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MEMORANDUM

To: Robert Van Campen, Esq.
Denise Gaffey

From: James P. Mitchell, Esq.

Date: January 16, 2020

Re: 0 Swains Pond Road, Melrose, MA
Colucci Estates

Rob and Denise:

As requested, there is before the Planning Board by Laura Szekely, Trustee of 0 Swains Pond Avenue Realty Trust (the "Applicant") a Request for the Modification of a previously approved Colucci Estates Subdivision Plan dated May 3, 1998. The purpose of this Memorandum is to clarify certain legal issues surrounding the Request by this Applicant.

1. Zoning Freeze.

Tolling or Extension of the Plan Freeze Period Colucci Estates.

The definitive subdivision plan was approved by the Melrose Planning Board from which an appeal to the Land Court was filed. On May 24, 2017 by Order of the Court the Plan was approved and filed at the Land Registration Division of Middlesex South Registry of Deeds on June 16, 2017.

G.L. c. 40A, § 6, ¶ 8 provides as follows:

"[i]n the event that any lot shown a plan endorsed by the planning board is the subject matter of any appeal or any litigation, the exemptive provisions of this section shall be extended for a period equal to that from the date of filing of said appeal or the commencement of litigation, whichever is earlier, to the date of final disposition thereof, provided final adjudication is in favor of the owner of said lot."

With respect to ANR plans and definitive subdivision plans, disapproval of the plan does not terminate freeze rights if an appeal is filed.

"Such appeal shall stay, pending either (1) the conclusion of voluntary mediation proceedings and the filing of a written agreement for judgment or stipulation of dismissal, or (2) the entry of an order or decree of a court of final jurisdiction, the applicability to land shown on said plan of the provisions of any zoning ordinance or by-law which became effective after the date of submission of the first plan submitted, together with time required to comply with any such agreement or with the terms of any order or decree of the court."

G.L. c. 40A, § 6, ¶ 7.

Accordingly, the zoning in place at the time of approval by the Planning Board was frozen.

2. **Slope Protection Special Permit Bylaw**
§ 235-73.2 **Slope protection.** [Added 12-19-2005 by Ord. No. 06-017; amended 6-5-2006 by Ord. No. 06-224; 5-19-2008 by Ord. No. 06-224A]

The Slope Protection Special Permit Bylaw was enacted on December 19, 2005., after the filing of the Colucci Estates Subdivision Plan.

As set forth above, the resulting litigation froze the zoning. Accordingly, the Slope Protection Special Permit Bylaw (Section 235 73.2) as adopted 12/19/2005, as amended, is not applicable to the Colucci Estates Subdivision Plan, nor is site plan review required.

3. **Chapter 41, Section 81W.**
Modification of an Approved Subdivision Plan.

Section 81W of M.G.L., c.40A provides in pertinent part

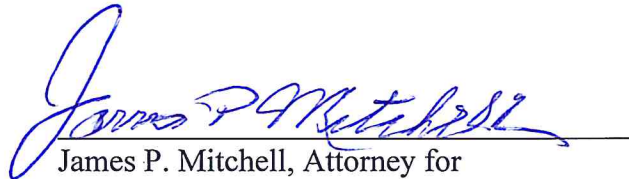
A planning board, on its own motion or on the petition of any person interested, shall have power to modify, amend or rescind its approval of a plan of a subdivision, or to require a change in a plan as a condition of it retaining the status of an approved plan. All of the provisions of the subdivision control law

relating to the submission and approval of a plan of a subdivision shall, so far as apt, be applicable to the approval of the modification, amendment or rescission of such approval and to a plan which has been changed under this section.

The proposed Modification to the 12-Lot Colucci Plan provides a significantly improved 9-Lot Subdivision as compared to the 12-Lot Colucci Subdivision Plan. Accordingly, the Applicant as a matter of right can seek a modification pursuant to Section 81W as the proposed Plan meets all of the requirements of the statute for an existing approved plan.

I have included a Comparable List of Waivers prepared by Williams and Sparages for the Planning Board's review which is incorporated herein and marked as **Exhibit A**.

Respectfully submitted,



James P. Mitchell, Attorney for
0 Swains Pond Avenue Realty Trust

Hillside Park, Melrose
Comparative List of Waivers 1/15/2020

A

Subdivision Regulation		Modified Definitive Plan, December 4, 2019, Williams & Sparages	Definitive Subdivision Plan, May 4, 1998, Edward Farrell, PLS (Colucci Plan)
1	Section V.A.1.f, Minimum Center Line Radius of 100'	Requesting Center Line Radius of 90' (New Waiver)	Met Requirements, No Waiver Required
2	Section V.A.1.g, No streets intersect at less than 60 degrees	Requesting intersection angle of less than 60 degrees between Patrick's Place and Maple Terrace	Approved intersection angle of less than 60 degrees between proposed main road and Maple Terrace
3	Section V.A.1.h, Street lines at intersections must be cut back and connected with a radius of not less than 20 feet	Requesting a side line radius of 10.81 feet at the intersection of Patrick's Place and Maple Terrace	Approved side line radius of 13.81 feet at the intersection of proposed main road and Maple Terrace
4	Section V.A.2, Requires the minimum width of street right of way to be 50 feet	Requesting a right of way width of 40 feet for Patrick's Place and a portion of Hillside Park (New Waiver)	Met Requirements, No Waiver Required
5	Section V.A.3.a, Requires that grades of non-principal streets be no greater than 10%	Requesting a 12% grade for Patrick's Place and 14.5% grade for the improved portions of Hillside Park	Approved a 12% grade for the proposed main road and 15% grade for the improved portions of Hillside Park
6	Section V.A.4.a, Requires cul-de-sac streets not to exceed 500 feet in length	Requesting a centerline road length of 651.84 feet to the center of the cul-de-sac	Approved a centerline road length of 582 +/- feet to the center of the cul-de-sac
7	Section VI.B.3, Requires a minimum width of roadways between curb lines of 32 feet	Requesting a width of 24 feet between curb lines for Patrick's Place and a portion of Hillside Park (New Waiver for Patrick's Place)	Proposed main road met requirements, no waiver required, Hillside park approved road width of 20 feet between curb lines