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February 17, 2022

BY HAND DELIVERY

Mr. Michael Main, Chair
Zoning Board of Appeals
Town of Plymouth
26 Court Street
Plymouth, MA 02630

Re: Zoning Appeal pursuant to M.G.L. c. 40A, § 8 from the issuance of
Zoning Permit Z20220040, 10 Collins Ave., Plymouth
Spencer Plymouth Realty LLC, owner

Dear Chairman Main and Members of the Board,

This is an appeal of the Building Commissioner's grant of a zoning permit dated February 10, 2022 to Spencer Plymouth Realty LLC ("SPR LLC") for the property located at 10 Collins Avenue ("Subject Property"). This appeal is brought by Save the Pine Barrens, Inc. (STPB). STPB, and its members, are aggrieved by the grant of the zoning permit in violation of the Zoning Bylaw.

STPB's is an organization with a mission and objectives dedicated to the conservation of the Pine Barrens Ecoregion and the Plymouth/Carver Sole Source Aquifer, and it and its members are substantially and specifically affected by this proposed Project.

Zoning Permit Z20220040 was issued in reliance on a recommendation from the Plymouth Planning Board. STPB believes that any such permitting is improper, for several reasons including that the approximately 600,000 cubic yard earth removal operation approved by the Planning Board is not "necessary and incidental" to the proposed project, as required by the Zoning Bylaw and unambiguous case law including several cases arising from projects in the Town of Plymouth.

The project as proposed has the clear purpose of earth removal, entirely separate from the use of the site for a warehouse. The initial proposals for developing the site did not include earth removal. Only recently has the earth removal operation also involved siting a warehouse. These

factors undermine the Building Commissioner and Planning Board's conclusion that earth removal is "necessary and incidental" to the proposed use.

Furthermore, the scope of earth removal alone sets it apart from necessary site work to prepare for construction of a building. The Planning Board should have inquired into the value of the materials being removed, in order to properly evaluate whether the earth removal was "necessary and incidental". The Planning Board failed in this regard, and the issuance of the permit was in error.

The Planning Board's site plan review was faulty in other respects. The Subject Property was previously cleared under a zoning permit prior to site plan review. This has detrimentally affected the site review process, and as a result of improperly segmenting this project, failed to ensure the standards of the zoning bylaw are met. The Planning Board is tasked with reviewing **existing conditions** in order to ensure adequate buffers are in place, proper erosion controls are established, and the zoning bylaw guidelines are followed.

For example, §203-2 requires approval of a Development Plan prior to clearing trees 6 inches or larger in diameter, or taller than 3 feet, on a lot greater than 3000 square feet. §203-2 also requires active construction to justify such tree clearing. Because the Building Commissioner issued the zoning permit prior to Planning Board review and the site was cleared, including clearing of the required tree buffers, it is impossible for the Planning Board to apply the bylaw to the site. With no existing conditions present, due to clearing the lot, the Planning Board's present review of the project is deficient. It also makes the Planning Board's recommendation to the Building Commissioner, and his subsequent issuance of Zoning Permit Z20220040, defective.

The prior zoning permit also explicitly prohibited earth removal at the site. This explicit prohibition was violated in about October 2021 when SPR LLC, pursuant to a contract it entered into prior to even owning the site, began earth removal operations. No enforcement actions were ever taken by either the Building Commissioner, and this was not addressed by the Planning Board in its site plan review.

Furthermore, the project has been impermissibly segmented in order to evade proper review. SPR LLC first applied for a project with no earth removal, then for a project with approximately 100,000 cubic yard removal. At the Planning Board public hearing on January 11, 2022 the principal of SPR LLC admitted the plan was to undertake the earth removal in segmented portions. This is what has played out in the site clearing as well. With the trees cleared and the site disturbed, there is little ability to evaluate what exists versus what is being proposed.

The project site also sits in a Light Industrial District that abuts a residential zone, R-20 SL. Projects in the LID that abut a R-20 SL zone must have 100-foot vegetated buffer. Deviations are allowed only by special permit, and no special permit has been granted or applied for. SPR LLC's own plans call out the 50' buffer required by §203-5, and the Building Commissioner's decision otherwise was in error.

For the above reasons, this Board should find the Building Commissioner, and the Planning Board, erred in finding the earth removal was necessary and incidental to the proposed project, revoke zoning permit Z20220040, require SPR LLC to provide documentation of the number of trees cut during the initial site clearing, require SPR LLC to provide documentation of the alteration of topography, volume of earth removed and depth of excavation, the anticipated value of the materials to be removed, comply with all stormwater requirements for both the mining operation and the “end use” of a purported manufacturing facility (for which no specific plans have been presented or approved) and order SPR LLC to undertake mitigation, including but not limited to establishing the 100 foot vegetated buffer required by §203-2(C)(4).

Very truly yours,

Jonathan M. Polloni

JMP/

Enclosures

Cc: Client
Spencer Plymouth Realty LLC