



TOWN OF SHERBORN
19 Washington Street
Sherborn, MA 01770
508-651-7850

Jeffrey R. Waldron, *Chair*
Marian R. Neutra, *Vice Chair*
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Paul R. DeRensis
Eric V. Johnson
Diane Moores, *Interim Town Administrator*

July 18, 2022

MassHousing: Office of Planning & Programs
Attn.: Mr. Michael Busby
One Beacon Street
Boston, MA 02108

RE: Proposed 40B Project
Farm Road Homes, Sherborn, MA
MH ID No. 1151

Dear Mr. Busby:

This letter is in response to your letter of May 17, 2022, soliciting comments from the Sherborn community regarding the proposed 40B project "Farm Road Homes" (MH ID 1151). This letter summarizes background information about Sherborn relevant to the project, the Select Board's summary analysis, and specific issues and concerns raised by our municipal boards & committees. The Developer's site plan is provided at the end of this letter for visual reference.

The Appendix includes these detailed board and committee reports, and along with comments from Sherborn citizens.

I. Background

As you review these comments, we trust that you will bear in mind the specific local conditions in Sherborn that define our approach to increasing housing diversity, including affordable housing:

Unlike almost all other towns in the Boston area, Sherborn has no municipal water or wastewater infrastructure.

- Almost all the Town's residents are served by private wells for water and private septic systems with leaching fields for waste collection and wastewater dissipation.
- Most of Sherborn sits on shallow bedrock covered by a thin overburden of soil, so siting of leaching fields is challenging and critical to maintaining clean water resources and public health for all.
- Large, localized septic fields that discharge large volumes of effluent in a confined area may threaten well water safety and health of project residents and existing abutters.
- Ledge blasting and disruption for new development elsewhere in Town appear to have contaminated at least one abutting private well with toxic manganese.

Despite these challenges, Sherborn fully supports increasing the availability of affordable and diverse housing options:

- Sherborn has a Housing Production Plan (HPP) originally approved by the State in 2016; a recent update (May 2022) has been approved.
- Sherborn's 2019 Master Plan places great emphasis on the need for diverse and affordable housing options, and recommends strategies and actions in line with the HPP.
- In 2018, Sherborn Town Meeting approved a zoning bylaw change that facilitates and encourages accessory apartments as small rental units in single family homes or farms.
- In 2020, Sherborn Town Meeting approved an "inclusionary zoning" bylaw that requires all new developments of 2 or more units to include 15% affordable units, or contribute to a new Affordable Housing Trust devoted to investment in affordable housing in Sherborn.
- Also in 2020, Sherborn established an "Affordable Housing Trust" to manage funds generated by the inclusionary bylaw and from other sources, to support affordable housing investments by the town.

Sherborn has taken concrete steps toward fulfilling its affordable housing goals:

- There are currently 48 housing units listed on the SHI: 24 rental and 24 ownership.
- Eight (8) additional SHI units will be added as current approved 40B projects are completed.
- Two other 40B project applications by a single developer, a 60 unit rental apartment complex and a 27 unit ownership project, were denied Comprehensive Permits by the Sherborn ZBA in 2021, based largely on public health concerns including unproven well water resources and potential impacts of excessive groundwater extraction and wastewater discharge on abutters. They are currently in the appeal process.
- In hopes of fulfilling our affordable housing goal of 156 total SHI units without compromising groundwater safety, in 2021 the Sherborn ZBA approved a Comprehensive Permit for a 120-unit LIP 40B rental project that would access MWRA water & sewer from adjacent communities. The project is currently on hold pending required applications, approvals and negotiations (MWRA approvals, inter-municipal agreements with adjacent communities, MA legislative approval, etc.) as well as developer commitments.
- Sherborn is currently not in "Safe Harbor". Sherborn's Safe Harbor status expired in June of this year, due to delay in the 120-unit rental project cited above.

II. Select Board Summary and Analysis

Regarding eligibility of the project, the Town does not have enough information to make a determination as to whether the Applicant's organizational and financial structure meets the general eligibility standards of the housing program contained in 760 CMR 56.04. The Applicant has site control, as he purchased two parcels totaling 16.7 acres and a single-family house at #55 and #65 Farm Road in 2021.

However, the project is not clearly eligible for multiunit housing development under 40B, due to (a) a deed restriction on the parcels, and (b) the 40B "cooling off" period.

As for the deed restriction, the property was historically part of a large, undeveloped parcel that

was divided in 1980 into 3 parts, including an addition to adjacent conservation land and two house lots. The 1980 deed (recorded in Book 13926, Page 211) contained a restriction specifying that the private parcels not be further subdivided. This restriction was referenced in all subsequent deeds including the transfer to the Applicant in 2021. State law (MGL Ch. 184 S.27) provides for a 30-year limit or deed restrictions, but because the restriction was referenced in all subsequent deeds, it should still apply. Case law supporting the ongoing validity of this restriction is detailed in a "citizen comment" letter from attorney Arthur Fenno to the Select Board Chair (see Appendix Part II). An excerpt from Mr. Fenno's letter follows:

"The 2021 deed for the 55 Farm Road parcel incorporates by reference the "certain restrictions and conditions as recited in the deed of Richard Saltonstall and D. McLaughlin Building Co., Inc. dated February 20, 1980 and recorded with the Middlesex South Registry of Deeds in Book 13926, Page 211." Those "restrictions and conditions" specifically provide, among other things, that (A):

1. The parcel hereinbefore described [Lot 1, a/k/a 55 Farm Road] shall not be subdivided into lots or parcels, nor shall any conveyance or transfer of less than the whole part be made.
2. The above restrictions shall be considered a covenant running with the land and shall bind the undersigned grantee, his successors and assigns.

and that (B): such restrictions and conditions "shall attach to said piece or parcel of land hereinbefore described [Lot 1, a/k/a 55 Farm Road] and shall be for the benefit of and appurtenant to Lots 2 and 3' . . . "

In other words, the deed conveying the 55 Farm Road parcel to the developer expressly prohibits subdividing that parcel, and also expressly provides that said prohibition benefits and belongs to - and thus is enforceable by - the owner of Lot 3 which, as noted *supra*, is the Town."

Regarding the "cooling off" period, we note that the project is not eligible at this date for submission of a Comprehensive Permit application to the Sherborn Zoning Board according to 760 CMR 56.03(7). In brief, this regulation provides for a 12 month ineligibility period from the date the Applicant previously submitted plans to the Planning Board for market-rate housing on the same land. We understand that the Applicant is aware of this, and that formal submission of a Comprehensive Permit application the ZBA may be delayed by these previous market-rate housing plans.

Specifically, on Sept. 1, 2021 a 2-lot ANR plan was submitted; it was endorsed by the Planning Board on Sept. 7, 2021. A 5-lot ANR plan was submitted On Dec. 27, 2021. It was denied by the PB on January 4, 2022, but the denial was invalidated by an administrative delay and the ANR plan was recorded at the Registry of Deeds on January 4, 2022. A revised 2-lot ANR plan including the 14-acre undeveloped parcel of this 40B was submitted on March 14, 2022, and was endorsed by the Planning Board on May 3, 2022.

The additional comments that follow are made with the caveat that project eligibility has not been established at this time.

The siting of the development is directly adjacent to an extensive series of conservation lands that include the Bay Circuit Trail. The site has walking connections via trails to the Town Center, elementary school, and an extensive town-wide trail system. These are positive features.

Farm Road is a state-designated Scenic Road in a wooded, relatively undisturbed natural environment. This area of Sherborn is characterized by widely spaced, single-family houses that are generally set at a distance from the road. The project property was, until recently, a horse

farm. The proposed development would be much more densely built than any other part of the neighborhood. Thus loss of the scenic quality of the road and the rural character of the neighborhood is a major concern.

The design and layout of the plan have positive features: The development is consistent with the goals and recommendations of Sherborn's Master Plan and Housing Production Plan, in that it responds to the need for more affordable and diverse housing options in Sherborn by providing a range of housing sizes and prices including small cottages, duplexes, and other modestly sized homes. The housing sizes and styles are equitably distributed between affordable and market-rate. The houses are arranged in clusters, and a significant portion of the property will remain undisturbed. The layout and preliminary housing design is the work of an architectural firm (Union Studio) known for well-designed village-style housing.

However, the positioning of 8 units (4 duplexes) in a row very close to Farm Road is inconsistent with the character of the neighborhood and with the Scenic Road status of Farm Road. This feature of the layout requires revision, including repositioning of these units and visual screening of the development from the road.

The Applicant is applauded for the net-zero energy goal with carbon-neutral features including energy conservation measures and solar panels. However, the proposed ground-mounted solar arrays are inconsistent with state guidelines: solar panels should preferably be on rooftops or on already disturbed areas and not on undisturbed land, especially not if tree removal is required. The current plan proposes ground-mounted arrays in a small meadow and adjacent woods, but instead should maximize rooftop locations.

Environmental and public health concerns dominate the comments of Sherborn regulatory boards, committees and abutters. A major environmental issue is the potential for flooding on the site and onto adjacent properties, given the topography and the undetermined water absorption capacity of the soil overburden of the site. According to current Conservation Commission regulations and wetland delineations done within the past two years, the planned wetland setbacks are adequate. However, current published USGS StreamStats maps, the observations of current residents, and historical anecdotes indicate the presence of a hydrological feature (open surface drain, watercourse) in the southwest area of the property running parallel to Farm Road from the surface pond to the far western property line and on into the wetlands in the adjoining property. Surface water flow in this area after periods of extreme precipitation will have to be kept in mind when the placement of wells, septic, stormwater management features, buildings and roads are finalized during the ZBA review process. It should also be noted that current regulations don't take into account the projected increases in precipitation due to climate change, and some planning of stormwater features along those lines is recommended.

Safety of well water for public health is a continual, existential concern in Sherborn, and is intensified when dense development projects such as Farm Road Homes are proposed. The Farm Road site is particularly challenging in this regard, both for the developer and for regulatory bodies. The soil conditions and geology of the site make septic field siting very difficult, as evidenced by the proposed clustering of septic fields. Filtration of wastewater through soils is important, and discharge of high wastewater volumes into a small area poses an unreasonable risk to residents of contaminants in groundwater beyond the standard setback area. This is a regulatory conundrum that will be addressed in the Comprehensive Permit review processes. The town will seek the collaboration of the developer as well as state regulators in addressing

this challenge.

III. Summaries of Comments from Town Boards, Committees and Departments.

The key comments and concerns are summarized below. (Please also refer to the Appendix, Part I) The Select Board unanimously supports the inclusion of all comments, but specific opinions expressed should be attributed to the originating Board/Committee.

Planning Board

- The project addresses Sherborn's need for affordable housing and more diverse (smaller) housing options, in line with the goals of the town's Housing Production Plan and Master Plan.
- The net-zero energy features are a strength of the plan. However, rooftop solar panels should be prioritized over ground-mounted panels that require tree removal.
- Siting of the 8 closely-spaced duplex units very near Farm Road should be changed; this feature of the design is inconsistent with the character of the neighborhood of Farm Road, a state-designated Scenic Road.
- The planned open-air parking lot for the cottages should be covered, as residents are likely to include seniors.
- Low-Impact Development features for rainwater capture and recharge should be maximized in the definitive plan.
- EV charging stations should be considered.
- A sidewalk along Farm Road would be an additional community asset.

Conservation Commission

- There is potential for significant wetland and water quality impacts, as large, clustered septic fields are located at the edge of, and up-gradient from, a wetlands buffer zone.
- The development would create over 2 acres of new impervious area that could strain stormwater storage capacity of the existing pond and adjacent land that has been subject to flooding. The proposed entry road crosses an area currently subject to seasonal flooding.
- Continuity of wildlife habitat between wetland areas and in the broader ecosystem should be considered.

Board of Health

- The septic leach fields are clustered, presumably due to the lack of suitable conditions elsewhere on the site. The local concentration of effluent could impact nearby wells, as standard setback regulations are based on smaller wastewater systems.
- To assure the safety of well water of project residents and abutters, an Environmental Health Impact Report (EHIR) should be required.
- For the purposes of the EHIR and public health concerns, the entire project should be evaluated as a whole and not in separate segments.
- The project's water supply, whether single or multiple wells, should be treated as a Public Water Supply to assure continued oversight of water safety. If not, local BOH regulations should apply.
- If the project requires bedrock disruption, local regulations to prevent potential water contamination by such disruption should apply.
- Formal financing systems should be established for maintenance and oversight of shared

water and wastewater systems.

Groundwater Protection Committee

- The project addresses Sherborn's need for affordable housing and diverse housing options.
- Given the documented hydrogeology of the site, well and septic placement and a robust stormwater management plan will be critical.
- The projected volume of septic effluent is a concern, given the shallow overburden soils of the area.
- The detailed stormwater management plan will need to consider projected future increases in precipitation due to climate change.

Water Commissioners

- A public water supply is recommended for the development, for State oversight to assure well water safety.
- A small wastewater treatment plant should be considered, again for DEP oversight.

Fire & Rescue Department

- The estimated addition to Sherborn's population from this development is well within the capacity of the Fire Dept. to respond to calls and fire or safety needs.
- There are no access issues; the developer has adjusted road widths in response to a FD request.
- The developer is committed to installing a water cistern for firefighting supply.
- Installation of sprinklers is recommended, although not legally required.

Other Committees and Town Departments

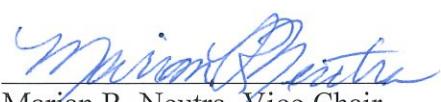
Additional evaluations await the submission of more detailed plans, and will be submitted to the Zoning Board during the Comprehensive Permit process.

We are grateful for the extension of the deadline for this letter to 7/20/2022, and we thank you in advance for your consideration and review of the Town of Sherborn's comments and concerns regarding this 40B application.

Sincerely,



Jeffrey R Waldron, Chair



Marian R. Neutra, Vice Chair

