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BY EMAIL: Pdeschenes@walpole-ma.gov

Walpole Zoning Board of Appeals
135 School Street
Walpole, MA 02081

Re: Darwin Commons, 32 Darwin Ln, Walpole MA

Dear Members of the Board:

As you know, I represent the abutters (copied below) to the project proposed by Wall Street Development Corp. (“Developer”) for the Residence at Darwin Commons (“Project”) located at 32 Darwin Lane in Walpole (“Site”). Previously, in my letter dated June 20, 2023, I outlined how the Planning Board granted a one-time waiver of the 750 foot maximum length of Darwin Lane when the initial subdivision was approved in 1997, and has twice refused to extend it further, in 2005 and again in December 2022.

Walpole’s long-serving Planning Board Chair has explained the 1997 waiver was based on an agreement made by the Applicant with the Town that allowed the road to exceed the maximum length for two extra lots in the subdivision. In exchange, the Town protected the land adjacent to the “Well Head Pumping Area . . . crucial to protecting the Town’s water.” (7/26/23 email from J. Conroy) Although the Applicant has reneged on his agreement, the Board and Town should keep their promise to protect the wellhead area that was never supposed to be developed.

At the last hearing, I promised the Board I would submit information about the length of dead end streets like Darwin Lane and how those have been addressed in the context of Chapter 40B. The Planning Board has twice considered extending Darwin Lane, as recently as just several months ago. Both times, they unanimously rejected an extension for further development, based on the deal struck over 25 years ago, the recommendation of the Fire Department, and the public health and safety concerns for protecting the water supply area. Nothing in Chapter 40B commands you to grant waivers that the Planning Board would not, the Fire Department recommends against, or that would risk public health and safety of the Town water supply.

HAC Has Repeatedly Affirmed Denial Of 40B Projects Involving Long Dead End Roads

The Housing Appeals Committee (“HAC”) has adjudicated several 40B cases involving long, non-conforming dead-end roads and access driveways. The seminal case was a project denied by the Waltham Board of Appeals in 2002, which was upheld by the HAC in 2005.¹ The Waltham project featured a 1,000-foot dead-end access driveway serving a 36-unit project. Even automatic sprinklers inside the building to improve fire protection, were “not a substitute for access to the site for firefighting, and they do not protect against medical emergencies.”² Here, by contrast, the dead end would be longer, there would be more units, and fire sprinklers have not even been proposed. In the Waltham case, the HAC found that the “combination of problematic elements” with the design length of the access driveway justified the denial by the local zoning board.³

The HAC also affirmed the denial of another Chapter 40B permit, a 100-unit condominium project in Braintree that would have been served by two dead-end driveways, one 1,550 feet long, and the other 1,250 feet long.⁴ The HAC commented that long dead-end roads without a secondary alternative access present a public safety concern: “when homes may become isolated from the town's street network because of a single point of entry to the development. . . . [i]t is a concern that increases not only with the length of the cul-de-sac, but also with the number of homes that are located at a distance from the street network.”⁵ The HAC held that “[e]ach such roadway must be considered on its own merits based upon ‘an analysis of all the characteristics of the roadway taken together.’”⁶

In 2011, the HAC again revisited the safety of dead-end roadways in a 52-unit project in Norwell where the ZBA cut the length of the proposed roadway by nearly half. There, the applicant proposed a 2,120-foot dead-end access road, but the Norwell ZBA conditioned its approval of the project on the road not exceeding 1,150 feet, which the HAC found reasonable under the “consistent with local needs” balancing test.⁷

On just two occasions (Holliston and Wenham), the HAC has overturned a local zoning board decision not to allow a dead-end road, but both involved facts distinguishable from Darwin Lane. In the Holliston project, two dead-end roads of 600-700 feet in length each served 30-32 units.⁸ At 857 feet, Darwin Lane is already longer than either of those dead-ends in Holliston. If increased to 1159 feet, as Developer proposes, it would be the longest dead-end road ever approved under Chapter 40B.

In the Wenham matter, HAC stated that the width of the proposed road “is rarely the most important factor. More typically it is the number of units isolated on the single--access roadway and the length of the roadway, as well as unusual factors specific to the site that are

¹ *Lexington Woods, LLC v. Waltham ZBA*, HAC No. 02-36 (Feb. 1, 2005).

² *Id.*, at *33.

³ *Id.*, at *41-42.

⁴ *O.I.B Corp. v. Braintree ZBA*, HAC No. 03-15 (Mar. 27, 2006).

⁵ *Id.*, at *16.

⁶ *Id.*, citing, *Lexington Woods, LLC v. Waltham ZBA*, supra.

⁷ *Simon Hill, LLC v. Norwell ZBA*, HAC No. 09-07 (Oct. 13, 2011).

⁸ *Green View Realty, LLC v. Holliston ZBA*, HAC No. 06-16 (Jan. 20, 2009).

most important.”⁹ The 1,120-foot access road served just 20 units for the Burley Street project in Wenham, whereas Darwin Lane already has 14 houses plus five on Queens Court, and Developer proposes to add 28 more for a total of 47, more than twice the number in Wenham.

HAC Case	# Units	Length of Road	Town Regulation	HAC Decision
Waltham	36	1000 ft.	500 ft.	<i>denied waiver</i>
Braintree	100 ¹⁰	1550 ft.	400 ft.	<i>denied waiver</i>
Norwell	52	2120 ft.	550 ft. ¹¹	<i>denied waiver</i> ¹²
Wenham	20	1120 ft.	500 ft.	<i>allowed waiver</i>
Holliston	30-32	600-700 ft.	500 ft.	<i>allowed waiver</i>

Based on this survey, this project would have the greatest number of housing units served by what would be the longest dead-end road ever approved under Chapter 40B. Yet, to date Developer has offered no justification for a waiver to further extend Darwin Lane that has already been twice denied. And the Fire Department has maintained its longstanding position that such a waiver would compromise public safety. Plus, further extending the road into the wellhead protection area would also risk public health by jeopardizing the public water supply. For all of these sound reasons, and based on solid precedent from HAC, we ask the Board to deny any waiver that would allow a further extension of Darwin Lane.

Very truly yours,

/s/ Dennis A. Murphy

Dennis A. Murphy

cc: Jim & Yasemin Herlihy, 3 Darwin Lane, Walpole MA 02081
 Michael & Laurie Moore, 4 Darwin Lane, Walpole MA 02081
 Mark & Jacqueline Mannion - 8 Darwin Lane, Walpole MA 02081
 James & Elaine Piersak, 11 Darwin Lane, Walpole MA 02081
 Sean & Amy Radley, 12 Darwin Lane, Walpole MA 02081
 Michael & Caroline Farley, 15 Darwin Lane, Walpole MA 02081
 Mike & Marianne Stanton, 19 Darwin Lane, Walpole MA 02081
 Tom & Peg White, 20 Darwin Lane, Walpole MA 02081
 Denna Horne & Jim Howley, 23 Darwin Lane, Walpole MA 02081
 Mario & Susan Corso, 24 Darwin Lane, Walpole MA 02081
 Thomas & Elizabeth Dunleavy, 27 Darwin Lane, Walpole MA 02081
 Joe & Bernadette Moriarty, 28 Darwin Lane, Walpole MA 02081
 David & Jo-Anne Vlacich, 31 Darwin Lane, Walpole MA 02081
 Paul & Caroline Truland, 15 Queens Court, Walpole MA 02081

⁹ *Burley Street, LLC v. Wenham ZBA*, HAC No. 09-12 at *9-10 (Sept. 27, 2010).

¹⁰ The entire project in *Braintree* had 119 housing units, but only 100 would have been served by the 1,000-foot dead-end road.

¹¹ In the *Norwell* case, it was noted that the length of a dead-end road could be allowed for up to 1,000 feet by special permit.

¹² The HAC affirmed the ZBA’s condition that limited the length of the road to 1,150 ft.