

**TOWN OF LITTLETON  
BOARD OF APPEALS**

37 Shattuck Street  
P.O. Box 1305  
Littleton, MA 01460  
Tel: 978-540-2420



**APPLICATION FOR PUBLIC HEARING**

Pursuant to MGL Chapter 40A, 40B and 41 and the Littleton Zoning Bylaws

**TOWN USE ONLY**

Received by the Town Clerk Office

**received**

*Wendy Bailey Town Clerk  
July 19 2022 8:50 AM*

The filing is not official until stamped by the Town Clerk

Filing Fee paid: \$ 506.53 Check # 4643221

Pursuant to the provisions of Chapter 40, §57 of the Massachusetts General Laws as adopted by Town Meeting 2003, this document must be signed by the Tax Collector verifying payment of taxes.

*Deborah A. Richard*  
\_\_\_\_\_  
Signature of Tax Collector

The undersigned hereby submits this petition for the following action (check all that apply):

- ☒ Appeal of Decision of Building Inspector or other administrative official (see page 2)
- ☐ Special Permit (40A) (see page 2)
- ☐ Variance (see page 3)
- ☐ Comprehensive Permit (40B) Complete additional application (see page 2)

PETITIONER: Signature

*Matthew P. Field*

Date:

7/19/2022

M&M Realty Trust

Print Name  
442 King Street

Address  
Littleton, MA 01460  
Town, State, Zip

978-486-3000

Phone #  
michael@field-development.com  
Email Address

Deed Reference: Bk 69236 Page 257

PROPERTY OWNER: include authorization of Owner for Petitioner to represent Owner, if unsigned

*Matthew P. Field*

Date

7/19/2022

978-337-6378

Phone

Print Name (if different from petitioner)  
Matthew P. Field

Email  
Matthew@onthecommonrealty.com

Address (if different from petitioner)  
12 Blood Road Littleton MA 01460

ASSESSOR MAP & PARCEL NUMBER U11 61-5 E

ZONING DISTRICT: (R) VC B IA IB (Circle all that apply)

Check box if applicable

☐ AQUIFER DISTRICT

☐ WATER RESOURCE DISTRICT

**FEES**  
Residential Property \$200 filing + \$105 recording fee + \$25 abutter list + \$176.53 public hearing notice = \$506.53  
Commercial Property \$350 filing + \$105 recording fee + \$25 abutter list + \$176.53 public hearing notice = \$656.53  
Comprehensive Permit \$1000 + \$100/unit over 10 units  
Please make check payable to Town of Littleton

## Appeal

Under MGL c. 40A §. 8

The undersigned hereby appeals a written order or decision of the Building Commissioner / Zoning Officer or other administrative official alleged to be in violation of the provisions of MGL c. 40A or the Zoning By-laws to the Board of Appeals for the Town of Littleton.

**1. From what Town Official or Board is the appeal being sought?**

*Mandatory: Attach copies of written order or decision under appeal*

Administrative Official Building Commissioner

Date of order / decision July 7, 2022

**2. Which statute or Zoning Bylaw do you rely for your appeal?**

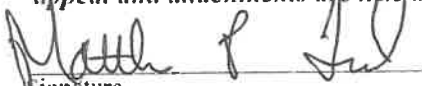
MGL c.40A § 15

Zoning Bylaw § \_\_\_\_\_

Code of Littleton § \_\_\_\_\_

*You may also consider whether you qualify for relief under any other authority of the Board to grant a Special Permit or Variance.*

**3. I hereby certify that I have read the Board of Appeals Instructions for Appellants and that the statements within my appeal and attachments are true and accurate to the best of my knowledge and belief.**

  
Signature

Matthew P F.B.A  
Print name

## Special Permit 40A

Under MGL c. 40A §. 9

The undersigned hereby petitions the Board of Appeals for the Town of Littleton to grant a Special Permit for the reasons hereinafter set forth and in accordance with the applicable provisions of the Zoning By-law.

**1. Special Permits are expressly permitted in the Zoning Bylaws. Which Zoning Bylaw section do you rely for your appeal?**

Zoning Bylaw § \_\_\_\_\_

**2. Why are you applying for a Special Permit? Attach a written statement that specifically describes existing conditions and your objectives, along with necessary exhibits as listed in the filing instructions. *You may also consider whether you qualify for relief under any other authority of the Board to grant a variance.***

**3. I hereby certify that I have read the Board of Appeals Instructions for petitioners and that the statements within my petition and attachments are true and accurate to the best of my knowledge and belief.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

See supplemental instructions: Littleton Zoning Board of Appeals Rules for the Issuance of a Comprehensive Permit under

## Special Permit 40B

Under MGL c. 40B

M.G.L.c40B

# Variance

Under MGL c. 40A §. 10

The undersigned hereby petitions the Board of Appeals for the Town of Littleton to vary, in the manner and for the reasons hereinafter set forth, the applicable provisions of the Zoning By-law.

1. Specifically, from what Zoning bylaw section are you seeking relief? \_\_\_\_\_
2. Why are you seeking relief from a literal enforcement of this Zoning Bylaw?  
*Attach a written statement that specifically describes existing conditions and your objectives, along with plans, specifications, certified plot plan and any documentation necessary to support your request.*
3. Show evidence that you meet the minimum requirements of a variance under section 173-6 B (2) of the Littleton Zoning Bylaws.  
*Attach a written statement which specifically includes why, owing to conditions (soil, shape, or topography) especially affecting the premises, but not affecting generally the zoning district in which it is located, a literal enforcement of the Zoning By-law would result in a substantial hardship to you. Applicant must clearly demonstrate the lack of alternative remedies.*
4. *I hereby certify that I have read the Board of Appeals Instructions for petitioners and that the statements within my petition and attachments are true and accurate to the best of my knowledge and belief.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

## Filing Instructions

1. **IMPORTANT: SEE THE BUILDING COMMISSIONER/ZONING ENFORCEMENT OFFICER BEFORE YOU FILL OUT THIS APPLICATION.** He will assist you with the proper zoning sections and application request(s). His review may save time by preventing delays in the hearing process.
  2. Bring the completed application packet to the Administrative Assistant to the Building Commissioner who will assist you in filing with the Town Clerk.
- Necessary Exhibits**— provide 3 copies and an electronic copy of the following with the completed application:
1. A copy of the most recently recorded plan of land or where no such plan exists, a copy of a plot plan endorsed by a registered engineer or land surveyor. The plan should show:
    - A) metes and bounds of the subject land
    - B) adjacent streets and other names and readily identifiable landmarks and fixed objects
    - C) dimensional layout of all buildings
    - D) distances and setbacks from the various boundaries
    - E) exact dimensions, setbacks and specifications of any new construction, alterations, additions or installations
    - F) direction of North
    - G) the name of each abutting property owner
  2. Copy of the latest recorded deed
  3. A written statement which details the basis for your petition
  4. Pictures, plans, maps, drawings and models are always helpful in explaining the problem
  5. In cases pertaining to signs, a scale print of the sign lettering and colors
  6. In cases pertaining to subdivisions of land, prints should show the proposed subdivision endorsed by a registered engineer or land surveyor
  7. In cases pertaining to Accessory dwellings evidence that the Board of Health has approved the septic system
  8. The date of the building construction and the history of ownership are useful in finding facts about the case

Completed applications filed with the Town Clerk by the third Thursday of the month will be considered at the next regularly scheduled Zoning Board of Appeals meeting, held on the third Thursday of the following month.

The Board in its discretion may dismiss an application or petition for failure to comply with any of the foregoing rules

# General Information

## What authority does the Board of Appeals have?

The Board of Appeals obtains its authority under the Massachusetts General Laws Chapter 40A §14 and the Town of Littleton's Zoning By-law 173-6 to hear and decide *appeals*, to hear and decide applications for *Chapter 40A special permits*, and to hear and decide petitions for *variances*. The Board of Appeals also hears and decides applications for *special permits for low and moderate income housing under Massachusetts General Laws Chapter 40B Sections 20, 21, 22, and 23*.

## What is an Appeal?

Pursuant to Massachusetts General Laws Chapter 40A §8 and Littleton Zoning By-law 173-6 B(3) and 173-6 B(5) the Board of Appeals hears and decides appeals by any person aggrieved by any written order or decision of the Zoning Enforcement Officer or other administrative official in violation of any provision of Massachusetts General Laws Chapter 40A or the Littleton Zoning By-laws. Building permits withheld by the Building Commissioner acting under MGL C. 41, §81Y as a means of enforcing the Subdivision Control Law may also be issued by the Board of Appeals. Action taken by the Building Commissioner acting under the Code of Littleton Chapter 152 will also be heard by the Board of Appeals. *If the Zoning Enforcing Officer or other administrative official does not issue a written order or decision, the Board of Appeals will not hear the appeal.* Appeals from the written decisions of the Zoning Enforcement Officer or other administrative official must be filed with the Office of the Town Clerk pursuant to Massachusetts General Laws Chapter 40A Section 15 within thirty (30) days from the date of the written order or decision which is being appealed. **Failure to file a timely appeal is fatal.**

## What is a Chapter 40A Special Permit?

Certain uses of property are permitted as a matter of right. However, the Littleton Zoning By-laws provide that other uses are not allowed in certain zoning districts, and that specific types of uses shall only be permitted in specified zoning districts upon the issuance of a Special Permit from the Board of Appeals pursuant to Massachusetts General Laws Chapter 40A § 9, 9A, and 9B. Special Permits may be issued only for uses which are in harmony with the general purpose and intent of the By-law, and may be subject to general or specific provisions set forth therein, and such permits may also impose conditions, safeguards and limitations on time or use. A Special Permit, unlike a Variance, may be conditioned by limiting its duration to the term of ownership or use by the Applicant. When a Special Permit application is accompanied by plans or specifications detailing the work to be undertaken, the plans and specifications become conditions of the issuance of the permit. Therefore, once a Special Permit is granted, modification of the plans or specifications require as a prerequisite, modification of the Special Permit through the filing of a successive Special Permit application. No building permit may be issued by the Building Commissioner for a use or structure that requires a Special Permit until **1) a Special Permit has been granted by the Board of Appeals, 2) the expiration of the twenty (20) day appeal period pursuant to Massachusetts General Laws Chapter 40A Section 11, and 3) the Special Permit has been recorded at the Middlesex South District Registry of Deeds.** The Building Commissioner shall require proof of recording at the Registry of Deeds from the Town Clerk prior to issuance of a building permit. No party is entitled "as a matter of right" to a Special Permit. The Board of Appeals, in the proper exercise of its discretion, is free to deny a Special Permit even if the facts show that such a permit could be lawfully granted. **Special Permits 40A shall lapse 24 months following the granting unless substantial use or construction has commenced.**

## What is a Chapter 40B Special Permit?

Chapter 40B is a state statute, which enables local Boards of Appeals to approve affordable housing developments under flexible rules if at least 25% of the units have long-term affordability restrictions. Also known as the Comprehensive Permit Law, Chapter 40B was enacted in 1969 to help address the shortage of affordable housing statewide by reducing unnecessary barriers created by local approval processes, local zoning, and other restrictions. Its goal is to encourage the production of affordable housing in all communities throughout the Commonwealth. **Special Permits 40B shall lapse 3 years from the date the permit becomes final unless construction authorized by a comprehensive permit has begun, or unless specifically noted otherwise in the permit by the Board of Appeals.**

## What is a Variance?

A Variance is a waiver of the zoning rules adopted by the Citizens of Littleton at Town Meeting. A Variance may be granted pursuant to the Littleton Zoning By-laws and Massachusetts General Laws Chapter 40A Section 10. Accordingly, it is only in rare instances and under exceptional circumstances that relaxation of the general restrictions established by the Zoning By-laws are permitted. A Variance is distinguished from a Special Permit. The Variance is used to authorize an otherwise prohibited use or to loosen dimensional requirements otherwise applicable to a structure. No person has a right to a Variance. *Variance of "use" is almost never granted by the Board of Appeals. Variance of "dimensional" requirements is granted in rare occasions.* **The Board of Appeals has no discretion to grant a Variance unless the petitioner provides evidence, and that the Board of Appeals determines that, owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.** Even if the Board of Appeals find that such hardship exists, it may exercise its discretion and not grant a Variance. No building permit may be issued by the Building Commissioner for a use or structure that requires a Variance until **1) a Variance has been granted by the Board of Appeals, 2) the expiration of the twenty (20) day appeal period pursuant to Massachusetts General Laws Chapter 40A Section 11, and 3) the Variance has been recorded at the Middlesex South District Registry of Deeds.** The Building Commissioner shall require proof of recording at the Registry of Deeds from the Town Clerk prior to issuance of a building permit. **Rights authorized by a Variance must be exercised within 1 year of granting, or said variance shall lapse.**

RECEIPT

|   |          |  |           |
|---|----------|--|-----------|
| DATE <u>7/19/2022</u>                     |          | No. <u>335817</u>                      |           |
| RECEIVED FROM <u>M&amp;M Realty TRUST</u> |          | <u>\$506.53</u>                        |           |
| <u>Five hundred six</u>                   |          | <u>53/</u> DOLLARS                     |           |
| <u>Filing fee</u>                         |          |  |           |
| <input type="radio"/> FOR RENT            |          | <input type="radio"/> CASH             |           |
| <input type="radio"/> FOR                 |          | <input checked="" type="radio"/> CHECK |           |
| ACCOUNT                                   |          | FROM                                   | TO        |
| PAYMENT                                   | <u>X</u> |  |           |
| BAL. DUE                                  |          | BY <u>4643221</u>                      | <u>10</u> |
|   |          | adams<br>1182                          |           |

**WRITTEN STATEMENT**  
**IN SUPPORT OF APPEAL**





JENNIFER C. PLATT  
[jplatt@andersonkreiger.com](mailto:jplatt@andersonkreiger.com)  
T: 617-621-6528  
F: 617-621-6628

July 18, 2022

**VIA HAND DELIVERY**

Sherrill Gould  
Chair, Zoning Board of Appeals  
Town of Littleton  
37 Shattuck Street, Room 302  
Littleton, MA 01460

Re: *Appeal of Order of Building Commissioner re: EAU19/20 Dean Lane*

Dear Chair Gould:

Our client, Matthew P. Field and Michael S. Field, Trustees of the M&M Realty Trust, is appealing a written order of the Building Commissioner, pursuant to G.L. c. 40A, §§ 8, 15 and Zoning Bylaw 173-6. On July 7, 2022, at the direction of the Planning Board, Building Commissioner Ed Mullen issued a written determination via the Town's ViewPoint Cloud system, putting a hold on the previously-issued building permit for M&M's property at EAU19/20 Dean Lane, in the Couper Farm development. Commissioner Mullen's order stated two reasons for the hold: first, it erroneously stated that the unit at EAU19/20 Dean Lane must be built as an affordable unit; second, it erroneously stated that no action had been taken on the building permit, which was originally issued in April 2021 and amended May 2022. The Building Commissioner's written determination is enclosed with this letter.

**1. EAU19/20 Dean Lane is not an affordable unit.**

M&M is currently in the process of constructing EAU19/20 Dean Lane, as part of its Couper Farm/Dean Lane development. The two EAUs were combined into a single building lot. This is the last unit to be built at the development. When the Couper Farm development was originally permitted in 2019, M&M agreed to provide four affordable units. Note, that while the Special Permit dated March 16, 2017 does not specifically require *any* affordable units, M&M agreed to provide 4 affordable units (including the farm house) consistent with the Over 55 Housing Development bylaws then in place. By agreement with the Select Board and Planning Board, M&M agreed to renovate and make habitable the existing farm house on the property, which was in derelict condition, and deed it to the Town and in exchange, the Town agreed to count the

farm house toward the affordable units in the Couper Farm development. The Planning Board minutes from October 2, 2019, enclosed with this letter, describe the agreement. By early 2020, M&M had finished construction on the three new affordable units, and had renovated the farm house and delivered the deed for the farm house to the Select Board, thereby fulfilling all of its affordable housing obligations with respect to the development.

After a site visit through the renovated farm house, representatives of the Town decided it would be beneficial to the Town to take a monetary contribution rather than managing the farm house as an affordable property. In May 2021, M&M and the Select Board modified their agreement and amended the Host Community Agreement (“HCA”) governing the Couper Farm development. Pursuant to that amendment, which is also enclosed, M&M made a contribution of \$350,000 to the Town’s Affordable Housing Trust in exchange for the Town returning the deed to the farm house to M&M. The HCA amendment reflects that the monetary payment is in lieu of contributing the farm house to the Town for affordable housing purposes. The monetary contribution took the place of the farm house as part of the affordable component of the Couper Lane development. The Town returned the deed for the farm house in exchange for \$350,000 in June 2021.

The Planning Board, through the Building Commissioner, is now apparently claiming that M&M must construct an additional affordable unit at Dean Lane, in addition to the three it has already built and the \$350,000 payment, in order to comply with the development’s special permit. There is no basis for that claim, given that M&M has already fulfilled all of its affordable housing obligations with respect to Couper Farm.

In summary, to satisfy their affordable housing obligations relating to Couper Farm, M&M originally agreed to provide four affordable units. Both the Town and M&M later agreed to modify that agreement so that M&M instead built three units and renovated the farm house and deeded it to the Town for affordable housing purposes, which it did. After delivery of the deed for the farm house, the Town and M&M subsequently agreed to return the deed for the farm house in exchange for a contribution of \$350,000 to the Town’s Affordable Housing Trust. M&M had satisfied all of those obligations as of early June 2021, when it delivered the \$350,000 check to the Town. There is therefore no requirement that EAU19/20 Dean Lane be built as an affordable unit, and the Building Commissioner’s determination is in error.

## **2. M&M performed sufficient site work to avoid a lapse of the building permit.**

The Building Commissioner’s determination also states: “In addition the permit was issued in April 2021 with no action taken.” M&M understands this to mean that the building permit for EAU19/20 Dean Lane has lapsed because the work authorized by the permit was not commenced within 180 days. *See* 780 CMR 105.5. That contention is incorrect for two reasons. First, after the building permit was issued in April 2021, M&M performed site work, including grading, drainage, dug the foundation and installed the septic system that EAU19/20 will share with a neighboring unit. Due ground water issues on site, in October – December 2021, M&M installed French drains and refilled the foundation hole to allow for a revised house plan. That work is more than sufficient to constitute commencement of construction and avoid lapse of the building



permit. Moreover, in May 2022 M&M submitted revised plans for EAU19/20 designed to work better with the onsite septic system. This amended permit was approved in May 2022, less than 60 days ago.

### **3. Conclusion**

There is no basis for the Building Commissioner's order, and it should be overturned. The order has already caused one prospective purchaser to walk away from EAU19/20 Dean Lane after being told by the Planning Office that this is an affordable unit. M&M has construction equipment on site, and further delays will add to the damages that they are incurring.

Sincerely,



Jennifer C. Platt

*Enclosures*

Cc: Matthew P. Field (by email)  
Michael S. Field (by email)

# **PLAN OF LAND FOR DEAN LANE**

1000  
 1000  
 1000

2. THESE LOCATIONS HAVE BEEN DETERMINED BY AN ON THE GROUND SURVEY.

[illegible]

● 中国书画函授大学肇庆分校建校二十周年纪念册

THIS PLAN FULLY AND ACCURATELY REFLECTS THE LAYOUT, LOCATION, DIST AND NUMBER DIMENSIONS, APPROXIMATE AREA, TO WHICH THE UNITS HAVE ACCESS, AS BUILT.

THE PROPERTY LINES SHOWN HEREON AND THE LINES DIVIDING EXISTING OWNERSHIP AND THE LINES OF THE STREETS AND WAYS SHOWN ARE INSTEAD OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OF WIDE WAYS ARE SHOWN.

THE CERTIFICATION SHOWN HEREON IS INTENDED TO MEET REQUIREMENTS OF DESIGN REQUIREMENTS AND NOT A CERTIFICATION TO THE TITLE OR ADEQUACY OF THE PROPERTY'S SHOWN VALUES OR ADEQUACY OF THE PROPERTY'S SHOWN VALUES. ALL PROPERTY VALUES ARE SHOWN ACCORDING TO THE CURRENT MARKET CONDITIONS.

THIS PLAN HAS BEEN PREPARED IN CONFORMITY  
WITH THE RULES AND REGULATIONS OF THE  
REGISTERS OF DEEDS OF THE COMMONWEALTH OF  
MASSACHUSETTS

## PROFESSIONAL LAND SURVEYOR



GRAPHIC SCALE

100 200 300 400 500 600 700 800 900 1000

677 of 2021 1/3

CONDOMINIUM SITE PLAN  
SHOWING EXCLUSIVE USE  
AREAS  
DEAN LANE CONDOMINIUM  
DEAN LANE, LITTLETON, MASSACHUSETTS

**M+M REALTY  
TRUST**  
442 KING STREET  
LITTLETON MASSACHUSETTS

P.O. BOX 967  
 AUSTON, MASSACHUSETTS 01720  
 TEL: 978-666-9607

**AB1**

# **RECORDED DEED FOR DEAN LANE**

J3



2017 00066058

Bk: 69236 Pg: 257 Doc: DEED

Page: 1 of 3 05/04/2017 02:06 PM

## QUITCLAIM DEED

**ON THE RAIL FARM CO., INC.**, a Massachusetts Corporation with a principal office located at 390 Goodrich Street, Lunenburg, Worcester County, Massachusetts,

for consideration paid and in full consideration of **SIX HUNDRED THOUSAND AND 00/100 (\$600,000.00) DOLLARS**

grant to **MATTHEW P. FIELD** and **MICHAEL S. FIELD**, Trustees of **M&M Realty Trust**, under Declaration of Trust dated June 30, 2011, a Certificate of which is recorded with the Middlesex South District Registry of Deeds in Book 57086, Page 36, with an address of 442 King Street, Littleton, Middlesex County, Massachusetts 01460

### *with Quitclaim Covenants*

A certain parcel of land on the Easterly side of Goldsmith Street, in Littleton, Middlesex County, Massachusetts, Northeasterly of Laurel Street so-called and more particularly bounded and described as Parcel B on a plan entitled "Definitive Subdivision - Open Space Development 'Wellington Drive' Goldsmith Street, Littleton, MA" dated May 30, 2016, as revised September 16, 2016 and April 4, 2017, Markey & Rubin, Civil Engineers, Scale 1" = 40', which plan is recorded with Middlesex South District Registry of Deeds in Plan ~~Book # 408~~, ~~Plan No. of 2017~~, Parcel B is shown on Sheet 6 of 15, denoted "L2" on said plan, and contains 328,819 square feet± of land according to said plan.

This sale does not constitute a sale of all or substantially all of the assets of the Corporation.

This is undeveloped land and therefore no one is entitled to a homestead exemption on this property.

Being a portion of the premises conveyed to Grantor by Deed dated October 17, 2012, and recorded with the Middlesex South District Registry of Deeds in Book 60279, Page 162.

MASSACHUSETTS EXCISE TAX  
Southern Middlesex District ROD # 001  
Date: 05/04/2017 02:06 PM  
Ctrl# 264152 18392 Doc# 00066058  
Fee: \$2,736.00 Cons: \$600,000.00

8

Property Address: 120 Goldsmith St., Littleton, Massachusetts 01460

aka Wellington Drive, Parcel B, Littleton, MA

Executed as a sealed instrument this 3d day of May, 2017.

**ON THE RAIL FARM CO., INC.**


  
By: **WILLIAM D. CHISHOLM**, President

**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, ss.

May 3, 2017

On this day, before me, the undersigned Notary Public, personally appeared the above-named **WILLIAM D. CHISHOLM**, President of On the Rail Farm Co., Inc. as aforesaid, who proved to me through satisfactory evidence of identification, which was the presentation of a driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.

  
Notary Public:  
My Commission Expires:





Executed as a sealed instrument this 31 day of May, 2017.

ON THE RAIL FARM CO., INC.

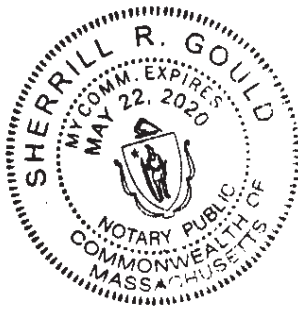
By: *Kim F. Tarky*  
KIM F. TARKY, Treasurer

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

*May 3*, 2017

On this day, before me, the undersigned Notary Public, personally appeared the above-named **KIM F. TARKY**, Treasurer of On the Rail Farm Co., Inc. as aforesaid, who proved to me through satisfactory evidence of identification, which was the presentation of a driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.



*Sherrill R. Gould*  
Notary Public:  
My Commission Expires:

## BUILDING COMMISSIONER'S JULY 7, 2022 ORDER

1:36

5G

littletonma.viewpointcloud.com



Town of Littleton, MA



Foundation

Not Inspected

Insulation

Not Inspected

Rough

Not Inspected

EM

Ed Mullen

Jul 7, 2022 at 12:30 pm

The Building Division has been informed this building will need to be built as an affordable unit to comply with the special permit granted by the Planning Board. In addition the permit was issued in April of 2021 with no action taken, this permit is on hold until we receive conformation from the Planning Board the special permit is complied with.  
Commissioner Ed Mullen

Ask a question about this

Send Message

## PLANNING BOARD MINUTES 10/02/2019

**PLANNING BOARD MEETING  
WEDNESDAY OCTOBER 2, 2019 AT 6:30PM  
ROOM 103  
37 Shattuck Street Town Offices**

**Members Present:** Ed Mullen, Chair; Anna Hueston, Vice Chair; Delisa Laterzo, Clerk; Mark Montanari, Member.

**Also Present:** Maren Toohill, Town Planner, and Nina Nazarian, Town Administrator.

**Absent:** Gerald Portante

The Pledge of Allegiance was recited and the meeting started at 6:30 P.M.

**1. Board Business:**

**A. Public Input:** Mark Rambacher, chair of the board of library trustees presented an update on the library parking proposed for the new library building; the current plan, within the scope of what is being proposed inside the budget is the addition of 16 parking spaces, to be located near the tennis courts. There are currently 129 spaces in the parking lot. The total with the new spaces would be 145. The spreadsheet distributed to the board shows 13 hours of overlap between activities/operations for the 3 areas, Town Hall, COA and Library. Therefore, expects there would be good use of the additional parking area. According to the architect's evaluation of the parking lot, there could be islands added and the lot re-stripped to get a total of 166 parking spaces, or 172 spaces without islands. The current work scope is for 16 spaces only, not the possible additional ones.

Mullen asked: how many additional spaces were included in the grant request?

Reply: not sure, will find out. Will appear before the PB after town meeting.

Currently in the design stage, the documents are ~ 80% complete. The other major addition is redoing the fire road. That is now part of the project scope, and in the budget, approximately \$125,000. That was a requirement of the fire department.

**B. Board Member Updates:** Montanari asked for more information regarding the senior housing community proposed for the Gruskowski property. Toohill explained that the Senior Co-Housing group has hired an attorney, an engineer, and construction oversight company and are at the planning stages. The application will likely be submitted to the PB under the Senior Residential Development bylaw as last amended. One of the items to be addressed will be the number of affordable units that are required. Hueston asked for an update on the 5G October meeting. Montanari indicated it is scheduled for November

**C. Bills and Payroll:** Reviewed and approved. Mullen moved to approve, Hueston seconded. Motion passed.

**D. Minutes: September 4, 2019:** Mullen motioned to approve the minutes as written, Hueston seconded it. Motion passed.

**E. FY21 Budget Process:** Toohill indicated the budget process is ongoing. Will distribute it to the board for review before it is due. Hueston presented the master plan road map to the board members for review, and indicated it contains items pertaining to the PB. Asked the board to consider if it will be working on master plan items in that fiscal year (2021). Other items relate to the Train Station Area, Housing, and Open

Space TDR. Those are items from the master plan that the board needs to consider and add to the budgeting process. Also for discussion, additional staff needed by Toohill, a planner assistant. Mullen recommended surveying other small, fast growing towns to determine how they are staffed. Collect data for supporting argument to the request for additional staff. Hueston and Laterzo will conduct the informal survey. Toohill will outline the current PB projects and estimated budget for each.

**F. Assabet Regional Housing Consortium** – There is a proposed inter-municipal agreement that will be going to the board of selectmen. Toohill drafted a letter of support from the planning board, to be signed by Mullen and sent to the selectmen. Cost to participate is an initial \$350, and \$5000 annually, for 3 years. That cost covers service from the housing consultant.

**G. Plans to sign:** The board approved the lot release for Jones Meadow.

The meeting adjourned for Public Hearings.

## **2. Continued Zoning Bylaw Public Hearing; Form Based Code for Littleton Common -**

The Public Hearing reopened. Hueston provided updates; at the last PB meeting on 9/4, the board decided to delay the vote on Form Based code (FBC), due to additional questions that needed to be addressed. Since then, Utile has updated the draft with responses to some of the questions, but not all, as some still need work.

With the latest draft of the FBC submitted 9/27 their contract is fulfilled, but there still needs to be work on the FBC to get it to town meeting. There are a couple of options, assuming we want to continue working with Utile:

1 - Take a look at their presented proposal. A couple of more visits are needed to Littleton, as well as site specific test fits for the larger buildings that were of concern the last time around.

2 - Preparing for town meeting and updating the code itself. Utile added some hours for the town meeting, as they planned on conducting the presentation at town meeting, but the board thinks it's better to do that themselves.

If the work they outline in their proposal is done, it represents an additional \$18,000. 2 ways to potentially pay for it: there are funds remaining for implementation of work not yet done. Additionally, Littleton received a \$50,000 grant but not all necessary information on that grant is available yet, to determine if the money will be used for this.

Critical: in order to move forward on FBC and be ready for spring town meeting, a draft must be completed by and heard in January, because there is a 90 day time frame. Toohill: if we target to have a draft for January, we will be on track for the spring town meeting.

Laterzo asked when the board will know more about the \$50,000 grant. Toohill replied that the delay is just getting the contract from the state. The money will be split between fiscal years 2020 and 2021.

Not sure yet which items will be in fiscal year 2020 and which in 2021. In the past, the town had liberty to decide how to expend the funds, as long as it addressed the issues in the application. Can't presume it's the same for contracting services.

Montanari asked about the \$13,000 for town meeting - if the board is going to do the presentation themselves, why is that money being spent? Response from Hueston – that would be for preparing the documentation as well as preparing the boards.



Hueston explained that there are various stakeholder groups in Littleton. The board had the opportunity to meet with people and share information about FBC in smaller group settings, to be able to have their questions answered directly by Utile, so that all input would be available as they prepare the final version of the code. Mullen asked for an example of a small stakeholders' engagement. Reply from Hueston: For example, the Littleton Business Association (LBA) being able to actually have a meeting with that particular group and all of its members, especially given the fact that a lot of the business members might very well have a business in the common. The board discussed the funding options and noted that the \$50,000 is a new grant.

Mullen added that would give the board an opportunity to create a document that's close to what it hopes it would be, with the time and money available now. The goal is to see a completed perfect draft in January, and get it on to the spring town meeting. Indicated he is in favor of the \$18,000 the board is hoping to use to continue. Need to get the information to the stake holders groups, and their input.

Toohill stated there are no new funding requests. There is funding left over to be used for Master Plan Implementation. MPIC is very much onboard with this process. The funding will be augmented with the Planning Assistance Grant funds that were just announced recently.

Hueston asked: do we continue this hearing, or close it and open a new one? Reply from Toohill: it is the board's decision. There is always a concern with leaving a hearing open to long, as it could cause administrative glitches. If we pick a date in January and don't meet that night, will need to re-notice. It would be cleaner to close and notice a new hearing as we get closer.

After further discussion, it was decided to continue the Public Hearing to the meeting on January 9<sup>th</sup>, 7:30. Hueston moved to continue the hearing until Thursday, January 9<sup>th</sup>, at 37 Shattuck Street. Montanari seconded. All in favor. The meeting reopened.

3. **Wellington Drive – Definitive Open Space Subdivision:** Applicants Steve Marsh from Wellington Drive, Jim DiAugustine.

Mullen stated the board did a site walk and looked at the developers' work regarding water connection to the subdivision road. Mr. Marsh provided an overview of work completed, stating that the road base is in, land clearing has occurred, the stumps have been removed from the site, and an area for the septic system has been prepped. The only incurred delay in this process was approval from the board of health (BOH). Asked the applicants if they have received approval from the BOH. Reply: they have not. The attorney for Wellington drive will speak with Jim Garreffi, the BOH agent to get a status update.

Mullen clarified the previous question was whether or not they had acted on the special permit the PB granted for open space subdivision. He thinks they have.

Hueston explained that condition 6, regarding building the roadway, is being hampered due to the lack of BOH permit. Applicants confirmed. They are stalled because in order to do the project, they want to do the drainage and the septic, build the houses and then build the road. Not asking to waive condition 6. Applicants' position is that their permits are still active and valid. PB position is that the permits have expired and run out. That's the issue. They are still working there, until they receive a stop work order, or something from PB stating "don't work anymore". Indicated they have 48 months to do the project, and it is not their fault the PB is delaying them. Feel they have done everything they can to expedite

it, and are anxious to get to work. Hueston clarified the permits might still be valid, but the condition isn't that, but rather for the roadway. Applicant reiterated they have 48 months to do it.

Hueston asked for information regarding the walking trail that currently connects to Couper Farm. Received reply that: If anything happens on that trail, is it incumbent on the town to go through National Heritages and Conservation. Will have to file with DEP and possibly with the Army Corps of Engineers, since there is a stream there. Mullen and Toohill assured it will not be a hard process.

Hueston also asked for clarification on the expired Conservation Commission approvals. Received confirmation that they have been extended. Mullen asked that they get a copy from the Conservation Commission.

Mullen stated his opinion that their permits are still active and they are still in compliance with the special permit conditions. Laterzo and Hueston agreed. Montanari disagreed. Mullen asked for a vote. 3:1 in favor.

Mr. Marsh indicated they would like to do the trail, if someone files for the permits (Rick Findlay), since it is easier if someone other than the developer files for the permits. Would be willing to rub out and stone dust the trail, and buy the bridge parts, if the town can find someone else to do the bridge.

Mullen proposed a motion to state for the record that the planning board is supporting the developers in their opinion that they are in compliance with their special permit. Hueston moved, Laterzo seconded. Approved 3:1. Montanari opposed.

Mr. Marsh stated they would upgrade the trail as discussed.

4. **Continued Public Hearing; Healy Corner Definitive Open Space Subdivision, Special Permit, and Joint Public Hearing with Tree Warden for Scenic Road Review – 195 Tahattawan Road – 17 lots:** Mullen requested a motion to immediately continue to October 21<sup>st</sup> with no testimony. Hueston moved to continue the Healy Corner meeting to October 21<sup>st</sup> in the Shattuck Street Town Offices. Laterzo seconded. All in favor, 4:0.
5. **Couper Farm Estates – Deed for Farmhouse / Affordable Units:** Jennifer Platt, and Matthew Field present.

Update: Open space development on great Road, started in 2015 continued through 2016 on a host community agreement. Ongoing interactions with the PB, the BOS and the town to come up with an agreeable plan. This is a 34 acre development, 22 acres of which were given to the town as open space. That gift was made over a year ago and includes all the frontage of the property as well as a very large parcel of woodland in the back as open space.

One of the other gifts the applicants agreed to give to the town was the existing farm house. In the host community agreement it would say "this is being given in memory of the Couper family, to the Littleton Housing Authority or Habitat for Humanities for affordable housing for a DHC eligible family or other such public use as determined by the town, which is so long as it is not detrimental to the development". That for such other use was put in there at the request of the BOS, to give them some flexibility just in case affordable housing wasn't what they wanted to use it for.

The house at that time, when first approved, was in a derelict shape, filled with garbage, and with graffiti on the walls. The current resident wasn't happy about being asked to leave.

There has been a fair amount of work done to that house. It isn't yet ready for a new family, but it has come from a very bad condition to habitable. It was used by a member of the construction team during the development process, as had been previously discussed with the PB. Needed to have someone on site, as manager as well as just having someone in that house, rather than having a third party there while construction was ongoing. The property deed was delivered to the town in May 2019.

The issue for discussion today is counting that house as an affordable unit. In the 55 and over component of the project, those houses cannot count as part of the Littleton Affordable Housing Inventory because they are age restricted. The house up front can, because there is no age restriction on it.

Since the very first discussions and offer to purchase the property from the seller, it has been the developers' intent to have that house counted as an affordable housing unit towards the overall development's affordable housing count. Of the total units for 55 and over being developed, 6 have been built. One of them is affordable and is ready to be marketed. The developers have been working with the town and the affordable marketing agency, the MCO, to get the lottery and the marketing packages ready. That's finalized. It will be put out for the lottery this month, contingent on sign offs from the town.

If construction goes according to plan, the next affordable unit will be coming up in mid-December, followed by another one in January. The existing farm house is not move in ready. The developer has delivered the deed, and is willing to put some work into that if the board agrees to use it for affordable, to make it ready to be marketed. Mr. Field indicated they have had vandalism in the house, such as broken windows. The house was vacated at the select board's request, and has been empty since May. The developer would like to get it used, preferably by a family for affordable housing purposes. If the town is not going to accept that, they want to at least get it rented, so it's not derelict.

Joe Knox, Board of Selectmen: would the work you are willing to do to make it go quicker, include landscaping? Mr. Field replied that yes, they will do that and make it look nice. Will not however, rehab the entire house. That was not the agreement. Knox indicated the state of the fields is a concern. Suggested to have someone take care of the farming, to avoid the fields becoming derelict. Mr. Field replied that the fields are not looking derelict, and are being maintained by Mr. Pickard.

Mullen returned to the affordable component itself, how that works out in the developer's count for the development and what was the original agreement with the town. Chuck DeCoste, BOS member indicated that there is nothing that ties the Host Community Agreement (HCA) to any affordable units, from the HCA component. The house is in disrepair. The house is being vandalized and if it isn't occupied soon, it is going to fall into greater disrepair. If the board can make a deal where applicants clean it up, then it is above and beyond what we would expect. Mr. Field stated he is willing to do that.

Chase Gerbig, BOS asked for a written agreement of what the applicants are willing to do. Mr. Field agreed to it.

Montanari stated the house is part of the HCA, doesn't relate to affordable housing. Asked: if Mr. Field does what he is asked to do, who gets the house? Gerbig indicated he would be willing to exchange. In exchange for the developer doing some substantive improvement to it, BOS would be willing to give the developer the credit for it and count it as an affordable unit. Not give them the house, but count it on the inventory.

Montanari clarified that the town would take it over and expressed that if it will be counted as an affordable unit, it will be expected to be in moving in condition. Asked who is going to maintain it.

Laterzo asked: if it's not made habitable, how can it be counted affordable? Mr. Field replied that it is habitable. Laterzo continued: if we don't grant you that, and it doesn't go toward the affordable unit count, does that then mean you have to give us another affordable unit elsewhere? Reply from Montanari: if they don't give the town that house as an affordable unit, they will just give it to the town as is, as part of the HCA. Reiterated he wants to be clear on what the town is getting, to avoid having to revisit the issue further.

Mr. DeCoste explained that when BOS agreed to allow the developer's representative to live in that house from a security basis, and to keep an eye on the development, there was quite an investment made to make the house habitable. If we sign the deed, and take possession of it, the HCA states that it will be a house for Habitat for Humanity, affordable housing through the HCA, or for other purpose as we see fit. If the town takes it over, and the developer does spruce up the landscaping, than it is up to the town, if we are going to make it an affordable unit, to bring in a contractor to see how much it would cost to make it habitable.

After some discussion regarding rehab work, Mr. Fields asked and Mullen agreed to be a liaison for the boards and advise the town and the developers on the home status and determine a dollar amount to fix it. Indicated they need to identify how the developer gets paid or other concessions are made to offset the expenses.

Gerbig commented: the expectation is that the quid pro quo here is that for it to be counted as an affordable unit, the rehab work is on the developer. That's the only way this works, otherwise we are breaking state law by circumventing the prevailing wage. With the exception of the septic. Bring it up to board standards and do the outside work and landscaping, and in exchange for that BOS would be willing to count it as affordable inventory on behalf of the developer.

Mr. Field indicated the deal made with the seller was that the house would be counted as an affordable unit. DeCoste explained that the HCA, based on the sellers' wishes, was for the house to be used for a Habitat for Humanity's house, or an affordable unit. Mr. Field reiterated that was part of the affordable component.

DeCoste continued: there were no affordable units counted on the HCA. What the board is trying to do now is the quid pro quo. They are willing to count it as an affordable unit if it is delivered in habitable condition.

Mullen proposed that the boards' chairs and Mr. Field go out and take a look at the house. Create a solution from there. Will come back and state that per their investigation, with Mr. Field's input, they can get to an agreeable number that makes the house habitable for rent for an affordable unit, to be counted in the development.

Gerbig requested to see an informal list of repairs that everyone is aware of and can agree on. Review the scope of work, and take a vote on it then.

Mullen indicated they will continue the conversation and post it on the select board's meeting agenda after they've reviewed the work to be done.

Ms. Platt asked for a PB vote, contingent on the BOS.

Mullen proposed a motion to accept the house as a count on the affordable units in the Couper Farm Development, once the definition of habitable is agreed upon by the BOS, with exception of the septic. Montanari seconded. All in favor.

6. **Voter Petition: Zoning bylaw amendment – vote to schedule public hearing:** Toohill explained the petition is request Town Meeting vote to prohibit or further limit the retail sale of marijuana in the town by amending certain provisions of the zoning bylaw. It would limit retail establishments for adult use marijuana in Littleton. The town has a policy in place to not accept voter petitioned articles closer than 90 days to town meeting. The selectmen have 2 weeks to forward the petition to the planning board. The planning board has it now, about 1 month before town meeting.
- The question for the planning board is: do you schedule it, and if you chose to do so, when do you schedule a public hearing on this issue?
- Laterzo recused herself.
- Montanari asked if it can be heard at the next meeting, October 21<sup>st</sup>.
- Mullen indicated he is not in favor of scheduling a public hearing at this point because the board is decreased by 2 members.
- After further discussion, Montanari made a motion to schedule a Public Hearing on the voters' petition for the proposed bylaw amendment for Monday, October 21<sup>st</sup>. Publish the notice for resident review before town meeting on the 28<sup>th</sup>. Hueston seconded. Approved 2:1. Mullen opposed.

ADJOURN – Mullen motioned to adjourn, Montanari seconded. Meeting adjourned at 8:40 PM.

The next meeting is scheduled for October 21, 2019.

**DOCUMENTS: (location – attached unless otherwise noted)**

Agenda

Public Attendance Sign-in Sheet

Library Parking:

Sketch

Hours/Activity worksheet

# AMENDMENT TO HCA FOR COUPER FARM



## **AMENDMENT TO HOST COMMUNITY AGREEMENT**

WHEREAS the Town of Littleton (the "Town"), acting by and through its Select Board, and Michael S. Field and Matthew P. Field, Trustees of M&M Realty Trust with its principal place of business at 442 King Street, Littleton, Massachusetts 01460, on behalf of themselves, their successors and assigns (the "Developer") are party to the Host Community Agreement dated April 25, 2016 (the "HCA"); and

WHEREAS the HCA detailed the terms and timing pursuant to which the Developer would convey several parcels, easements, and an existing residential home to the Town; and

WHEREAS Section 2(d) of the HCA details the obligations of the parties relative to the conveyance of the aforementioned existing residential home; and

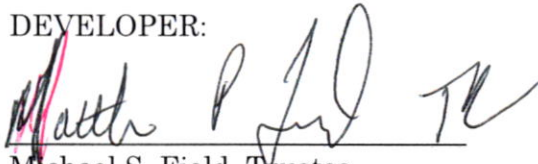
WHEREAS the Developer and the Town wish to amend their obligations under the HCA relative to the conveyance of that existing residential home, such that the Developer will be allowed to retain the property and, in lieu of the conveyance described in Section 2(d), make payment to the Town instead.

NOW THEREFORE in consideration of the mutual promises of the parties contained herein and other good and valuable considerations, the receipt in hand and sufficiency of which hereby acknowledged, the Parties, on behalf of themselves, their successors and assigns, hereby covenant and agree as set forth herein.

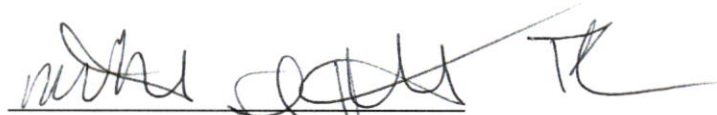
1. The Developer will pay to the Town of Littleton the sum of three hundred and fifty thousand dollars (\$350,000.00), for the exclusive use of the Littleton Affordable Housing Trust, upon execution of this Amendment to Host Community Agreement.
2. Upon receipt of the payment noted in Section 1 above, Section 2(d) of the HCA shall be deleted in its entirety and of no further force or effect.
3. Except as specifically stated herein, the HCA shall remain otherwise unamended, and in full force and effect.

Executed as an instrument under seal this 14<sup>th</sup> day of May, 2021.

DEVELOPER:



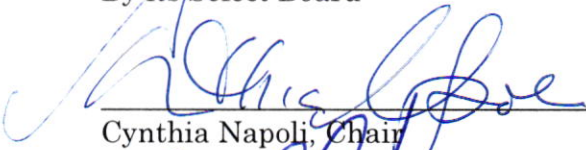
Michael S. Field, Trustee  
M&M Realty Trust



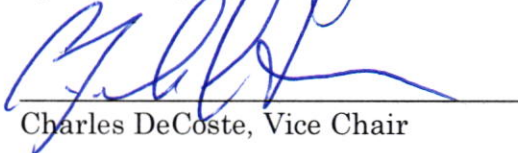
Matthew P. Field, Trustee  
M&M Realty Trust

TOWN:

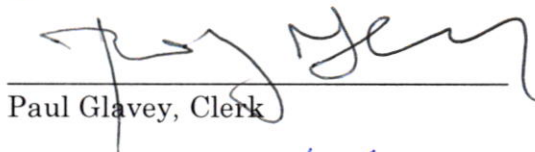
TOWN OF LITTLETON  
By its Select Board



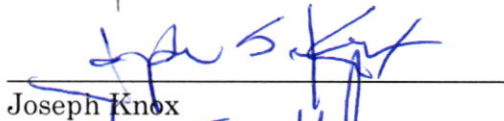
Cynthia Napoli, Chair



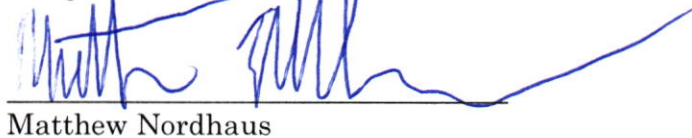
Charles DeCoste, Vice Chair



Paul Glavey, Clerk



Joseph Knox



Matthew Nordhaus