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June 29, 2022

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Via E-Mail

Jane Fisher Carlson, Chair
Weston Zoning Board of Appeals
11 Town House Road
P.O. Box 378
Weston, MA 02493

Re: Comprehensive Permit Application- 518 South Avenue

Dear Zoning Board Members:

Enclosed in the accompanying DropBox link, please find the following materials:

- Updated matrix responding to PSC's comments dated June 28, 2022;
- Memorandum from Dr. Thomas Ballestero dated June 29, 2022;
- Letter from Sanborn Head dated June 29, 2022;
- Updated waiver list dated June 28, 2022;
- Draft proposed conditions and waivers;
- Compiled revised plan set.

Full size paper copies of the plan set were delivered to Town Hall on June 28, 2022.

With respect to the draft conditions and waivers, the Applicant has taken this Board's November 29, 2021 decision approving with conditions a comprehensive permit for Weston BPR LLC's 180 rental unit multifamily project at 0, 751 and 761 Boston Post Road and has updated the conditions and waivers issued to that project to reflect the specifics of 518 South Avenue. The Applicant specifically directs the Board's attention to how it resolved many of the concerns raised in this hearing process with respect to Boston Post Road. For example, condition 36(g) in the Boston Post Road decision defers review of final design plans for retaining walls to the Building Inspector and conditions 175 and 176 in the Boston Post Road decision approved work within Town rights of way. The Board has set forth no basis for its sudden hesitation about its authority to grant approval for work in the right of way or its change in position with respect to the level of detail required for retaining walls. The Board's 761 Boston Post Road decision dated November 29, 2021 is the precedent it should follow here.



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Additionally, the Applicant is in receipt of PSC Group's Memorandum dated June 27, 2022, provided on June 28, 2022. PSC's letter does not raise any new issues and rather reiterates their prior comments. Accordingly, the Applicant directs the Board to Tetra Tech's May 18, 2022 memorandum and Sanborn Head's May 18, 2022 letter to the Board, both of which address these topics, as well as to the accompany memorandum from Dr. Thomas Ballestero dated June 29, 2022 and letter from Sanborn Head dated June 29, 2022 which summarize the prior responses on these topics.

Again, the Applicant reiterates, as it has at length before this Board, that the analyses requested by PSC pertaining to groundwater mounding and the mounding analysis of the 25- and 100-year storm events are not required by either state or local regulation. Importantly, there is no applicable local by-law regulating these issues. To the extent that the Board argues that the Town's Stormwater By-law justifies their request for the 25- and 100-year storm mounding analyses as a local concern, the Housing Appeals Committee has held that a local by-law which overlaps a state law is only a local concern if it is *more stringent* than the state law at issue. *See Weiss Farm Apartments, LLC v. Stoneham Zoning Board of Appeals*, No. 2014-10, slip op. at 31, March 15, 2021, citing *Herring Brook Meadow, LLC v. Scituate*, No. 2007-15, slip op. at 26, May 26, 2010 ("a board must show that the local concern set out in local bylaws or regulations applies to the proposed development, and that the specific interests identified in the local regulation are important at the site. If the Board has not articulated the local concern, nor identified the specific applicable local requirement, and, where there is state regulation, has not shown a local requirement to be stricter than the state standard, nor explained the purpose of the stricter standard or its applicability to the project or the project site, the Board has failed to demonstrate a valid local concern applicable to the project, much less that such a concern outweighs the need for affordable housing." (Emphasis supplied.))

Here, the Board's counsel and its reviewers have repeatedly stressed the fact that the local by-law incorporates the MassDEP's Stormwater Handbook for its standards, yet none of them have ever identified any more stringent requirements in the local Bylaw. Accordingly, the Board has not articulated how groundwater mounding and the mounding analysis of the 25- and 100-year storm events are valid local concerns. *See id.* In any event, the proposed project complies with all state and local regulations concerning stormwater, as will be evident when the state permits are issued. Thus, matters related to groundwater mounding and/or the mounding analysis of the 25- and 100-year storm events cannot serve as a lawful basis for any denial or conditions the Board might seek to impose in its ultimate decision on this application.

The Applicant looks forward to answering any questions the Board may have at its final hearing on this matter this evening.



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Very truly yours,

A handwritten signature in blue ink that reads "Valerie A. Moore". The signature is written in a cursive, flowing style.

Valerie A. Moore

VAM:
Enclosures

cc: Jonathan Witten, Esq.
Dennis Murphy, Esq.
Luke Legere, Esq.
Jonathan Buchman
David Hall

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