



January 11, 2022

Ms. Valerie Oorthuys, Town Planner
Bolton Zoning Board of Appeals
663 Main Street
Bolton, MA 01740

Subject: Mallard Lane – Comprehensive Permit

Dear Valerie:

Hancock Associates has been hired to assist the Board of Appeals in their review of the proposed Mallard Lane Comprehensive Permit through a grant from the Technical Assistance Program of the Massachusetts Housing Partnership (MHP). MHP engages qualified consultants to assist the Zoning Board of Appeals (ZBA) in navigating and understanding underlying development issues and impacts as they relate to the process and regulations associated with evaluating a Comprehensive/40B permit. Consultants also help facilitate productive discussions with developers and in most cases, communities receiving technical assistance from MHP have successfully negotiated comprehensive permits on terms mutually agreeable to both the municipality and developer.

Hancock Associates has reviewed revised documents, neighbor, town comments and peer review letters related to the Comprehensive Permit submission and offer the following as initial guidance to the Board.

Minimum Requirements

The governing regulations (760 CMR 56) require applicant to meet three main criteria for consideration of a Comprehensive Permit before a Zoning Board of Appeals:

- The Applicant has site control
The Applicant, Northeast Classic Builders, LLC has presented a deed to the subject 5-acre parcel (Deed Book 58115 Page 346). Northeast Classic Builders, LLC is a limited liability corporation however the Massachusetts Secretary of State's office has issued a dissolution by court order on 6/30/21. The Applicant should resolve this issue. The deed is also in the names of James J. Morin and Kathryn M. Lumb personally. The Applicant should provide a Purchase & Sale into the LLC once reinstated by the SOC. *Item remains open.*

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- The Applicant has received a Site Eligibility Letter (PEL).
MassHousing issued a Site Eligibility Letter on July 2, 2019. The project does not appear to have changed appreciably since the PEL was issued.
- The Applicant is a Limited Dividend Organization
As discussed above, the Applicant, Northeast Classic Builders, LLC was a limited liability corporation registered with the Massachusetts Secretary of State, we would recommend the Applicant resolve the issue with the Secretary of State's office and also provide a letter to the Board committing to the limited dividend requirements. The actual full commitment is through execution of the required Regulatory Agreement prior to construction. As of the date of this letter, the Mass SOC website still has the LLC dissolved.

Initial Review of Submission

760 CMR 56.05 contains the required elements of a submission of a Comprehensive Permit to the Zoning Board of Appeals. The following is a review of the submission with regard to these requirements:

- Preliminary site development plans with the locations and outlines of proposed buildings; the proposed locations, general dimensions, and materials for streets, drives, parking areas, walks and other paved areas; and proposed landscaping improvements. Any project of five or more units must have a site plan stamped by a registered professional architect or engineer.
The applicant has not fully satisfied this requirement. A Plan set has been submitted within the full submittal package, prepared by Ducharme & Dillis dated March 11, 2020, containing five sheets; Layout Plan Sheet C2.0, Grading & Drainage Plan Sheet C3.0, Erosion Control Plan Sheet C4.0 and Utilities Plan Sheet C5.0. The required Landscape Plan was not included. Additionally, a Color Site Plan was also submitted prepared by Ducharme & Dillis with a date of January 29, 2019. This depicts a different layout of the eleven houses and shows three lots being created. The plan is a single sheet, and the PDF is poor quality. The Applicant should explain which plan is being presented and supplement with the required information in accordance with 760 CMR 56.05.
A new site plan has been submitted by Dillis & Roy Civil Design Group dated 12-16-21, which has addressed the prior issues.
- An existing condition report on the proposed site and the surrounding areas.
The applicant has not complied with this requirement.
An Existing Conditions Plan has been included in the Dillis & Roy 12-16-21 plan set stamped and signed by a Professional Land Surveyor.
- Preliminary, scaled architectural drawings prepared by a registered architect, with typical floor plans, elevations, and sections, including construction type and finishes.
The applicant has not completely satisfied this requirement. Architectural Plans have been submitted but no scale is evident nor is the source of the plans given. The plans also do not match all the houses shown on the site plan(s).

This item remains open. Architectural renders submitted October 7, 2021 do not provide information verifying they were completed by a Registered Architect as required by the regulations and they lack dimensions to verify the floor plans match the site plan. The plans depict decks and porches and articulations in the building footprints that do not match the site plan.

- Tabulation of proposed buildings by type, size, and footprint, impervious coverage, and open space, including percentage of tract to be occupied by buildings, parking and paved vehicular areas.

The applicant has satisfied this requirement. This table appears within the narrative accompanying the application.

This table should be added to the site plans so it can be updated as the plans change.

- A preliminary subdivision plan if the project involves a subdivision.
The project may involve a subdivision if three lots are in fact proposed. If this is the case, a preliminary subdivision plan is required.
This item may resurface based on final guidance from MassDEP regarding the wells.
- A preliminary utilities plan (water, wastewater, drainage, and storm water management facilities).

The applicant has satisfied this requirement with the plan set referenced above.

- A list of Waivers from local bylaws and regulations.

The applicant has satisfied this requirement.

Procuring peer review consultants

The Board has engaged Horsley Witten Group (HW) to peer review the civil engineering and wetland issues on site as outlined in their proposal dated 9/2/21. HW provided a letter to the Board dated 10/14/21. The applicant provided responses to comments in two letters: one from Dillis & Roy dated 12/16/21 and the second addressing wetlands issues raised from Norse Environmental dated 12/15/21. A follow up letter from Horsey Witten is pending. Several issues within the letters remain unanswered with calls for the Applicant to provide additional information or additional information forthcoming from the applicants engineer and wetland scientist. A key item relates to the required and available sight distance at the proposed roadway intersection. The HW letter had six items within the wetlands section, the response from Norse only responds to the first two.

Comments from other municipal boards and committees, town staff

The application has been distributed to town board and departments for comment. We will work with staff to keep track of input and make sure all parties have provided comments. We will assist the Board in coordinating review and comments from the various Boards and Departments in town.

Conservation Commission:	Rebecca Longvall, Conservation Agent
Planning Board:	Valerie Oorthuys Town Planner
Board of Health	Bill Brookings, Heath Agent
Fire Department	Chief Jeffrey Legandre
Police Department	Chief Warren Nelson
Building Inspector	Michael Sauvageau
Public Works	Joseph Lynch, Director

The Board has already received comments from Board of Health (8/4/21), Police (8/3/21) and Fire (8/4/21). The most potentially impactful comment came from Bill Brookings, BOH Agent regarding clarification of whether the proposed well(s) will be considered a Public Water Supplies (PWS) per Massachusetts Regulations (310 CMR 22.00). Mr. Brookings is seeking input from the Massachusetts Department of Environmental Protection (MassDEP) in this regard. A note on the Ducharme & Dillis March 11, 2020, plan states “Water supply is not to be considered a public water supply due to serving 24 or less non-transient residents based on applicant’s discussion with MassDEP 11 units = 22 non-transient residents < 24 non-transient residents”. It is our understanding that MassDEP uses the Title 5 assumption of two people per bedroom. There are tremendous implications to the project should the proposed well be considered a PWS. The Applicant should provide documentation from MassDEP in this regard.

The Town Planner had requested additional guidance from MassDEP. The Planner has received guidance from DHCD regarding a prohibition on the restricting children from occupying the affordable units regardless of the general age restriction imposed through the condominium documents. This presents a challenge to applicant’s claim of restriction occupancy of all units to no more than two persons thus avoiding the need for a Public Water Supply (PWS) Permit from MassDEP. To be clear, if the project requires a PWS Permit, the project as presently formulated cannot move forward as PWS wells would be required to have a minimum Zone I radius that must be vacant of any improvements except those that are well related. This radius is defined in the Massachusetts Drinking Water Regulations (310 CMR 22.0) in feet = (150 x log of pumping rate in gpd) - 350. Based on the Applicant’s use of 150 gallons per day per unit, this would require a Zone I of 133 feet.

Massachusetts Drinking Water Regulations (310 CMR 22.00) defines a Public Water Supply: “a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days of the year. Public Water System includes any collection, treatment, storage, and distribution facilities under control of the operator of such a system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. The Department may presume that a system is a Public Water System as defined in 310 CMR 22.00 based on the average number of persons using a facility served by the system or on the number of bedrooms in a residential home or facility. The Department reserves the right to evaluate and determine whether two or more wells located on commonly owned property, that individually may serve less than 25 people, but collectively serve more than 25 people for more than 60 days of the year should not be regulated as a Public Water System, taking into account the risk to public health.”

It our opinion that the matter is not within the jurisdiction of the Zoning Board but falls first to the discretion of MassDEP as to if a PWS is required and then to the Board of Health to permit the private wells per state requirements.

We came across a similar permitted and built project in Sherborn (59 Main Street West) that proposed 12 two-bedroom units of age restricted condominiums providing two wells on a single lot. This project was issued a Comprehensive Permit by the Sherborn ZBA and is currently being built. The Comprehensive Permit requires proof of unit deed restrictions to two bedrooms without specifically restriction the occupancy to two persons.

We contacted Tim O'Keefe MassDEP-CERO, BWR Drinking Water Program. Mr. O'Keefe stated there was a process with Mass DEP involved with PWS determinations. An internal Mass DEP Statement of Policy (SOP) was created in 2017 for MassDEP staff to use for determining whether multiple wells situated on commonly owned property should not be regulated as a PWS. He sent us several documents (attached) that outline what is needed for MassDEP to make a formal determination. The Board should share this information with the Applicant and Mr. Brookings (Bolton BOH Agent). The Board of Health should then compel the Applicant to run through this process ahead of granting any well permits. Beyond this, we believe the only thing the Board could request the Applicant provide is a sample unit deed with the proposed restrictions and a legal opinion as to how these restrictions respect the information sent from DHCD. The Board could then have your counsel review. The latest architectural plans show two bedrooms and an office. Deed restricting the units to two bedrooms would prohibit future conversion of the office.

Coordinating the project review schedule

As the Board is aware you have 180 days from the opening of the public hearing to close the hearing. The Board has scheduled August 10, 2021, for the opening of the Public Hearing. The 180 days would bring us to Friday February 4, 2022. The Board should seek an extension to the 180 days given the delays in receiving the new plans and information in a timely manner. I would suggest at least an additional 60 days.

August 10, 2021

- Brief overview of Chapter 40B for the audience,
- Initial presentation by applicant
- Initial comments from the Board, BOH and Fire Department
- Discussion of Public water Supply question.
- Discuss Peer Review.
- Open discussion to the public.
- Discuss future schedule and schedule site walk

September 7, 2021

- Review Site Walk held August 29, 2021

- Engineering Peer Review – Review Proposals and Make Selection
- Applicant Presentation of New Material
- Board Q&A
- Q&A - J. Peznola / V. Oorthuys
- Audience Q&A
- Review of New Correspondence Submittals

October 19, 2021

- Review Site Walk held 10/13/21 with Town Planner, Conservation Agent and Horsley Witten.
- Engineering Peer Review Presentation of initial letter from Horsley Witten
- Application presentation of new material: architectural plans, house layouts and plantings.
- Board Q & A
- Audience Q & A

November 30, 2021

- Continued without testimony

January 11, 2021

- Presentation of new materials from applicant, new site plan, response letters to peer review.
- Peer review input (if available)
- Review letters from neighbors
- Review occupancy restriction and well issue (DEP/DHCD Input)
- Board Q & A
- Audience Q & A

February 2022

- Peer review input on new plans and responses.
- Begin discussion of possible decision and conditions
- Economic review if any conditions claimed uneconomic

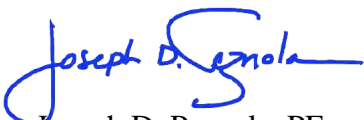
March 2022

- Clean up loose ends
- Begin framework of draft decision
- Close Public Hearing (starts 40 days to clock decision with Town Clerk)

The Board can meet in public sessions during the 40 days to deliberate on the draft decision and vote when the Board is ready to do so. This is a very rough draft; we will work with the Board to establish the schedule moving forward. This being a small project the process could proceed more quickly.

We look forward to assisting the Board in this complex and dynamic process. Please do not hesitate to contact me should you have any questions or comments.

Sincerely,
Hancock Associates,

A handwritten signature in blue ink, reading "Joseph D. Peznola". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

Joseph D. Peznola, PE
MHP Consultant