

## EXECUTIVE SUMMARY

**TITLE:** Appointment of an alternate member to the Historic District Commission.

**BACKGROUND:** The Town has a vacancy on the Historic District Commission for an alternate member. The vacancy has been advertised several times in the paper and on the Town's website. Abby Schroeder has expressed interest in being an alternate member to fill this vacancy. The Historic District Commission Chair has recommended her for this position. Chapter 113-2 of the Town Code requires appointment by the Selectboard.

**FISCAL IMPACT:** Not applicable.

**RECOMMENDATION:** Appoint Abby Schroeder as an alternate member of the Historic District Commission for a term to expire June 30, 2017.

**PREPARED AND REVIEWED BY:** Jennifer Tabakin by (JB)  
Jennifer Tabakin, Town Manager

**DATE:** 7/10/15

(Alternate Member)

**Jennifer Bailly**

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**From:** Abby Schroeder <abbyjs125@gmail.com>  
**Sent:** Wednesday, June 03, 2015 11:31 PM  
**To:** Jennifer Bailly  
**Subject:** HISTORIC DISTRICT COMMISSION

Barbara Sayer and Don Howe asked me to request that you appoint me to the above named committee.

I of course appreciate your consideration. Cordially, Abby Schroeder

35 Stoney Brook Road,  
Great Barrington.  
Phone: 528 1824  
E mail: [abbyjs125@gmail.com](mailto:abbyjs125@gmail.com)

HISTORIC DISTRICT COMMISSION  
3 YEAR TERM (5 MEMBERS & 2 ALTERNATES)

TERM EXPIRES:

JAMES MERCER	2016
BARBARA A. SYER	2017
DONALD V. HOWE (CHAIR)	2018
HOLLY M. TROIANO	2018
DANIEL BAILLY	2017
* <b>VACANCY (ALTERNATE)</b>	<b>2017 *</b>
PATRICIA RYAN (ALTERNATE)	2016

NOTICE

TOWN OF GREAT BARRINGTON

VACANCIES

The Town of Great Barrington is accepting letters of interest from legal residents/registered voters to fill the following vacancies:

- **Council on Aging** (1) - until 2017
- **Five Town Cable Advisory Committee** (1) – Indefinite term
- **Fence Viewer** (1) - until 2015
- **Board of Registrars** (1) Democrat or Republican - until 2017
- **Energy Committee** (1) - until 2016 and (1) until 2017
- **Agricultural Commission** (1) – until 2017
- **Historic District Commission** (1) alternate - until 2017
- **GB Technology Committee** (1) - Indefinite term

Letters of interest must be submitted to **Selectboard, Town of Great Barrington, Town Hall, 334 Main Street, Great Barrington, MA 01230** or emailed to Town Manager [jtabakin@townofgb.org](mailto:jtabakin@townofgb.org)

Deb Phillips  
Chair

*Shoppers Guide*

*1.21.15*

*1.28.15*

NOTICE

TOWN OF GREAT BARRINGTON

VACANCIES

The Town of Great Barrington is accepting letters of interest from legal residents/registered voters to fill the following vacancies:

- **Conservation Commission** (1) - until 2017
- **Cultural Council** (1) – until 2017
- **Five Town Cable Advisory Committee** (2) – Indefinite term
- **Board of Registrars** (1) Democrat or Republican - until 2017
- **Energy Committee** (1) - until 2016 and (1) until 2017
- **Agricultural Commission** (1) – until 2017
- **Historic District Commission** (1) Alternate - until 2017
- **GB Technology Committee** (1) - Indefinite term
- **Design Advisory Committee** (1) - General Public Member until 2019

Letters of interest must be submitted to **Selectboard, Town of Great Barrington, Town Hall, 334 Main Street, Great Barrington, MA 01230** or emailed to the **Town Manager** [jtabakin@townofgb.org](mailto:jtabakin@townofgb.org)

Deb Phillips  
Chair

Publish on 3/25/15 + 4/1/15 (Shopper's)

## ISSUES TO CONSIDER IN PREPARING FOR DISPOSITION OF DECENDENTS (excerpt)

<http://www.mass.gov/eohhs/gov/departments/dph/programs/environmental-health/comm-sanitation/burial-and-cremation.html>

### Home Burials

A home burial, meaning burying a person on privately owned residential property that is not an approved cemetery, is not explicitly prohibited by law but there are many important issues to be resolved before considering this. First, unless your property has already been approved for burial use, you must attain written approval from the local board of health where the land is situated.<sup>[1]</sup> After obtaining written approval from the local board of health, those seeking to bury a person on their property must also get the permission of the local city or town government.<sup>[2]</sup> There is an exception to the requirement of approval from the BOH and city or town in cases where a body is being temporarily stored on private property in a tomb, which is defined as a receiving vault designed for the temporary storage of a casketed body which is not to be interred immediately<sup>[3]</sup>, in this case no such permission is required.<sup>[4]</sup> Also, since any area of land that is set aside and dedicated for the final disposition of the remains of a deceased person is considered a cemetery under M.G.L. Chapter 114, Section 1, use of privately owned residential land to bury a body would require that the land where the body would be buried be designated and operated as a cemetery and the owner of the land would need to comply with requirements to establish a cemetery corporation. In addition to obtaining the required local approvals those seeking to have a home burial must meet certain environmental standards. Unless the property in question was approved for burial prior to 1908, land that is situated so that surface water or ground drainage enters a pond, stream, well, filter gallery, public water supply, or tributary source cannot be used for burial purposes unless the Department of Environmental Protection has given written approval to the plan.<sup>[5]</sup> Finally, those who do a home burial will need to note the burial on the deed for that property where the body is buried before the property can be transferred, as a home burial is likely to be viewed as an encumbrance on the land.<sup>[6]</sup>

### Requirements for Disinterment

Disinterment (removing a buried body) without proper authorization is a crime under Massachusetts law punishable up to \$4,000 or two and one-half years in prison.<sup>[7]</sup> In order to have a body disinterred, the person seeking the removal must get a removal permit from the city or town in which the body to be disinterred is located. This requirement also applies to any relocation of human remains within a cemetery. Upon the removal of the body, the superintendent or other officer in charge of the cemetery shall “indorse upon the coupon accompanying the permit the fact of the removal and the date.”<sup>8</sup> Also the superintendent must keep a record of the removal, including any recitals in the removal permit relative to service of the deceased as a veteran and the location of the grave.<sup>9</sup> In situations where the Department has determined that a body has become a menace to the public health and the owner of the property has failed to address the problem to the satisfaction of the Department, a court may order the owner of the land to remove the body to a suitable location at the property owner’s expense.<sup>10</sup>

[1] Mass. Gen. Laws ch. 114, §34 (2013). – BOH written approval 6/4/15

[2] Mass. Gen. Laws ch. 114, §34 (2013). – Town government permission (NEEDED)

[3] Mass. Gen. Laws ch. 114, §1 (2013). – Designation and operation of cemetery (NEEDED)

[4] Mass. Gen. Laws ch. 114, §34 (2013). – N/A

[5] Mass. Gen. Laws ch. 114, §35 (2013). – DEP & ConCom Letters of Determination Completed

[6] Mass. Gen. Laws ch. 184, §21 (2013). – Deed Designation (NEEDED)

[7] Mass. Gen. Laws ch. 272, §71 (2013). – Disinterment License (NEEDED)

## CASE NOTES

This section does not aid widow seeking to have her husband's body interred in a family lot owned by the widow's family. *McAndrew v. Quirk* (1952) 329 Mass 423, 108 NE2d 667, 1952 Mass LEXIS 588.

Policy that a family lot is protected by the solicitude of law that it be kept within the



**§ 34. Use of Land for New Cemetery or Extension of Existing One; Approval; Penalty.**

Except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land, other than that already so used or appropriated, shall be used for burial, unless by permission of the town or of the mayor and aldermen of the city in which the same lies; but no such permission shall be given until the location of the lands intended for such use has been approved in writing by the board of health of the town where the lands are situated after notice to all persons interested and a hearing; and the board of health, upon approval of the use of any lands either for new cemeteries or for the extension of existing cemeteries, shall include in the records of the said board a description of such lands sufficient for their identification. For every interment in violation of this section in a town in which the notice prescribed in section thirty-seven has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars.

## History—

1855, 257, §§ 2-4; GS 1860, 28, §§ 5, 11; PS 1882, 82, §§ 18, 21; RL 1902, 78, § 30; 1908, 379, § 1.

## Jurisprudence—

14 Am Jur 2d, Cemeteries §§ 7, 10-13.  
22A Am Jur 2d, Dead Bodies §§ 6, 7.

## Annotations—

Validity of public prohibition or regulation of location of cemetery. 50 ALR2d 905.  
Private or family cemeteries. 75 ALR2d 591.

## CASE NOTES

1. In general
  2. Nature and necessity of permission
- (1868) 99 Mass 281, 1868 Mass LEXIS 74.

## 1. In general

The proprietor of an unlicensed cemetery is liable in tort for disinterring and removing the remains of a child from a lot owned by its father. *Meagher v. Driscoll* (1868) 99 Mass 281, 1868 Mass LEXIS 74.

The provisions of this section are constitutional, and extend to corporations for

burial purposes, whose charters do not exempt them from the control of the legislature in the exercise of its police power for the security of the public health and comfort. *Woodlawn Cemetery v. Everett* (1875) 118 Mass 354, 1875 Mass LEXIS 372.

Fact that town authorities granted permission to a predecessor in title of the present owner of lands to develop the same as a cemetery is a personal privilege and not a contract, property, easement, lease, or grant running with the land for the benefit of succeeding owners. *Weiss v. Woburn* (1928) 263 Mass 30, 160 NE 444, 1928 Mass LEXIS 1108.

## 2. Nature and necessity of permission

Land in a city cannot be "dedicated" for cemetery purposes or the burial of the dead, without municipal permission first obtained according to the provisions of this section. *Woodlawn Cemetery v. Everett* (1875) 118 Mass 354, 1875 Mass LEXIS 372.

Absence of evidence of the grant of permission raises no presumption of illegality. *Trefry v. Younger* (1917) 226 Mass 5, 114 NE 1033, 1917 Mass LEXIS 917.

The permission of the town referred to in this section must result from vote of

inhabitants in town meeting legally assembled. *Canton v. Westbourne Cemetery Corp.* (1925) 251 Mass 128, 146 NE 258, 1925 Mass LEXIS 972.

When permission has not been obtained in accordance with this section, the town has a property interest in enforcement of § 34 which can be safeguarded by injunction. *Canton v. Westbourne Cemetery Corp.* (1925) 251 Mass 128, 146 NE 258, 1925 Mass LEXIS 972.

The use of land for cemetery purposes may be restrained where a permit authorizing its use for this purpose had never been voted upon at a town meeting. *Markovitz v. Swartz* (1928) 264 Mass 392, 162 NE 898, 1928 Mass LEXIS 1283, 59 ALR 1022.

A cemetery corporation owning land a substantial part of which is then being used for cemetery purposes under circumstances where all of the land can be said to be dedicated to cemetery purposes within the meaning of ALM GL c 59, § 5 clause Twelfth would seem to come within the exception of this section dispensing with the necessity for permission for use of land for cemetery purposes in the case of land already used or appropriated for such purposes. *Board of Assessors v. Knollwood Cemetery* (1969) 355 Mass 584, 246 NE2d 660, 1969 Mass LEXIS 838.

**§ 35. Plan for Cemetery to be Approved by Department of Environmental Protection.**

No land other than that so used and appropriated on April tenth, nineteen hundred and eight, shall be used for the purpose of burial if it be so situated that surface water or ground drainage therefrom may enter any stream, pond, reservoir, well, filter gallery or other water used as a source of public water supply, or any tributary of a source so used, or any aqueduct or other works used in connection therewith, until a plan and description of the lands proposed for such use have been submitted to, and approved in writing by the department of environmental protection.

## History—

1908, 379, § 2; 1975, 706, § 190; 1990, 177, § 218.

## Editorial Note—

The 1975 amendment substituted department of environmental quality

**OBTAINED:**

- BOH Approval
- DEP Approval
- Conservation Commission determination that there are no resource areas

**STILL NEEDED:**

- Town government approval
- Cemetery Designation- Ms. Schroeder would be responsible for understanding and meeting these requirements.
- Note on Deed- Ms. Schroeder would be responsible for drafting this note
- Disinterment/Burial License (Town Clerk)- obtained from Marie as a last step prior to moving the body.





Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

Great Barrington Board of Health  
Town Hall, 334 Main Street  
Great Barrington, MA 01230  
ATTN: Jayne Smith, Health Agent

June 12, 2015

Re: Great Barrington - DWP  
Private Land for Cemetery Use

Dear Ms. Smith:

Thank you for contacting the Massachusetts Department of Environmental Protection (MassDEP) regarding the consideration of a burial plot on lands owned by Abbey Schroeder, located near 35 Stony Brook Road in the Town of Great Barrington. The proposed site is land adjacent to Stony Brook Cemetery. Please be advised, that according to Massachusetts General Law, Chapter 114, Section 35:

*No land other than that so used and appropriated on April tenth, nineteen hundred and eight, shall be used for the purpose of burial if it be so situated that surface water or ground drainage therefrom may enter any stream, pond, reservoir, well, filter gallery or other water used as a source of public water supply, or any tributary of a source so used, or any aqueduct or other works used in connection therewith, until a plan and description of the lands proposed for such use have been submitted to, and approved in writing by, the Department of Environmental Protection.*

According to MassDEP records and the site plan you provided, the property proposed for burial does not abut any Public Water System, Zone I or Zone II regulated by MassDEP. Based on the remote distance of the property from the nearest regulated water sources and a review of MassDEP records and data, it is MassDEP's opinion that this land use will not pose a significant threat to water supply and herein approves this use with the following conditions:

- All activities are in compliance with appropriate Department of Public Health regulations and local by-laws,
- All applicable Federal, State and local regulations.

According to information on file in this office, there may be resource areas subject to jurisdiction under the Wetlands Protection Act on the property. A Request for Determination of Applicability should be filed with the Great Barrington Conservation Commission to determine if there is such jurisdiction.

Thank you for your assistance with this. If you have any questions, or require assistance, please contact Jimmy Gibbs at (413) 755-2299.

Respectfully,

Brian D. Harrington  
Deputy Regional Director  
Bureau of Resource Protection

jjg/BDH  
w:/brp/ws/landacquisition/Great Barrington/letter of determination\_schroeder property

cc: Great Barrington Conservation Commission, 334 Main Street, Great Barrington, MA 01230  
Massachusetts Department of Public Health, 23 Service Center Rd., Northampton, MA 01060 ATTN: Mr. Charles Kaniecki  
DEP - Boston - DWP  
DEP - WERO - Wetlands Section  
Great Barrington General File

This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-5751. TTY# MassRelay Service 1-800-439-2370  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

Printed on Recycled Paper

Claudia Ryan, Chair  
Michael Lanoue, Vice- Chair  
Peter Stanton, Member

www.townofgb.org



Town Hall, 334 Main Street  
Great Barrington, MA 01230

Phone: 413-528-0680  
Fax: 413-528-3064

## TOWN OF GREAT BARRINGTON MASSACHUSETTS

### BOARD OF HEALTH

June 9, 2015

Abbey Schroeder,  
35 Stony Brook Road  
Great Barrington, MA 01230

Re: Letter of Approval for burial on private property located near 35 Stony Brook Road

To Whom it May Concern,

At our Board of Health meeting on June 4, 2015, the Board considered your request that it issue an Approval Letter to bury your late husband's remains on your property on Stony Brook road in an area adjacent to the existing Stony Brook Cemetery. It was at this meeting that the Board voted to:

*"Issue a letter of approval to Abbey Schroeder for disinterment her husband's remains from one cemetery to a property that is adjacent to Stony Brook Cemetery (Parcel A – as described on the map) and to send a copy of that letter to the Department of Environmental Protection."*

We hereby issue this Letter of Approval with the understanding that it meets only one of the many requirements that need to be met before human remains may be buried on your property. The process must also comply with all applicable Massachusetts General Laws and the guidance included in the attached document entitled "*Issues to Consider in Preparing for the Disposition of Decedents*" which calls for, but is not limited to:

- Written approval from the Department of Environmental Protection upon review that the land is not situated so that surface water or ground drainage would enter a pond, stream, well, filter gallery, public water supply or tributary source (MGL Ch 114 Section 35);
- Possibly designation and operation of a cemetery and compliance with the requirements to establish a cemetery corporation;
- Permission of the local town government (MGL Ch 114 Section 34);
- Removal/burial permit from the Great Barrington Clerk's office (MGL Ch. 272 Section 71).

We wish you the best of luck with this process. If we can be of further service, please let us know.

Regards,

Claudia Ryan, Board Chair

Cc: Great Barrington Town Manager's office  
Department of Environmental Protection

Shepley Evans  
Conservation Agent

E-mail: [conservation@townofgb.org](mailto:conservation@townofgb.org)  
[www.townofgb.org](http://www.townofgb.org)



Town Hall, 334 Main Street  
Great Barrington, MA 01230

Telephone: (413) 528-1619 ext. 122  
Fax: (413) 528-2290

TOWN OF GREAT BARRINGTON  
MASSACHUSETTS

CONSERVATION COMMISSION

June 17, 2015

Great Barrington Board of Health  
Town Hall, 334 Main Street  
Great Barrington, MA 01230  
ATTN: Jayne Smith, Health Agent

Re: Private Land of Schroeder  
Proposed for Cemetery Use

Dear Ms. Smith:

Further to our conversation this afternoon about the consideration of a burial plot on lands owned by Abbey Schroeder, located near 35 Stony Brook Road in Great Barrington. The proposed land is adjacent to the northeast corner of Stony Brook Cemetery as shown on the site plan you shared with me. We have conducted a site visit on June 17, 2015 and have reviewed the DEP Wetlands data layers and the NHESP rare species and rare wildlife habitat data layers in the Mass Geographic Information System (Mass GIS) and find that **there are no wetlands or delineated habitats on or near the subject parcel** of land. It therefore will not be necessary to file a Request for Determination of Applicability with the Conservation Commission to determine if there is such jurisdiction.

Best regards,

  
Shepley W. Evans

Conservation Agent

THIS PARCEL IS SUBJECT TO AND WITH THE BENEFIT OF ALL RIGHTS, RESTRICTIONS, CONDITIONS, EASEMENTS, LEASES, ENCUMBRANCES AND APPURTENANCES OF RECORD.

UNLESS OTHERWISE NOTED HEREON, THIS SURVEY PLAN SHALL BE CONSIDERED A SEPARATE BUILDING PERMIT APPLICATION AND SHALL BE SUBJECT TO THE REGULATIONS AND LIMITS OF ANY OR ALL REGULATED WETLANDS OR FLOODPLAINS. ANY SURFACE WATER FEATURES SHOWN, SUCH AS STREAMS OR PONDS, ARE NOT REPRESENTED AS INDICATING LIMITS OF WETLAND RESOURCE AREAS.

PLANNING BOARD ENDORSEMENT DOES NOT IMPLY COMPLIANCE WITH THE MASS. WETLANDS PROTECTION ACT.

RECORD OWNER: ABBY SCHROEDER  
 THIS DEED, BK 443 PG 28  
 (REFERENCE IS MADE TO A SKETCH ENTITLED, "COMPLETED PLAN OF LAND LOCATED IN GREAT BARRINGTON, MASS. OWNED BY WILLIAM J. GOULD ASSOCIATES, INC." THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF AN ATTORNEY'S ABSTRACT OF TITLE AND/OR TITLE REPORT AND IS SUBJECT TO ANY STATEMENT OF FACTS SUCH AS THAT OR REPORT WOULD HAVE REVEALED. THE POSSESSION LINES FOUND AT THE TIME THE SURVEY WAS MADE.

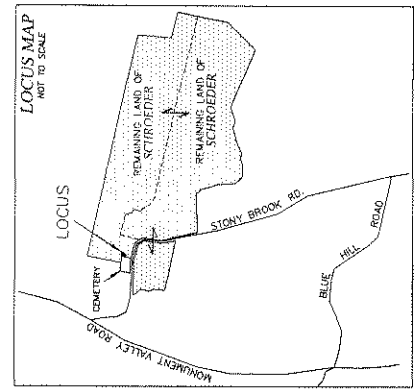
**LEGEND**

- IRON PIPE FOUND
- IRON ROD TO BE SET
- SPLIT RAIL FENCE

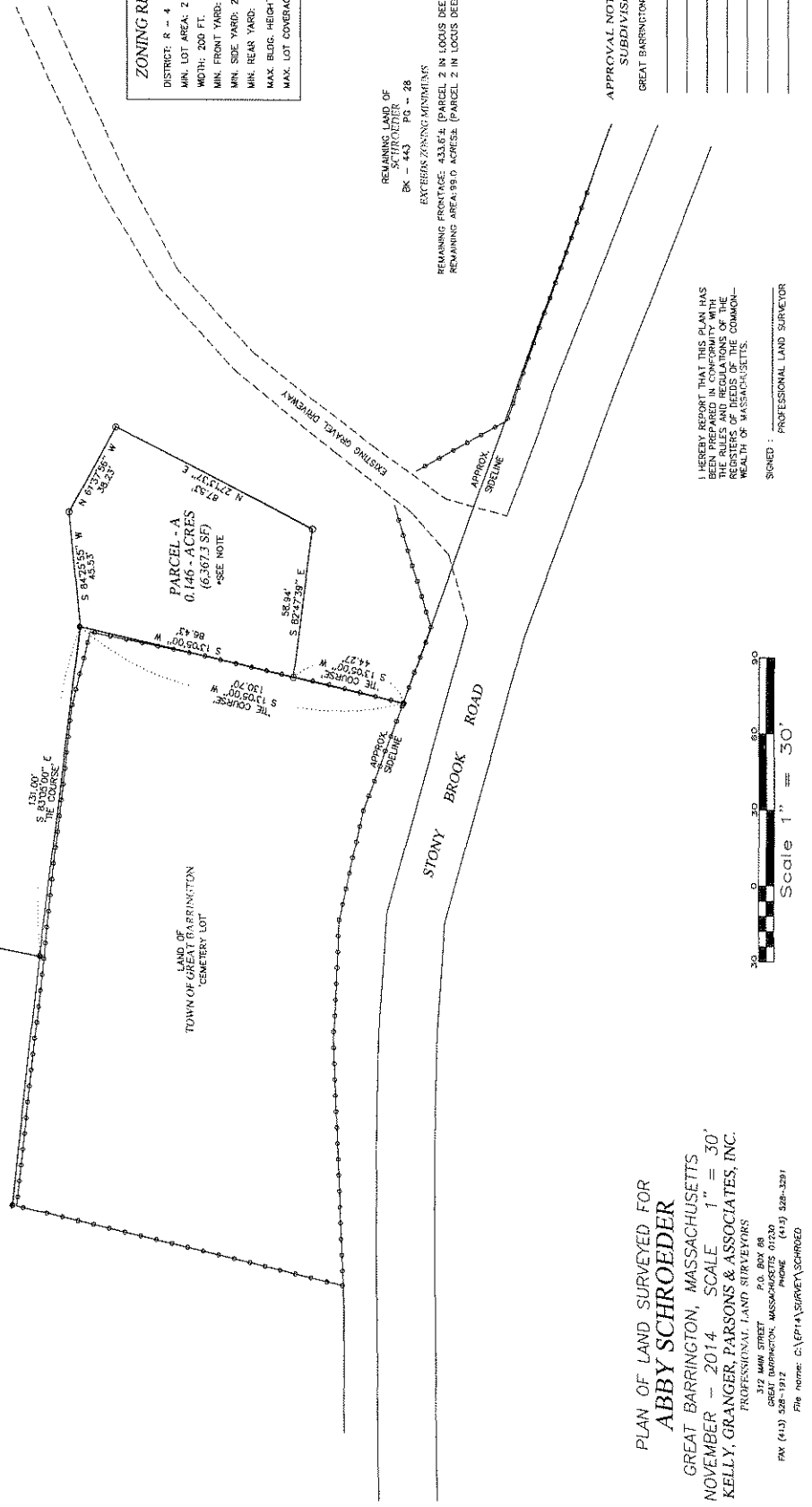
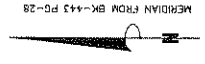
REMAINING LAND OF SCHROEDER  
 BK - 443 PG - 28  
 EXTERNS ZONING MINIMUMS  
 REMAINING FRONTAGE: 433.6 ± (PARCEL 2 IN LOCUS DEED)  
 REMAINING AREA: 99.0 ACRES (PARCEL 2 IN LOCUS DEED)

**ZONING REQUIREMENTS**  
 DISTRICT: R - 4  
 MIN. LOT AREA: 2 ACRES (87,120 SF)  
 WIDTH: 200 FT.  
 MIN. FRONT YARD: 50 FT.  
 MIN. SIDE YARD: 20 FT.  
 MIN. REAR YARD: 20 FT.  
 MAX. BLDG. HEIGHT: 3 1/2 STORES (35 FT.)  
 MAX. LOT COVERAGE (by imp): 10 %

REMAINING LAND OF SCHROEDER  
 BK - 443 PG - 28  
 EXTERNS ZONING MINIMUMS  
 REMAINING FRONTAGE: 433.6 ± (PARCEL 2 IN LOCUS DEED)  
 REMAINING AREA: 99.0 ACRES (PARCEL 2 IN LOCUS DEED)



FOR REFSRY USE ONLY



I HEREBY REPORT THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE MASSACHUSETTS LAND SURVEYING REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

SIGNED : \_\_\_\_\_ PROFESSIONAL LAND SURVEYOR

PLAN OF LAND SURVEYED FOR  
**ABBY SCHROEDER**  
 GREAT BARRINGTON, MASSACHUSETTS  
 NOVEMBER - 2014 SCALE 1" = 30'  
 KELLY GRANGER, PARSONS & ASSOCIATES, INC.  
 PROFESSIONAL LAND SURVEYORS  
 312 MAIN STREET P.O. BOX 88  
 GREAT BARRINGTON, MASSACHUSETTS 01230  
 PH (413) 528-1912 PHONE (413) 528-3291  
 File Name: C:\EP1A\SURVEY\SCHROED



APPROVAL NOT REQUIRED UNDER THE SUBDIVISION CONTROL LAW  
 GREAT BARRINGTON PLANNING BOARD  
 CHAIRMAN \_\_\_\_\_

**Zoning Board of Appeals  
Town of Great Barrington**

**NOTICE OF PUBLIC HEARINGS**

The Great Barrington Zoning Board of Appeals will hold a public hearing on Wednesday, July 15, 2015, at 7:30 p.m. at Town Hall, 334 Main St., Great Barrington, to act on the Comprehensive Permit Application "State Road Affordable Housing," submitted by Construct Inc. for property at 316 State Road. The application is for 11 affordable housing units. The board will make a site visit at 5:30 p.m. that same date. A copy of the petition is on file at the Town Clerk's office, Town Hall.

Ron Majdalany, Chairman



Town of Great Barrington
Massachusetts

RECEIVED
TOWN MANAGER

ZBA-1
Rev. July 2013

JUN 24 2015

Application to the
Zoning Board of Appeals

BOARD OF SELECTMEN
GREAT BARRINGTON, MA

INSTRUCTIONS

You may download this form and fill it in on your computer. Fill out all applicable information. Save and print the form, and sign it where required. When you are ready with your form and all supporting plans and materials, call the Town Planner to set up a time to file the application. You will need to submit the original and 14 full copies of the entire package. It may not be submitted electronically, but submissions made by mail are acceptable. Incomplete applications and those not accompanied by the required fee or copies may be rejected. The Town Planner can be reached at (413) 528-1619, x.7 (Note, for Comprehensive Permit applications, please call the Town Planner.)

FOR OFFICE USE ONLY

Filing Date:
Received and checked for completeness by:
Number Assigned:
Date filed with the Town Clerk:
FOR ZBA USE:
Advertising dates: &
Public hearing date:

TIMELINE: The Zoning Board of Appeals (ZBA) will set a public hearing date that is at least 45 days but no more than 65 days from the date of your filing. The hearing date will be posted at Town Hall and in accordance with the Open Meetings Law, and notice of the hearing will be sent to the Applicant and/or Applicant's agent and abutting property owners by mail, and advertised for two consecutive weeks in the local newspaper.

A. WHAT ARE YOU SEEKING?
Check all that apply. If you are unsure, please consult with the Town Planner, Building Inspector, or ZBA Secretary (413-528-4953)
[ ] VARIANCE (exempts a property from some Zoning requirements)
[X] SPECIAL PERMIT (for changes to nonconforming uses, structures)
[ ] APPEAL (to overturn a decision of Building Inspector or a Board)
B. SITE / PROPERTY INFORMATION
Address of Subject Property 316 State Rd. (formally 314 State Rd)
Assessor's Map No. 16 Lot No. 20\*
Registry of Deeds Book No: 2124 Page: 118
Zoning District(s) R2 One-acre Res.
Overlay Districts (if any)

C. APPLICANT AND OWNER INFORMATION
Applicant's Information
Name (please print) Construct, Inc. Phone (area code first) (413) 528-1985
Street Address 41 Mahaiwe Street
City, State, Zip Code Great Barrington, MA 01230
If Applicant is a corporation, provide name of contact person: Cara Davis, Executive Director
Email Address construct12@yahoo.com Signature [Signature]
[X] Check here if Applicant and Property Owner are the same, and skip to the next section.
[ ] Check here if Applicant is different than the Property Owner, and to verify that you have the Property Owner's permission to file this Application. Note that the Property Owner must sign below to indicate permission to file this Application.
Enter Property Owner's information EXACTLY as it appears on the most recent tax bill.
Property Owner's Information
Name (please print) Phone (area code first)
Street Address
City, State, Zip Code
Email Address Signature

**D. VARIANCES** If you are requesting a variance, please answer all of the following. Attach additional sheets if necessary.

- 1) From which Section(s) of the Zoning Bylaw do you request a variance?
- 2) What will the requested variance(s) enable you to do?
- 3) If the variance(s) is not granted, what hardship will that cause you?
- 4) What special circumstances relating to soil condition, shape or topography of land or structures, affect your property but not other properties in the same zone?
- 5) Explain why your special circumstances are not a result of your own actions.
- 6) If the variance(s) is not granted, what rights will you be deprived of that other properties in the same zone enjoy?
- 7) Explain why a variance will not give you any special privileges that other properties in the same zoning district don't have.

**E. SPECIAL PERMITS** If you are requesting a special permit, please answer all of the following. Attach additional sheets if necessary.

- 1) A special permit is being requested in order to (please describe project):  A 40B Comprehensive Permit is requested to build affordable housing with a plan that includes waivers on density and building setbacks.
- 2) This application is made under the following Sections of the Zoning Bylaw (check all that apply)
 

<input type="checkbox"/> Section 5.2	<input type="checkbox"/> Section 5.3	<input type="checkbox"/> Section 5.5
<input type="checkbox"/> Section 5.6	<input type="checkbox"/> Section 5.7	<input type="checkbox"/> Section 10.4
- 3) Reason(s) that this property is not in conformance with the Zoning Bylaw  Zoning waivers are requested for increased density (multi-family housing) and building setbacks.
- 4) Are there any previous Special Permits or Variances for this property?  No  Yes  
If yes, provide date(s), and name of issuing Board

**F. APPEALS** If you are seeking an appeal, please answer all of the following. Attach additional sheets if necessary.

- 1) This application is to appeal the decision of 

<input type="checkbox"/> Building Inspector	<input type="checkbox"/> Planning Board	<input type="checkbox"/> Board of Selectmen
---	---	---
- 2) Date of decision
- 3) Nature of the decision
- 4) Applicable Section(s) of the Zoning Bylaw
- 5) Describe your interpretation of the nature of the decision and the remedy you seek. Attach additional sheets if needed.

## G. REQUIREMENTS FOR ALL APPLICATIONS

By checking the items below, applicant acknowledges that each application is accompanied by each of the items listed below.

- Plot Plan of the entire property or tract. The Board may require the plan to be signed by a licensed surveyor or engineer, particularly if the matter involves dimensional issues. The plan should include those items listed in Section 10.5.3 of the Zoning Bylaw, including two locus maps--one USGS survey map and one current zoning map-- illustrating property location.
- A current list of all abutters within 300 feet of the property, including address of owner, map and lot number. The list must be obtained from the Assessor's office and certified by the Assessor's office. Call 413-528-1619, x. 5.
- At least one copy of the application and plans / specifications shall be no larger than 11 x 17 inches.

## H. APPLICATION FEE

Application fees are calculated at \$150 per request. (For example, if one box in A. is checked, the fee is \$150. For two boxes, the fee is \$300.)

- Check here to confirm that your check in the appropriate amount is enclosed. Make checks payable to Town of Great Barrington.

## I. TECHNICAL REVIEW FEES

The Zoning Board of Appeals may hire independent consultants whose services shall be paid for by the applicant(s) under the terms of the Rules and Regulations of the Zoning Board of Appeals, and in accordance with Chapter 44, Section 53G of the Massachusetts General Laws. Check here to acknowledge and be bound by these regulations. Failure to acknowledge shall cause this application to be rejected as incomplete. Please also sign here: Lara B. Davis

## J. ADDITIONAL INFORMATION

Recommending Boards: All applications to the Zoning Board of Appeals are referred to the Planning Board, Conservation Commission, Board of Health, and Board of Selectmen for comments and recommendations. Applicants should be prepared to attend those meetings in order to brief those boards of their project and answer any questions.

Site Visits: The ZBA and recommending Boards may contact the Applicant to request a site visit. Applicants agree to facilitate access to the site at a mutually convenient date and time.

Timeline/ Procedures: The ZBA conducts its business in accordance with Massachusetts General Laws. Accordingly, the ZBA will hold its Public Hearing not later than 65 days after the filing of the application. A decision for a variance or appeal will be rendered not later than 100 days from the filing date. A decision for a special permit will be made not later than 90 days after the close of the Public Hearing. The decision will be filed with the Town Clerk within 20 days of the date of the decision. The appeal period lasts for 20 days after the filing with the Town Clerk. On the 21st day, if no appeals are filed, or once all appeals are resolved, the applicant shall have the decision certified by the Town Clerk. The Applicant is responsible for then filing the decision with the Registry of Deeds, at which time the decision becomes effective.

Guidance and Counsel: In preparing this application and when presenting the case to the ZBA, applicants are advised to be fully familiar with, or seek counsel from a qualified person who is familiar with, the Zoning Bylaw and other rules, regulations, and laws as may be appropriate. If you wish to discuss the completeness of this application, or have any questions about this application, please contact the ZBA's Secretary, Bernard Drew, at 413-528-4953, or the Town Planner at 413-528-1619, x. 7. However, we will not discuss the merits or strategy of your case.

Applicant's Signature: "I have read and I understand all of the information on this application."

Lara B. Davis (signed) 6-18-15 (date)

Print Form

### Need Help? Just call us.

Town Planner: (413) 528-1619, x.7

Building Inspector / Zoning Enforcement Officer:  
(413) 528-3206

ZBA Secretary: (413) 528-4953

For bylaws, regulations, maps, and other useful information, visit us online at [www.townofgb.org](http://www.townofgb.org)





TOWN OF GREAT BARRINGTON  
MASSACHUSETTS

OFFICE OF PLANNING AND COMMUNITY DEVELOPMENT

Christopher Rembold, AICP  
Town Planner  
Ph: (413) 528-1619, ext. 7  
[crembold@townofgb.org](mailto:crembold@townofgb.org)

## MEMORANDUM

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TO: Zoning Board of Appeals

FROM: Christopher Rembold

DATE: July 10, 2015

COPY: Jennifer Tabakin, Town Manager  
Cara Davis, Construct and Tim Geller, CDCSB

SUBJECT: Construct's Comprehensive Permit (40B) Application, 316 State Road

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### Application Summary:

Construct, Inc. (Applicant and Owner), proposes 11 new units of affordable rental housing within three new buildings to be built at 316 State Road. The application is complete according to State applicable law and regulations, and other Town boards and commissions and staff have received copies.

The site is in an R2 zone and contains over 12 acres of land. Since multifamily housing is not allowed in an R2 zone, the Applicant is applying to the Zoning Board of Appeals (ZBA) for a Comprehensive Permit in accordance with MGL Ch. 40B, sections 20-23 in order to request certain waivers from zoning and local regulations. These waivers include the multifamily use in an R2 zone, side yard setbacks, lot width (at building line), multiple principal structures on one lot, fences, multifamily development requirements, and site plan review. A full list of requested waivers will be provided by the Applicant.

The project team includes Construct, Inc. as the owner and manager, the CDC of South Berkshire as project managers, White Engineering as site and civil engineers, and Studio One Inc. as architects. Construct will own the site and will manage the units.

### Staff and Board Reviews:

These notes summarize comments from the Development Review Team (DRT), which met with the Applicant's project team on June 30. The DRT staff includes the Building Inspector, Conservation Agent, Health Agent, DPW Superintendent, Fire Chief, Police Chief, and Town Planner. Certain items that were identified by staff at that time have been revised by the Applicant's team. This memo also includes some comments from the Planning Board, which reviewed the application on July 9. The Planning Board made a positive recommendation to the ZBA.

The Board of Health also provided a positive recommendation. The Conservation Commission notes that it has no jurisdiction on site. The Selectboard reviews the project on July 13.

The materials reviewed include:

- Application package dated June 15, 2015
- Site plans dated June 12, 2015 and revised site plans dated July 7, 2015
- Architectural plans and elevations dated June 12, 2015

1. Location and Context: The site is located at 316 State Road (Route 23), 0.1 mile east of Hebert Drive and 0.25 miles west of East Mountain Road. This site is 12 acres, with much of the property extending southwesterly and up East Mountain. Only about 30-50% of the front two acres of the site are actually developed. This portion of the site is flat.

The parcel is vacant but the portion nearest the road is improved with driveways and an asphalt parking area that serves the house immediately to the west, 314 State Road. (That house is on a 0.92 acre lot and is also owned by Construct. It will remain. While it is not part of this Comprehensive Permit application, certain site improvements will need to take place there, since this project will develop what is now the parking area for 314 State Road.)

The general character of the area is single family residential uses setback from the road, which is a high speed collector roadway. Parcels are developed generally at the 50-foot setback line, and usually no further from the road than 100 to 150 feet back. The rear of parcels on both sides of State Road is undeveloped (with the exception of Mountain View Hotel).

Sidewalks and bus service do not extend to the site.

This portion of State Road is a state highway under the jurisdiction of MassDOT.

2. Environmental: The Conservation Commission finds no wetlands, floodplains, riverfront, or endangered species issues. The soil characteristics allow for good drainage. A landscaping plan is provided; most of the existing trees and shrubs will remain except for a large apple tree on the eastern edge, where the driveway is proposed.
3. Work on other Property: Portions of the proposed driveway and parking lot, between Buildings A and B, are on the adjacent property (314 State Rd). While the Applicant owns both properties, DRT has recommended that easements agreements between the properties be developed in order to allow for the work, the use of the property, and ensure access in perpetuity.

It is also noted that a new driveway and parking lot is proposed at 314 State Road. It is not part of this application and will be subject to any applicable local law or regulation.

4. Traffic: There are no apparent issues with traffic safety, sight distance on State Road, or the number of trips generated by this proposal. It is noted that State Road traffic volume is about 6,900 to 7,000 vehicles per day on average, and the proposal estimates 73 trips per day with this development (see Exhibit. 10). The Applicant team has spoken to BRTA but transit service extension for this project is not likely. Neither DRT nor Planning Board had concerns about traffic safety.
5. Driveways: The proposal will remove much of the existing asphalt, including the driveway entrance nearest to the 314 State Road house. The eastern-most entrance will remain and will serve as the main driveway. It will be 18 feet wide (original drawings show it as 22 feet wide), as recommended by the staff DRT and approved by the Fire Chief. Parking spaces off of the driveway are provided for each unit.

The driveway appears to be located in such a way as to minimize headlight glare into neighboring properties including those across the street.

The location and width of the proposed driveways must be approved by Mass DOT since this is a State Highway. Project has met with DOT, but a written approval should be provided.

Since this is technically a driveway and not a subdivision road, a waiver from the common driveway requirements of Town Code should be sought. A common driveway is typically limited to serving three units (see Ch. 153).

6. **Parking:** The zoning bylaw requires 22 spaces (two spaces per unit). Applicant proposes 19 parking spaces so a parking waiver will be required. DRT commented that there should be sufficient parking for residents, guests, staff, maintenance, delivery vehicles. There is also area for snow storage, landscaping, and trash disposal. Neither DRT nor Planning Board thought that more than 19 spaces would be necessary.
7. **Architecture and Design features of the buildings:** Floor plans and elevations are provided as well as an architectural summary. See Exhibit 12. The buildings are called "farm house style," and, so that tall facades and blank walls are not presented at neighbors, the buildings are designed and oriented to step up in height as they get further into the site. They are also deliberately oriented to maximize solar gain. They are designed to be extremely energy efficient, "net-zero" units. The buildings will be on crawl space foundations. Buildings will be sprinkled for fire protection.

The Applicant is aware that there may be building or fire code issues where Buildings A and B are less than 10 feet from a property line.

8. **Utilities:** The site will be served by public water and public sewer. A new 6-inch main will be extended up the development's driveway in order to serve the units. A hydrant was recommended by the DRT and one is now shown on plans dated July 7. It is proposed to be near the south side of the rear addition of the 314 building, at the end of the driveway.

Application requests a waiver from water hookup fees. This likely is not appropriate for the ZBA to consider and should be directed to the Fire District instead.

With regards to the sewer, the units will be connected via gravity lines to the main in State Road. A manhole was recommended by DRT and one is now shown on plans dated July 7. The Applicant is requesting a waiver from sewer hookup fees. It is not clear if a fee waiver of this sort is in the ZBA's purview or not.

Natural gas is proposed as the fuel source and the Applicant is in discussions with Berkshire Gas. The gas main currently terminates near the Chinese restaurant about 800 feet to the west.

Electric power is proposed to be above ground.

9. **Stormwater /Drainage:** Runoff from the proposed buildings (as well as from the 314 State Road building) will be managed in series of dry wells at Buildings B and C, and a rain garden between Building A and State Road. These structures are shown on the more recent plans, dated July 7.

Exhibit 11 has information relative to the site's drainage characteristics. The study indicates the site soils should be able to infiltrate the amount of runoff expected in storm events. More detail about the size and capacity of the structures, and the profile and planting plan for the rain garden, should be provided. Rain garden detail should also address a long term maintenance plan.

10. **Landscaping:** Sheet A-100.02 shows landscape plantings, but more detail should be provided relative to the rain garden. On the original plans, a full height fence is shown. If fences are still proposed, details of any fence on the property line should be provided. Unless proposed fences comply with Zoning section 4.2.9, a waiver request should be added. Dumpster screening detail should also be provided.
11. **Lighting:** Recent plans dated July 7 have a light fixture schedule. Lighting is proposed to be LED with dark sky compliant fixtures. A preliminary Planning Board comment was that LED lights should be a color temperature of less than 5000K.
12. **Signage:** It is not known yet if a site sign will be placed near the road. If there will be one, details should be provided. If it is not compliant with the sign code, waivers may be sought. Any sign placed within the right-of-way should also be reviewed by MassDOT.

13. Other:

A payment in lieu of taxes (PILOT) is proposed by the Applicant. The property is currently exempt. Approval of a PILOT is not in the ZBA's jurisdiction.

It is acknowledged that these are preliminary plans and approval of a Comprehensive Permit is not be construed as approval for building permit. Building permits will be required.

DRT recommends that the Applicant furnish the Town with two sets of as-built plans within 30 days of receipt of a Certificate of Occupancy.

Waivers:

The zoning district is R-2. Zoning prohibits multi-family uses in R-2 zones; thus the Comprehensive Permit (40B) application which requests waivers from this and certain other regulations in return for providing affordable housing.

A full list of requested waivers will be provided by the Applicant. They include:

Zoning:

1. To allow multi-family dwelling in an R2 zone (see Zoning section 3.1.4, A (3))
2. To allow 125-foot wide lot where 150 is required (see 4.1.2)
3. To allow a 0-foot side yard setback (north side of Building A) where 20 is required (see 4.1.2)
4. To allow only 19 parking spaces where 22 spaces would be required (see 6.1.2)
5. To allow more than one principal structure on the lot where the lot frontage and width dimensions would preclude it (see 4.2.1)
6. To waive Planning Board Site Plan Review (see 10.5.1 , item 1)

Other Regulations:

7. To allow a common driveway to access more than 3 units (see Town Code Ch. 153-19)
8. To allow a sign identifying the development, if it is not permitted in the district (see Ch. 146)

I remind the ZBA that it is not compelled to grant any waivers that it believes are not necessary to implement the project. However, when it denies waivers, it should (1) do so only when it cannot identify any permit conditions that would address legitimate concerns caused by the waivers requested, and (2) make a detailed written finding of why the waiver should not be granted.

The waivers requested by this Applicant are those that the Applicant believes are required in order to implement a well-planned project to meet area affordable housing needs. In its "Guidelines for Local Review of Comprehensive Permits," issued in October 1999, the Massachusetts Department of Housing and Community Development (DHCD) states: "The Comprehensive Permit Law expresses a strong public policy in favor of waiving local restrictions, when appropriate, to facilitate the construction or substantial rehabilitation of low and moderate income subsidized housing."

Timeline and Decision:

The public hearing must be opened within 30 days of the application (which was June 15), but there is no specific deadline to complete the hearing. The ZBA may keep the hearing open as long as it is reasonable to receive and review pertinent new information. Excessive delays that would effectively deny a project are not permitted. Once the hearing is closed, the ZBA has 40 days to issue its written decision.

A simple majority vote of the ZBA is all that is required to grant a Comprehensive Permit.

The 40B statute requires that a comprehensive permit be granted when it is "consistent with local needs."