

# DROHAN TOCCHIO & MORGAN, P.C.

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February 10, 2021

## **Via Electronic Mail**

Lois S. Barbour, Chair  
Norwell Board of Appeals  
Norwell Town Hall  
345 Main Street  
Norwell, MA 02061

**Re: Damon Farm, LLC – Washington Street, Norwell, MA**

Dear Ms. Barbour:

I hope you have been well. As you may recall, we represent Damon Farm, LLC (“Damon Farm”) concerning a Comprehensive Permit pursuant to M.G.L. c. 40B, §§ 20-23, issued by the Board on November 7, 2008, and recorded with the Plymouth County Registry of Deeds in Book 36583, Page 248 (the “Comprehensive Permit”). We submit this letter to request approval of an “insubstantial” modification to the Comprehensive Permit. Changes to details of a project after issuance of a Comprehensive Permit are governed by 760 CMR 56.05(11). The regulations provide that if a permit holder desires to change the details of a project it should notify the Board in writing, describing the requested changes. The Board then issues a determination whether the requested changes are “substantial” or “insubstantial.”<sup>1</sup> If the change is determined to be insubstantial, the Comprehensive Permit is deemed modified to incorporate the change.

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<sup>1</sup> 760 CMR 56.05(11) references the factors to consider in deeming whether a change is substantial or insubstantial, as set forth in 760 CMR 56.07(4), which provides as examples the following:

- (c) The following matters generally will be substantial changes:
  - 1. An increase of more than 10% in the height of the building(s);
  - 2. An increase of more than 10% in the number of housing units proposed;
  - 3. A reduction in the size of the site of more than 10% in excess of any decrease in the number of housing units proposed;
  - 4. A change in building type (e.g., garden apartments, townhouses, high-rises); or
  - 5. A change from one form of housing tenure to another (e.g., owner-occupied to rental units).
- (d) The following matters generally will not be substantial changes:
  - 1. A reduction in the number of housing units proposed;
  - 2. A decrease of less than 10% in the floor area of individual units;
  - 3. A change in the number of bedrooms within individual units, if such changes do not alter the overall bedroom count of the proposed housing by more than 10%;
  - 4. A change in the color or style of materials used; or
  - 5. A change in the financing program under which the Applicant plans to receive a Subsidy, if the change affects no other aspect of the proposal.

The Comprehensive Permit was granted “for the construction of a 32-unit residential condominium development, including 8 affordable housing units.”<sup>2</sup> At present, all of the foundations have been installed except for Units 30, 31 and 32.

The proposed modification requested by Damon Farm allows for an improved placement of the footprint of Units 30, 31 and 32 on the site, and provides a significant increase in the setback to the wetlands and wetland mitigation. The requested changes are described below and are shown on the plan set prepared by DeCelle-Burke-Sala dated February 10, 2021 and attached hereto as Exhibit A (the “Plan”). As depicted on the Plan, the alteration of the footprint of the building for Units 30-32 from that previously approved, (1) results in a *de minimis* increase in the size of the footprint by 96 s.f.; (2) increases the building setback to wetlands by 18.2’; and (3) reduces impervious area within the 100’ wetland buffer by 857 s.f. See Sheet 3 of the Plan, which overlays the proposed footprint over previously approved. Overall, the proposed modification of the building footprint results in a high net-positive to the design and layout of Units 30-32.

The proposed minor modification is “insubstantial” under the factors referenced in 760 CMR 56.07(4). Specifically, the limited waiver does not constitute a “substantial” change, as there is (i) no increase in the height of the buildings; (ii) no increase in the number of housing units proposed; (iii) no reduction in the size of the site; (iv) no change in building type (*e.g.*, from townhouses to high-rises); and (v) no change from one form of housing tenure to another (*e.g.*, owner-occupied to rental units). Rather, the change requested is consistent with the examples of “insubstantial changes” set forth under 760 CMR 56.07(4)(d).

Based upon the foregoing, Damon Farm respectfully requests that the Board approve the “insubstantial change” to the Comprehensive Permit set forth herein. Pursuant to 760 CMR 56.05(11), the Board has twenty (20) days to determine whether it deems the change substantial or insubstantial, with reference to the factors set forth at 760 CMR 56.07(4), and notify us of its determination; or, the Board may elect to allow the 20-day period to elapse whereby the modification is deemed incorporated into the Comprehensive Permit. There is no requirement that the Board conduct a public hearing to make a determination whether a change is substantial.<sup>3</sup>

Thank you for your attention to and consideration of this matter.

Very truly yours,



Jeffery A. Tocchio

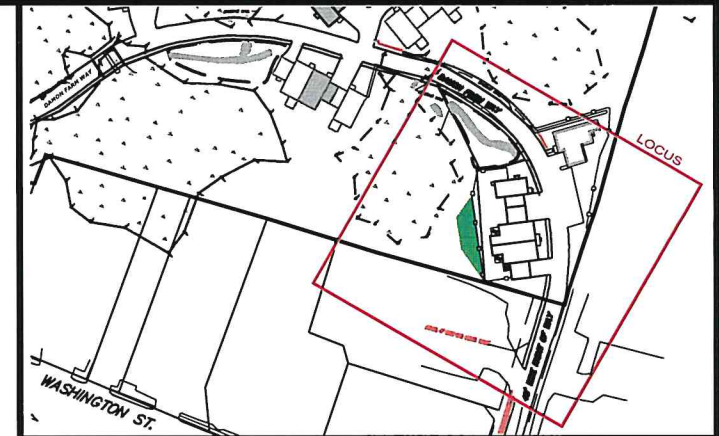
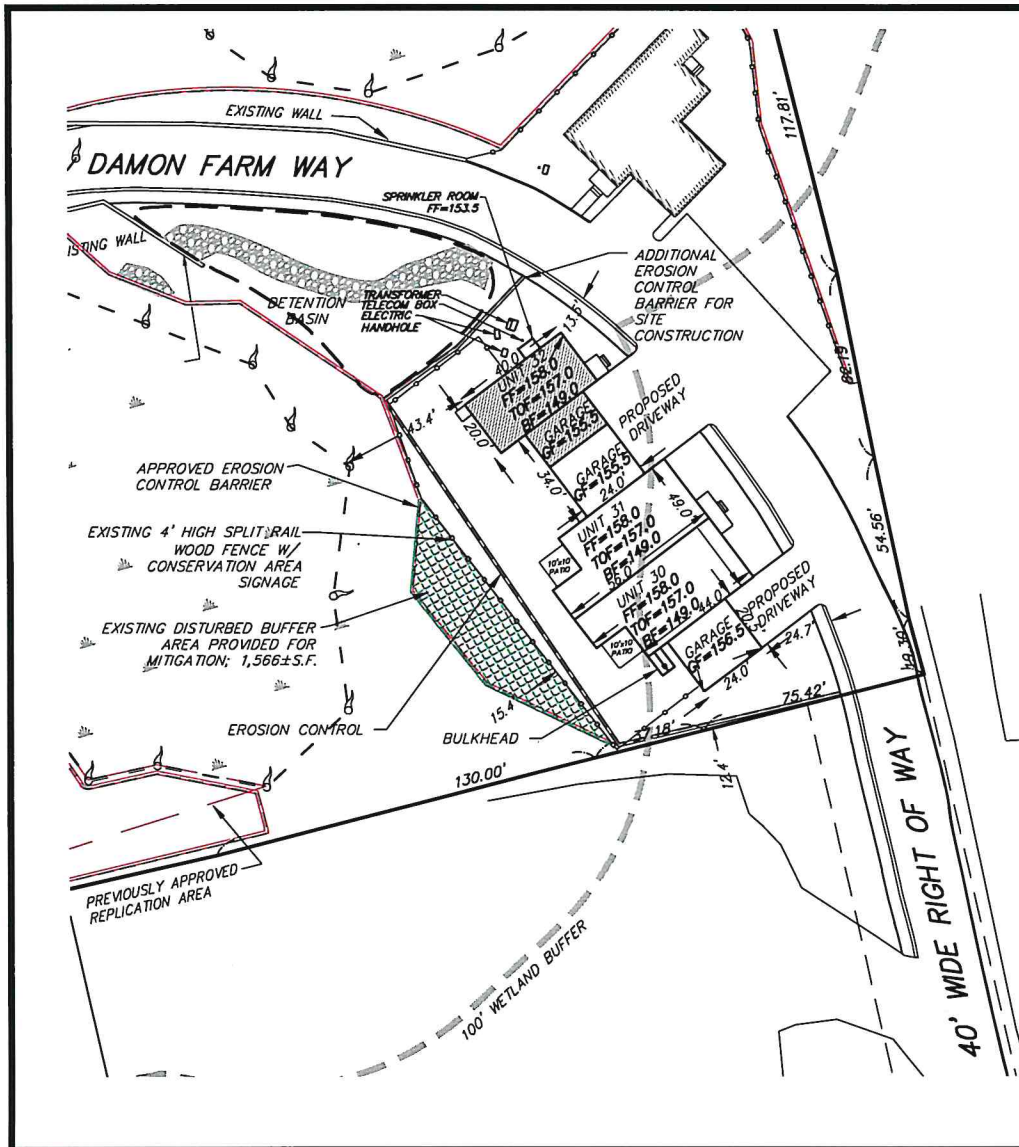
cc: Maureen Trifone, Damon Farm, LLC

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<sup>2</sup> Twenty-four units are located in Norwell and eight are located in Hingham. The Hingham Board of Appeals issued a Comprehensive Permit for the development on May 19, 2008, recorded with the Plymouth County Registry of Deeds in Book 36063, Page 168.

<sup>3</sup> If a change is determined to be “substantial”, then the Board must hold a public hearing to consider whether it will approve the proposed “substantial change.”





LOCUS MAP  
SCALE 1"=150'

PROJECT TITLE:  
**PROPOSED PLOT PLAN  
UNITS 30, 31 & 32**  
LOCATED AT  
**27, 29 & 31 DAMON FARM WAY  
NORWELL, MASS.**

PREPARED FOR:

DAMON FARM LLC.  
P.O. BOX 568  
MILTON, MA 02186

**DeCelle-Burke-Sala**



1266 Furnace Brook Pkwy., #401 Quincy, MA 02169  
(617) 405-5100 (O) (617) 405-5101 (F)  
www.decelle-burke-sala.com

DATE: FEBRUARY 10, 2021

REVISED:



JOB NUMBER: 136.001

SCALE: 1"=40'

**LEGEND:**



- AFFORDABLE HOUSING UNIT



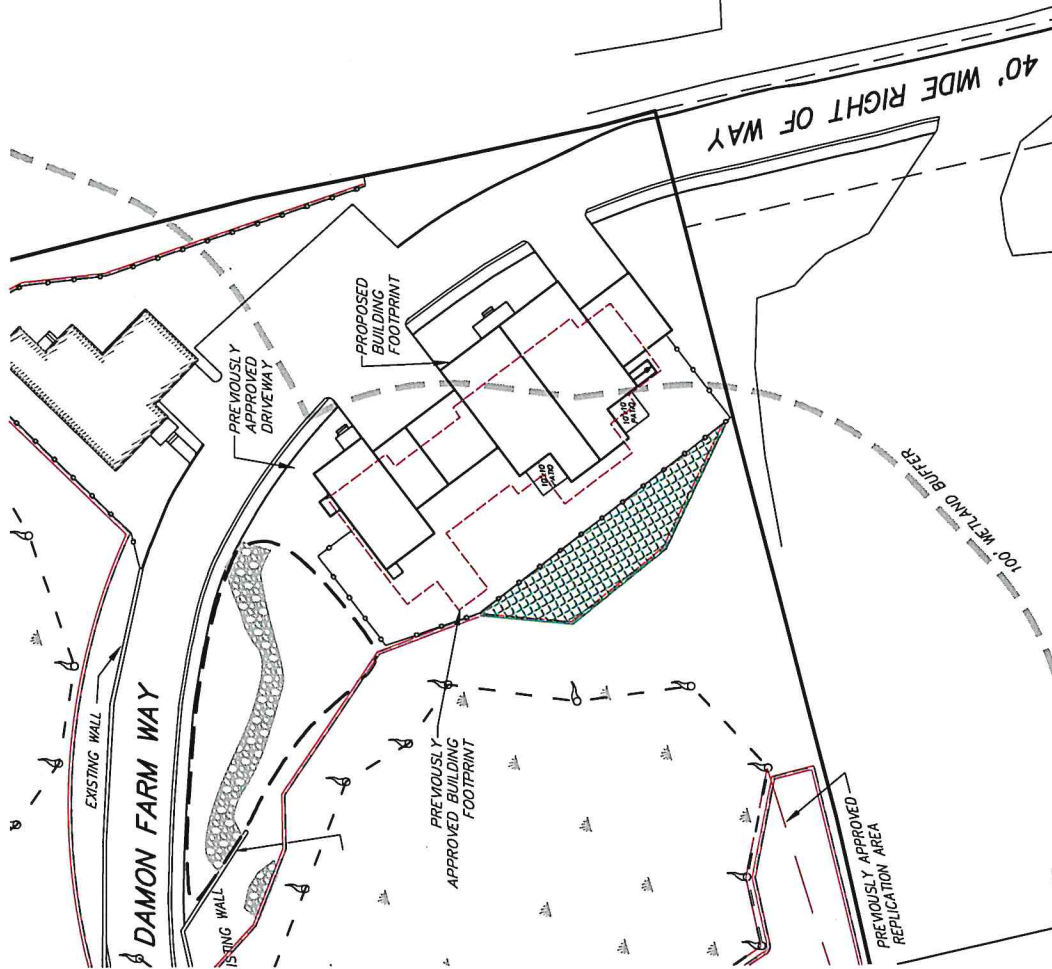
— AFFORDABLE HOUSING UNIT



WETLAND IMPACT COMPARISON NUMBERS


|   |   |            |
|---|---|------------|
| PREVIOUSLY APPROVED BUILDING FOOTPRINT            | - | 4,456 S.F. |
| PROPOSED BUILDING FOOTPRINT AREA                  | - | 4,552 S.F. |
| PREVIOUSLY APPROVED BUILDING SETBACK TO WETLAND - | - | 25.2'      |
| PROPOSED BUILDING SETBACK TO WETLAND              | - | 43.4'      |
| PREVIOUSLY APPROVED IMPERVIOUS AREA IN BUFFER     | - | 4,012 S.F. |
| PROPOSED IMPERVIOUS AREA IN BUFFER                | - | 3,155 S.F. |

THE PREVIOUSLY APPROVED FOOTPRINT FOR UNITS 30-32 FROM THE PLAN REFERENCED IN THE TOWN OF NORWELL ZBA COMPREHENSIVE DECISION. IT IS OUR UNDERSTANDING BASED ON THE ABOVE COMPARISON THE PROPOSED BUILDING FOOTPRINT PROVIDES INCREASED SETBACK TO WETLANDS AND DECREASES THE TOTAL PROPOSED IMPERVIOUS AREA INCLUDING WITHIN THE WETLAND BUFFER ITSELF.



PROJECT TITLE:  
**FOOTPRINT COMPARISON  
 UNITS 30, 31 & 32**  
 LOCATED AT  
**27, 29 & 31 DAMON FARM WAY  
 NORWELL, MASS.**

PREPARED FOR:  
 DAMON FARM LLC.  
 P.O. BOX 568  
 MILTON, MA 02186

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February 11, 2021

## Via Electronic Mail

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

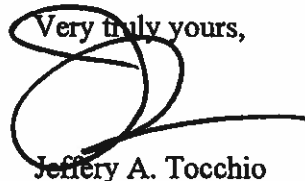
**Re: Damon Farm, LLC – Washington Street, Norwell, MA**

Dear Ms. Barbour:

With reference to our letter dated February 10, 2021, we understand that the Board is not scheduled to meet until March 3, 2021. We agree to extend the timeline set forth in our letter to March 15, 2021.

Thank you for your prompt request to align dates with your hearing schedule. Please let us know if you require any further information.

Very truly yours,



Jeffery A. Tocchio

cc: Maureen Trifone, Damon Farm, LLC

RECEIVED  
2021 FEB 16 AM 11:12  
TOWN OF NORWELL  
TOWN CLERK