

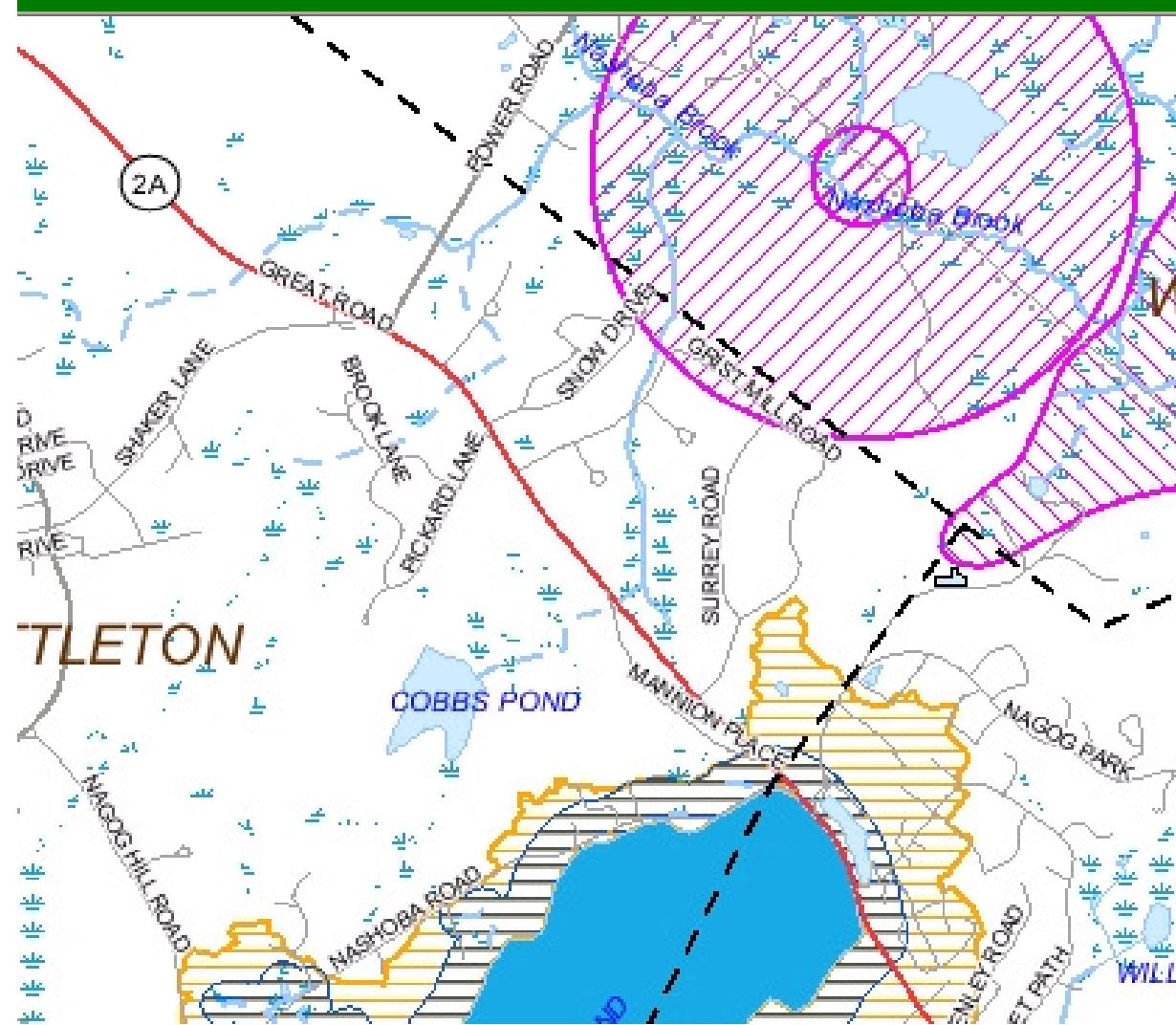
The Omni 40B Proposal: Initial Comments from the Neighbors



on Areas

DEP Drinking Water Program

Leg



2008 Priority Habitat and Estimated Habitat Natural Heritage & Endangered Species Program



Road Option A



Road Option B



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**SECOND AMENDMENT TO
DECLARATION OF PROTECTIVE COVENANTS
APPLE D'OR FARMS
LITTLETON, MASSACHUSETTS**

This Second Amendment to Declaration of Protective Covenants dated this Day of May 17, 2011 is made by the owners of a majority of the lots in the Apple D'Or Farms subdivision, Littleton, Massachusetts (the "Subdivision"), who appear as signatories below (hereinafter, the "Owners").

WITNESSETH

WHEREAS, EN-DE-CON, Inc., as owner of certain land in Littleton, Massachusetts, made a declaration of protective covenants dated July 24, 1961 and recorded with the Middlesex South District Registry of Deeds in Book 9860, Page 112 (the "1961 Covenants"), affecting (A) all of the subdivision lots shown on a plan entitled "Plan of Apple D'Or Farms in Littleton, Mass.," prepared by William J. Ford, Jr., Newton, Mass., dated March 16, 1961 and recorded with said Deeds as Plan 448 of 1961, and (B) all of the subdivision lots shown on a plan entitled "Plan of Various Lots in Apple D'Or Farms, Littleton, Mass.," prepared by Everett M. Brooks, Co., Newtonville, Mass., dated June 5, 1961 and recorded with said Deeds as Plan 1209 of 1961 (collectively, the "1961 Plans"); and

WHEREAS, the 1961 Plans were amended and the lots shown on the 1961 Plans are now shown as all of the lots on the plan entitled "Apple D'Or Farms," prepared by J.D. Marquedant & Associates, Inc., Hopkinton, Mass., dated January 3, 1999, and recorded with said Deeds as Plan 1419 of 1999 (Book 30971, Page 464) (the "1999 Plan"); and

WHEREAS, the Littleton Land Corporation, a Massachusetts corporation, as owner of sixty-eight (68) lots within the Subdivision shown on the 1999 Plan, executed a "First Amendment to Declaration of Protective Covenants, Apple D'Or Farms, Littleton, Massachusetts," on January 21, 2000, and recorded with said Deeds in Book 31073, Page 144 (the "2000 Declaration"); and

Daniel Hill
31 5th St
Charlestown, MA
02129

WHEREAS, the 2000 Declaration replaced and superseded the 1961 Covenants as to the 68 lots that comprised the "Land" as defined in said Declaration, and provides that once the Littleton Land Corporation no longer owns any of the lots in the Subdivision, the 2000 Declaration may be amended by a vote of a majority of the lot owners of record; and

WHEREAS, as of the date hereof, the Littleton Land Corporation is no longer the record owner of any of the lots in the Subdivision; and

WHEREAS, the Owners desire to amend the 2000 Declaration in order to clarify the restrictions on the use of land within the Subdivision and to remove obsolete provisions of the 2000 Declaration.

NOW THEREFORE, the Owners hereby declare and amend the 2000 Declaration as follows:

1. Following the second sentence of Section 1, the following sentence is added:

The use of a lot for "residential purposes" does not include the construction and maintenance of a road or driveway that provides access (vehicular and otherwise) to a parcel of land located outside the boundaries of the Subdivision as shown on the Plans. No lot shall be used for access to another parcel of land outside the boundaries of the Subdivision.

2. The provisions of Section 14 are hereby deleted in their entirety and replaced with "[intentionally deleted]."
3. The second sentence of Section 15 is hereby deleted in its entirety.
4. The provisions of Section 16 are hereby deleted in their entirety and replaced with the following:

AMENDMENT OF RESTRICTIONS: These covenants may be amended or terminated by the vote of the owners of a majority of the lots shown on the 1999 Plan. Each lot shall have one vote regardless of the form of ownership.

5. The provisions of Section 17 are hereby deleted in their entirety and replaced with the following:

ASSIGNMENT: The authority to enforce and amend these covenants may be assigned and delegated to an entity such as a homeowners' association, as designated in writing by the owners of a two-thirds majority of the lots shown on the 1999 Plan.

6. Section 18 is hereby amended by changing the term from thirty (30) years to ninety-nine (99) years. The term of the Declaration shall run from the date of the 2000

Declaration. The enforceability of the Declaration may require the execution and recording of notices restriction as set forth under G.L. c. 184, §27.

7. The covenants contained in the 2000 Declaration, as amended, are for the express benefit of, and are appurtenant to, the "Lots" in the Subdivision, as shown on the "Plans" (as those terms are defined by the 2000 Declaration) and run with the land.

8. This Second Amendment may be executed in counterparts.

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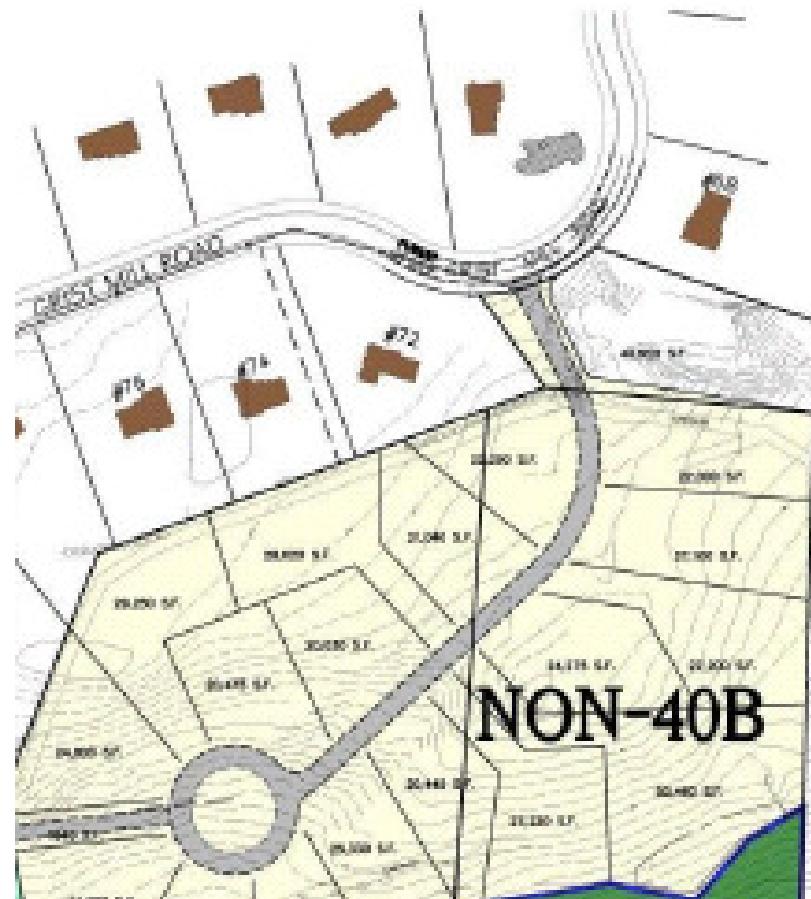
1. Following the second sentence of Section 1, the following sentence is added:

The use of a lot for "residential purposes" does not include the construction and maintenance of a road or driveway that provides access (vehicular and otherwise) to a parcel of land located outside the boundaries of the Subdivision as shown on the Plans. No lot shall be used for access to another parcel of land outside the boundaries of the Subdivision.

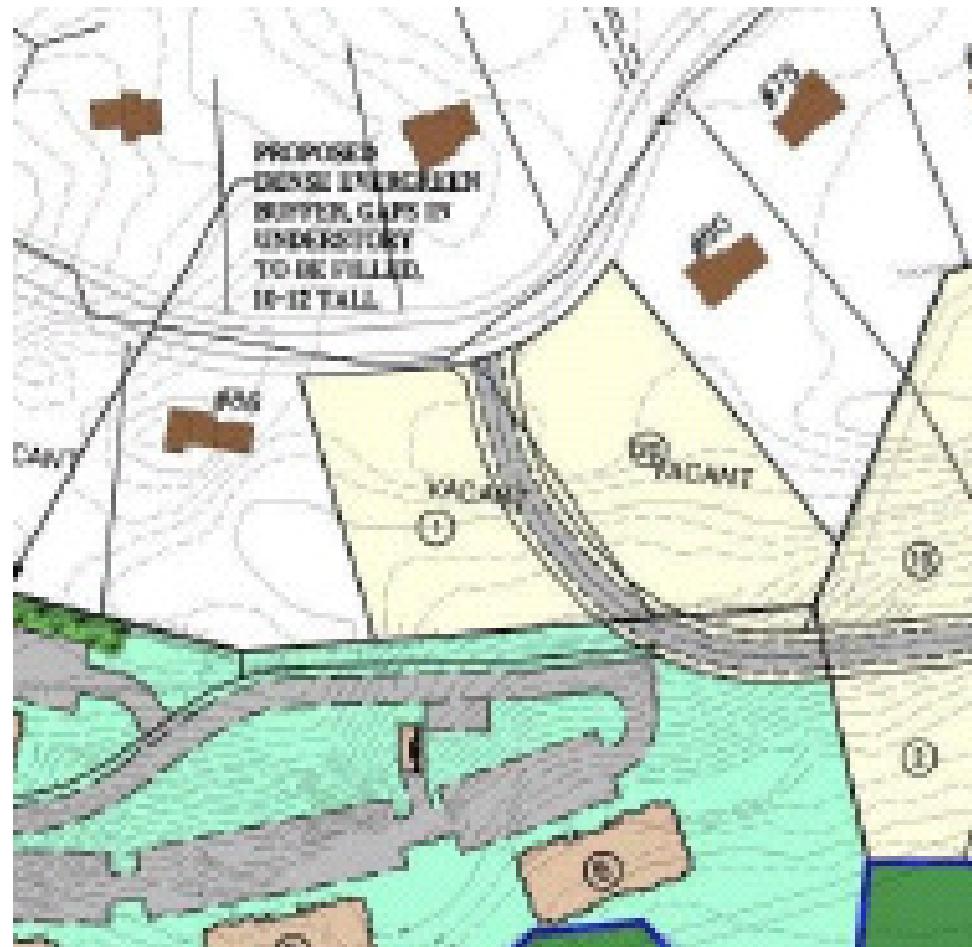
4. The provisions of Section 16 are hereby deleted in their entirety and replaced with the following:

AMENDMENT OF RESTRICTIONS: These covenants may be amended or terminated by the vote of the owners of a majority of the lots shown on the 1999 Plan. Each lot shall have one vote regardless of the form of ownership.

Road Option A



Road Option B



NFPA s. 5.1.4

5.1.4 Number of Means of Access.

5.1.4.1^a A land development shall have one or more means of access in accordance with [Table 5.1.4.1\(a\)](#), [Table 5.1.4.1\(b\)](#), or [5.1.4.2](#), whichever produces the greater number.

[Table 5.1.4.1\(a\)](#)

[Print](#)

Required Number of Access Routes for Residential Areas

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Table 5.1.4.1(a) Required Number of Access Routes for Residential Areas

Number of Households	Number of Access Routes
0–100	1
101–600	2
>600	3

Application Deficiencies

Section 4. Submittal Requirements

The applicant shall be required to submit the following information:

- (a) A detailed list of all requested exemptions to local requirements and regulations, including local bylaws and regulations;
- Omni's Waiver List requests blanket waivers from Site Plan Review and Open Space Development sections of the Zoning Bylaw – waiver request should itemize how project conforms or doesn't conform to performance standards and requirements under those sections.
- Omni's Waiver List does not include necessary waiver from Art. XVIII ("major commercial use")

Application Deficiencies

Section 4. Submittal Requirements

The applicant shall be required to submit the following information:

- (b) Preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site. All structures of five or more units must have site development plans signed and stamped by a registered architect. Structures of less than five units may submit a sketch of the matters referenced herein and in Subparagraph (c) below, which need not have an architect's signature and stamp, subject, however, to the Board's right to require architectural plans, at any time prior to or during the hearing, if deemed necessary by the Board;

•Plans do not provide dimensions or materials for impervious areas, or landscaping details.

Application Deficiencies

Section 4. Submittal Requirements

The applicant shall be required to submit the following information:

- (f) Where a subdivision of land is involved, a preliminary or a definitive subdivision plan. If a preliminary plan is submitted, the Board shall have the right to require the applicant to submit any and all information typically required on a definitive plan, if deemed necessary by the Board;

•Given the size and scale of the proposal, the ZBA should require Omni to submit “any and all information typically required on a definitive plan.”

Application Deficiencies

Section 5. Filing Fee

The application shall be accompanied by a filing fee, based on a flat fee and the number of housing units proposed:

\$1,000 base fee, plus \$100 per unit for developments with more than 10 units.

•Application fee should be \$21,000, not \$20,000.

Omni's "Regional Housing Demand" Argument

Apartment Demand

- Home ownership peaked at 69.2%
- Projected - 62-64%
- 1% decline = 1-1.2 million additional renters
- 6-7 million new renters

Omni's "Regional Housing Demand" Argument

Apartment Demand

- New household formation 500,000 – 1,200,000/year
- Changing demographics

The Relevant “Housing Need” Standard

67. However, a denial of a comprehensive permit can be justified “if the community’s need for low or moderate income housing is outweighed by valid planning objections to the proposal based on considerations such as health, site, design, and the need to preserve open space.” Town of Hingham v. Hous. Appeals Comm., 451 Mass. 501, 504, n.6 (2008) (emphasis added), quoting, Zoning Bd. of Greenfield v. Housing Appeals Committee, 15 Mass. App. Ct. 553, 557 (1983).

The Relevant “Housing Need” Standard

The regulations elaborate on the statutory balancing test: to meet its burden of proving that local concerns outweigh the regional need for housing, “a stronger showing shall be required on the Local Concern side of the balance where the Housing Need is relatively great than where the Housing Need is not as great.” 760 CMR 56.07(3) (b) (3). Thus, the regulations specifically contemplate a board presenting evidence on both the compelling “local concerns” that led to the denial of the permit, and the extent of the actual regional need for housing in the municipality.

The Relevant “Housing Need” Standard

- Littleton has a relatively high percentage of “subsidized housing” (7.8%)
- Determine actual need for subsidized rental housing by comparing “market-rate” rents in comparable rental housing developments to proposed “affordable” rent in this Project, and considering other factors such as vacancy rates, and duration of vacancies in affordable units in existing developments.