

BB Baker, Braverman & Barbadoro, P.C.

ATTORNEYS AND COUNSELORS AT LAW
300 CROWN COLONY DRIVE
SUITE 500
QUINCY, MASSACHUSETTS 02169-0904

WARREN F. BAKER
PAUL N. BARBADORO
GENE J. GUIMOND
CHRISTOPHER J. SULLIVAN
LISA BOND
GARY M. HOGAN*

LAWRENCE A. DINARDO
SUSAN M. MOLINARI
THERESA BARBADORO KOPPANATI**

ELIZABETH A. CARUSO
KIMBERLY K. KROHA***
RICHARD C. ASH
DANIEL FOSTER

*ALSO ADMITTED IN RI
**ALSO ADMITTED IN NY & CA
***ALSO ADMITTED IN FL

TELEPHONE
(781) 848-9610

TELECOPIER
(781) 848-9790

INTERNET ADDRESS
WWW.BBB-LAWFIRM.COM

JONATHAN BRAVERMAN (Retired)

OF COUNSEL
DUANE G. SULLIVAN
DOUGLAS C. PURDY (1943-2016)

January 20, 2021

Via E-mail and Certified Mail

Ms. Lois Barbour, Chair
Norwell Zoning Board of Appeals
345 Main Street
Norwell, MA 02061

**Re: Simon Hill Comprehensive Permit
Notice of Project Change**

Dear Ms. Barbour:

Simon Hill LLC, pursuant to 760 CMR § 56.05(11), hereby notifies the Norwell Zoning Board of Appeals (the "Board") of its requests to modify its Comprehensive Permit in two distinct aspects: (1) extension of the expiration date and (2) site layout modifications.

For background, Simon Hill received its Comprehensive Permit on October 21, 2013, authorizing construction of one hundred twenty six (126) apartment rental units in garden-style apartment buildings (the "Decision"). Abutter appeals tolled the expiration to February 20, 2018. The Board granted two continuances requested by Simon Hill, the most recent of which was dated February 18, 2020 and included an expiration date of February 20, 2021.

One-Year Extension. Simon Hill requests a one-year extension in this 2021 Notice of Project Change. On February 18, 2020, the Board decided that the expiration date would be extended to "February 20, 2021, as a date certain in lieu of the nine-months following any open appeals." 760 CMR 56.05(12)(c) tolls the date of expiration during appeal periods, including the 409-day period between November 8, 2019 and December 21, 2020, when Simon Hill's appeal from the Conservation Commission decision was pending. Chapter 53 of the Acts of 2020, Section 17(b)(iii), also tolled deadlines for permits issued by such bodies as the Norwell Zoning

Board of Appeals, in existence as of March 10, 2020, through the end of the Covid-19 state of emergency. Several aspects of Chapter 53 were amended in Chapter 201 of the Acts of 2020, but the permit tolling provision in Ch. 53, § 17(b)(iii) was not modified. Notwithstanding the applicable appeal tolling and ongoing Covid-19 tolling noted below, Simon Hill now seeks a one-year extension of the expiration date to the February 20, 2022 or for one-year after tolling ends, whichever is later. The Board has the authority to modify the Comprehensive Permit by extending the expiration date. An extension “shall not, by itself, constitute a substantial change as an insubstantial change.” 760 C.M.R. § 56.05(12)(c), citing 760 C.M.R. § 56.07(4). The Board is not required to hold a public hearing on this request if it deems the change to be insubstantial. 760 C.M.R. § 56.05(11). The Board should determine the request to be insubstantial and incorporate the extension in the Comprehensive Permit.

Plan Modifications. In addition to the date extension, Simon Hill requests a determination of insubstantiality for changes to the site configuration. Condition 1 of the Decision approved the Comprehensive Permit Plans entitled “Comprehensive Permit Plans Known as Simon Hill Village, dated October 29, 2012, revised through June 19, 2013, and DWG No. PC-1, Conceptual Site Layout Plan, dated August 5, 2013 (concept plan) as prepared by McKenzie Engineering Group” subject to other conditions in the Decision. Obtaining a final Order of Conditions was a requirement of Conditions 24 and 78(c) of the Decision. The Superseding Order of Conditions obtained by Simon Hill approved the plan set entitled “Simon Hill Village, Notice of Project Change, Map 13C, Block 37, Lot 6, Comprehensive Permit Plans in Norwell, MA,” last revised September 23, 2019 (the “2019 Plan Set”). Under Conditions 1 & 72 of the Decision, the Applicant must create final Definitive Project Plans, and submit such to this Board at least ninety (90) days before applying for its building permit. Simon Hill seeks approval of the following changes so that the site configuration shown in the 2019 Plan Set can be incorporated in the Definitive Project Plans as required by Conditions 1 & 72 of the Decision:

1. Reconfiguration of three (3) garden-style apartment buildings and location of pool, club house, and wastewater treatment plant. The amount of buildings or units have not changed. The Conceptual Site Layout Plan dated August 5, 2013 and approved in the Decision includes three (3) garden-style apartment buildings with 42 units each, for a total of 126 units. The buildings have been reconfigured to allow the pool and clubhouse to be located in the middle of the three buildings. The wastewater treatment plant has been relocated outside of a 100’ buffer to the bordering vegetated wetland at the eastern end of the site instead of the western end where a portion was inside that buffer area. The buildings were shifted to accommodate the new location for the wastewater treatment plant and lessen environmental impacts, and Simon Hill requests that the Board incorporate the setbacks, configuration, building sizes, and site details shown on the 2019 Plan Set in its Decision.
2. The revised configuration includes a roundabout and eliminates dead-end to enhance firetruck turning radiuses and design safety to benefit internal road width and design discussed in Condition 15(b) and Conditions 27-32.
3. The updated plans incorporate Condition 51 that requires dumpster areas to be fenced and located away from abutting properties.

4. The updated plans include dense vegetation between buildings and abutting properties to comply with the landscape buffer requirements in Conditions 65 and 66.
5. The five (5) parking spaces designated for school bus pick up and drop off have been moved closer to Prospect Street.

The modifications incorporated in the 2019 Plan Set do not trigger any of the “substantial” change standards set forth at 760 C.M.R. § 56.07(4)(b)-(d) (pertaining to height, number of units or change in building type or housing tenure, or a decrease in site size by more than 10%). The modified site complies with the Wetlands Protection Act, as demonstrated by the superseding order of conditions issued by MassDEP. The site changes also enhance flow and safety measures and should not be considered substantial. The other modifications proposed in the 2019 Project Plans, including drainage, roadway configuration, specific setbacks and separations, and miscellaneous matters revised from the 2013 Plans, are insubstantial because they are generally consistent with the plans considered by the Board, are subject to conditions issued by the Board, and do not increase unit numbers or reduce open areas. Lever Development, LLC v. West Boylston Zoning Bd. of Appeals, No. 04-10, Decision on Stipulation, slip op. at 35 (Mass. Hous. App. Comm. Oct. 27, 2008). When the changes set forth herein have been reviewed by the Board, the Applicant can create final Definitive Project Plans to submit to this Board at least ninety (90) days before applying for its building permit.

As set forth herein, the Applicant makes two separate requests: (1) that the Board deem its extension request to be insubstantial and (2) that the Board deem its changes regarding site design discussed herein and shown on the 2019 Plan Set to be insubstantial, or if the Board deems these site changes to be substantial, that it approve the changes after public hearing. Simon Hill urges the Board deem both changes to be insubstantial. The Applicant is working in good faith to facilitate construction on a timely basis. This project is reaching its twelfth year, with the Applicant having filed its application on July 1, 2008 and prosecuting and defending several appeals thereafter. The permitted project has been thoroughly vetted through appeals to the Housing Appeals Committee and abutter appeals in the Superior Court. The project was pending for over a year with the Conservation Commission and another year with MassDEP, and the conservation process has resulted in increased wetlands protections.

Simon Hill has made significant progress during the last year, despite the challenges posed by Covid-19. Specifically, Simon Hill obtained an Advisory Opinion under the Massachusetts Environmental Policy (MEPA) on August 4, 2020, confirming that additional MEPA review is not warranted. Additionally, the Massachusetts Department of Environmental Protection (MassDEP) issued a Superseding Order of Conditions on December 21, 2020, approving the final plans presented to the Conservation Commission, entitled “Simon Hill Village, Notice of Project Change, Map 13C, Block 37, Lot 6, Comprehensive Permit Plans in Norwell, MA,” last revised September 23, 2019.

According to the Subsidized Housing Index issued by the Department of Housing and Community Development on September 14, 2017, only 7.4% of the housing units in Norwell are SHI Eligible Units. In a more recently obtained Subsidized Housing Index issued by the

Ms. Lois Barbour, Chair
January 20, 2021
Page 4

Department of Housing and Community Development on January 6, 2021, only 4.93% of the housing units in Norwell are SHI Eligible Units. More specifically, 180 out of 3,652 units are SHI Eligible Units. This project will add 126 rental units to Norwell, and 100% of rental units are included on the SHI under the guidelines. See 760 C.M.R. § 56.03(2)(c). Extending this Comprehensive Permit and approving the modifications set forth in this Notice of Project Change is a responsible and viable method of assisting Norwell in reaching the statutory guidance for affordable housing in the community.

We request that the Board find that this change is not substantial through either a written determination or inaction. If the Board determines that a hearing is helpful, then we look forward to the opportunity to review this request at that time. Consistent with 760 C.M.R. § 56.05, the Applicant preserves its rights to appeal any adverse decision.

Thank you for your attention to this matter.

Respectfully yours,

WARREN F. BAKER

WFB:amg

**BB Baker, Braverman
& Barbadoro, P.C.**

ATTORNEYS AND COUNSELORS AT LAW
300 CROWN COLONY DRIVE
SUITE 500
QUINCY, MASSACHUSETTS 02169-0904

WARREN F. BAKER
PAUL N. BARBADORO
GENE J. GUIMOND
CHRISTOPHER J. SULLIVAN
LISA BOND
GARY M. HOGAN*

LAWRENCE A. DINARDO
SUSAN M. MOLINARI
THERESA BARBADORO KOPPANATI**

ELIZABETH A. CARUSO
KIMBERLY K. KROHA***
RICHARD C. ASH

*ALSO ADMITTED IN NJ
**ALSO ADMITTED IN NY & CA
***ALSO ADMITTED IN FL

TELEPHONE
(781) 848-9610

TELECOPIER
(781) 848-9790

INTERNET ADDRESS
WWW.BBB-LAWFIRM.COM

JONATHAN BRAVERMAN (Retired)

OF COUNSEL
DUANE G. SULLIVAN
DOUGLAS C. PURDY (1943-2016)

February 11, 2021

Via Email

Lois S Barbour, Chair
Zoning Board of Appeals
Town of Norwell
345 Main Street, P. O. Box 295
Norwell, MA 02061

Re: Simon Hill Comprehensive Permit
Notice of Project Change

To the Board of Appeals:

I, Warren F. Baker, Esquire, on behalf of Simon Hill, LLC, hereby grant an extension of the statutory time period required for the rendering of a decision determining the substantiality of Applicant's Notice of Project Change, pursuant to 760 C.M.R. § 56.05(11), through March 15, 2021.

Simon Hill, LLC
By its attorney,
Warren F. Baker, Esq.

Assented by the Board of Appeals:

RS Barbour, 20 Chair

cc: Simon Hill LLC
Robert W. Galvin, Esq., Town Counsel

RECEIVED
2021 FEB 11 PM 1:55
TOWN OF NORWELL
TOWN CLERK