matter of Local Concern that would occur if such local requirements are waived. All such requirements are therefore waived to the extent they exceed the requirements of applicable state and federal laws, including the Massachusetts Environmental Protection Act. As noted, B&T has also been retained by the Topsfield Conservation Commission to perform a peer review of the Project under the Wetlands Protection Act and its implementing regulations. Although distinct from this peer review process, B+T's review of the Project under these (unwaivable) state requirements will directly relate to the issues under review here.

Notwithstanding the foregoing, as the Board's review advances (as well as that of the Topsfield Conservation Commission), the Applicant will seek to supplement the Waiver List with greater specificity as to which of the exact local performance standards of this Bylaw and its implementing regulations will be waived and which will be complied with. To that end, this response will be supplemented by future filings.

***Town of Topsfield Bylaws Chapter 325
Historic District Rules and Regulations (All sections)***

B+T Comment: We note our previous commentary relative to concerns regarding blanket waivers from entire sections of the By-Law. We request that the Applicant specify which aspects of the referenced By-Law are not being met in terms of technical specification and performance standards. We recommend that the Board solicit feedback from the Historical Commission on the Applicant's submission prior to considering the waiver requested.

Response: See above response regarding Chapter 153.

***Town of Topsfield Chapter 359
Sign Regulations (all sections)***

B+T Comment: Though a rendering is not provided, the Project sign as proposed appears to meet the intent of the underlying zoning. Therefore, it is unclear why

this waiver is being sought by the Applicant. We request that the Applicant clarify the need for the waiver to be granted.

Response: See above response regarding Zoning Bylaw Article XIII.

***Town of Topsfield Chapter 364
Stormwater and Erosion Control Regulations (All Sections)***

B+T Comment: We note our previous commentary relative to concerns regarding blanket waivers from entire sections of the By-Law. We recommend that the Applicant specify which components of the Topsfield Stormwater and Erosion Control Regulations require a waiver for the Project rather than requesting a blanket waiver to this entire section of the By-Law. Relative to this waiver we note the following:

- Section 364-6 M stipulates the needed requirements of an Operation and Maintenance (O&M) Plan. The O&M provided does not appear to be compliant or specific to this Project. We request that the Applicant provide a compliant O&M plan.
- Section 364-7 B (6)[3] stipulates the removal rates for structural best management practices (BMPs). The Applicant has not provided calculations for phosphorus or nitrogen removals. We request that the Applicant provide these calculations in accordance with referenced By-Law.
- Section 364-7B(8)(k) requires that design storms be based on Northeast Regional Climate Center "Atlas of Precipitation Extremes for the Northeastern United State and Southeastern Canada". The storm data used does not appear to comply with this requirement, particularly regarding the 100-year storm event. We request that the Applicant utilize the referenced data or NOAA Atlas 14 design rainfall data.

Response: See above response regarding Chapter 220.

With respect to Section 364-6(M), the Project stormwater management report include an Operation and Maintenance (O&M) Plan in compliance with the MSWMS. To the extent the filing requirements of this Section exceed the requirements of the MSWMS, they are subject to waiver.

With respect to Section 364-7(B)(6)(3), the requested calculations are not required by the MSWMS. Notwithstanding, the Applicant will conduct and provide these calculations in a future filing for reference purposes.

With respect to Section 364-7(B)(8)(k), the requested data is not required by the MSWMS. Notwithstanding, the Applicant will provide this data in a future filing for reference purposes.

***Town of Topsfield Chapter 368
Subdivision Regulations (All Sections)***

B+T Comment: Understanding the Project is not a subdivision; we note the following for the benefit of the Board. Relative to this waiver request we note the following:

- The single driveway only provides one means of emergency access and is greater than the 650-ft maximum length requirement for a dead-end street. We recommend that the Board solicit feedback from Topsfield Fire Department personnel relative to the adequacy of the emergency access provided.
- The details for concrete sidewalk do not appear complete. We request the Applicant clarify the design intent for concrete sidewalks and in accordance with Section 368-25E (1) of the By-Law.

Response: The Applicant concurs with B+T's recommendation that the Board solicit feedback from the Topsfield Fire Department and notes that Fire Chief Collins-Brown has in fact filed a written feedback letter dated February 16, 2023. The Applicant will respond separately to that letter but notes that Chief Collins-Brown did not raise any concern in her letter regarding the proposed driveway length.

Regarding sidewalk construction details, see Civil Sheet C-4.

***Town of Topsfield Chapter 384
Wetland Regulations (All Sections), including all TCC policy statements***

B+T Comment: We note our previous commentary relative to concerns regarding blanket waivers from entire sections of the By-Law. The Applicant is seeking a blanket waiver from the Topsfield Wetlands Protection Regulations. We caution against blanket waivers from general bylaws and request that the Applicant either list or tabulate which sections of the Wetland Regulations are required for this Project.

Response: See above response regarding Chapter 250.

Civil Engineering Comments

See forthcoming letter of DeVellis Zrein, Inc.

Traffic Comments

See enclosed letter of Vanasse & Associates, Inc.

Public Safety Emergency Access Comments

See enclosed letter of Vanasse & Associates, Inc. and forthcoming letter of DeVellis Zrein, Inc.

Landscape Plan Comments

See forthcoming letter of DeVellis Zrein, Inc.

Water Use Comments

See forthcoming letter of DeVellis Zrein, Inc.

Septic Comments

See forthcoming letter of DeVellis Zrein, Inc.

Wetland / Natural Resources Comments

See forthcoming letter of DeVellis Zrein, Inc.

Traffic Peer Review - Chappell Engineering Associates, LLC (January 30, 2023)

See enclosed letter of Vanasse & Associates, Inc.

Respectfully Submitted,

EMERSON HOMES, LP
By its Attorney,



JESSE D. SCHOMER, ESQ.