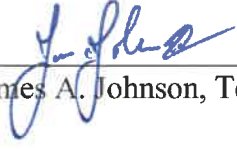




TOWN OF WALPOLE
COMMONWEALTH OF MASSACHUSETTS

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To: Board of Selectmen

From: 
James A. Johnson, Town Administrator

Date: October 11, 2019

Re: Request from Omni Properties for Summer St.

I received two emails from David Hale who is a partner with Omni Properties requesting that the Town grant Omni Properties with a "safe harbor waiver" for the proposed Summer St. housing development. The purpose of this memo is to ask the Board of Selectmen if the Board wants to grant Omni properties the waiver request that has been submitted. By way of background I received the following email from Mr. Hale on September 24th:

"55 SS LLC's planned purchase of the adjacent 25+/- acres from Baker Hughes offers the town the opportunity to get closer to, or above 10% SHI units based on the estimated 2020 census. According the town's s Housing Production Plan (last sentence on page 46 see attached HPP) the town needs 358 SHI units to be above 10 % and be protected from 40B projects for ten years based on the 2020 census. With the addition of the 25 acres, we believe the land can accommodate up to 420 units which could include 60 ownership town home units and 360 rental units. This combination of units would produce 375 SHI units. The 375 SHI units result because 100 % of the rental and 25% of the ownership units count toward SHI under the 40B regulations. For clarity I have attached a crude plan which shows the land we now own in yellow and the adjacent 25 acres in brown.

In order for the project unit count to increase, the Select Board would have to waive the "Large Project Safe Harbor". If the select board decides against the waiver, my company will use the additional land to permit 60 ownership single family and duplex homes instead of 60 town homes/row houses. We expect the market single and duplex units will sell at a higher price point than the townhome/row houses to help absorb extra land and site costs. If the town does decide to offer the waiver, we are open to discussions regarding the scope of the increase.

Save for a final title commitment which I expect to receive within a week, all of our due diligence is complete. I expect we will close on the property before the end of the year.

Waiver or not my group has decided it will be a better project with the adjacent land incorporated and we look forward to working with the town toward a successful project."

After receiving this request I asked Mr. Hale if he would provide the Town with a formal letter regarding this request and if there were any time stipulations associated with this request. Mr. Hale provided the following response on October 8th:

"At the outset I want to make clear that Omni is content with the size and scope of the project at 300 units and there will be no hard feelings if the Select Board decides not to grant a waiver of the large project safe harbor. My recollection of our previous experience with Acton is that that Acton initiated the discussion of the waiver thru a delegated Select Board member, the town manager and town counsel and it happened very early in the process which was helpful in terms of not wasting the ZBA's time and Omni's planning time and dollars. Omni did not initiate the discussion.

In order to keep the process timing "on track" we would like an answer within two weeks. However, we would also like to be cooperative. If there is a specific Select Board meeting schedule that requires more than two weeks please

let us know. Also if there are answers to specific questions the Select Board has that would help in making the decision please let us know.

In terms of keeping the process timing on track, we expect Mass Housing will issue a site approval letter in early to mid-November. Our goal is to make an application to the ZBA very shortly after receiving the site approval letter from MassHousing. We believe that sticking to the prescribed schedule benefits both the town and Omni. From Omni's perspective the quicker we start construction the better. From the town's perspective no safe harbor is achieved until the comprehensive permit for the Cedar's project is actually issued.

Given the relatively low density and other modest measurable impacts and the town's 40B position it seems logical for the town to provide a waiver. However, Omni will be happy to go forward either way.

Please let this email serve as a request to the select board to permit the Cedar's project to be approximately 420 units or such lesser amount above 300 that we and the Select Board agree upon. Please provide a response at your earliest convenience. In the meantime Dick Gelerman will reach out to you or town counsel."

Community and Economic Director Ashley Clark has reviewed Walpole's Subsidized Housing Inventory (SHI) figures and she has come up with the following figures:

	Housing Units	9/18/2019 SHI Total	Percent Subsidized	SHI % with Cedar Units	Cedar + Burns SHI %	Units needed for 10%	Current Units Short	Units Short with Burns + Cedar Units	Units Needed for 0.5%, 1 Year Safe Harbor	Units Needed for 1%, 2 Year Safe Harbor
2010 Census Data	8984	641	7.13%	9.97%	10.06%	898	257	-5.6	45	90
2017 ACS Data*	9232	641	6.94%	9.71%	9.79%	923.2	282.2	19.2	46	92

*Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, note these figures do not include the three major projects (525+ units) in the downtown area

	Burns Ave	Moose Hill Condos	Dupee Street	Cedar Edge Condos	Cedar Crossing
Could be Added to SHI	8	??	??	15	240

If Cedar project is approved with 240 rentals and 15 eligible owner units, it will bring the Town's SHI inventory count from 7.1% to 9.97%. This increase will qualify the Town for a two year safe harbor. If the Burns Ave project is approved, the SHI will be slightly above the 10% threshold based upon the 2010 census.

The Developer has asserted that a benefit to the Town to waiving the Large Project safe harbor is that the Town may be at or close to the 10% for the 2020 Census. The issue is that the 2020 census will not be out for at least a year and it is unknown how DHCD will count year round housing units related to that census.

Town Counsel has been consulted and has informed me that the Department of Housing and Community Development regulations at 760 CMR 56.03(6) provides the Town the ability to deny a "Large Project" which, with regard to Walpole (year round housing unit total of 8,984) is defined as follows:

- (a) in a municipality which has a total number of 7,500 or more housing units (as determined in accordance with 760 CMR 56.03(3)(a)), the application for a Comprehensive Permit involves construction of more than 300 housing units or a number of housing units equal to 2% of all housing units in the municipality, whichever number is greater.

However, it is the opinion of Counsel that while the Board of Selectmen may weigh in with a recommendation on safe harbor, pursuant to the Regulations, the Board of Selectmen may not waive the safe harbor, only the Zoning Board of Appeals may do that. Pursuant to 760 CMR 56.03(8), if a comprehensive permit application is filed for 420 units, the Zoning Board of Appeals may 1) invoke the Large Project safe harbor and deny the project; 2) invoke the safe harbor, reserving its rights, and proceed with the hearing on the project to analyze the merits of the project; or 3) move forward with the hearing on the project without invoking safe harbor thereby "waiving" any safe harbor.

Please let me know how the Board would like to proceed with this request.