

ANDERSON KREIGER

ARTHUR P. KREIGER

akreiger@andersonkreiger.com

T: 617.621.6540

F: 617.621.6640

July 6, 2020

Woburn City Council
Woburn City Hall
10 Common Street
Woburn, MA 01801

Re: *The Vale* – Special Permit Applications

Dear Councilors:

Our firm is Town Counsel to the Town of Winchester. This letter addresses legal concerns with the two special permit applications submitted by LCS Woburn LLC and Pulte Homes of New England, LLC for parts of the proposed mixed-use development known as The Vale on the former Kraft Foods site.

The Site

The former Kraft Foods property comprises approximately 77 acres and is located in the General Industrial District and the Technology and Business Overlay District under the Woburn Zoning Code (the “Property”). The southern edge of the Property abuts a residential neighborhood in Winchester, along Sunset Road and Forest Street, which is located in the RDB-10 (Residential B) District under the Winchester Zoning Bylaw.

There are three primary components to the proposed project: (1) a commercial and research development on the north side; (2) an assisted living facility in the southeast along Route 93; and (3) residential townhomes and multi-family buildings along the south side. There is a different developer for each component of the project. Leggat McCall has proposed the commercial development, LCS Woburn has proposed the assisted living facility, and Pulte Homes has proposed the residential development. LCS Woburn and Pulte Homes have recently submitted special permit applications for their components of the project.

Proposed Emergency Access Road

The plans submitted by Pulte Homes with its special permit application depict an emergency access road connecting the proposed development to Forest Street in Winchester. This access road would cross private property in Winchester’s RDB-10 district (owned by Legatt McCall) to reach Forest Street.

The proposed access road is prohibited under the Winchester Zoning Bylaw. “Use of land in one zoning district for an access road to another zoning district is prohibited where the road would provide access to uses that would themselves be barred if they had been located in the first zoning district.” *Bruni v. Planning Bd. of Ipswich*, 73 Mass. App. Ct. 663, 672 (2009) (quoting *Dupont v. Dracut*, 41 Mass. App. Ct. 293, 295-296 (1996)). The commercial uses, assisted living facility, and multi-family apartments proposed for the Property would be prohibited in Winchester’s RDB-10 district; therefore, an access road to that use is also prohibited. *See Harrison v. Bldg. Inspector of Braintree*, 350 Mass. 559, 561 (1966). The rule established in *Harrison* and the subsequent cases applies even where the different zoning districts are located in two different municipalities. *Dupont*, 41 Mass. App. Ct. at 295 (rule applies “[w]hether in the same or two different municipalities”); *see Town of Brookline v. Co-Ray Realty Co.*, 326 Mass. 206, 211-213 (1950) (prohibiting use of single-family-zoned land in Brookline for access to proposed apartment complex in Boston).

The fact that the access route would be for emergency access does not exempt it from this rule. Courts have recognized a “very narrow exception” to the principle in *Harrison* and *Brookline*, only where application of the rule would effectively prevent a party from using any portion of their land “for any purpose.” *Beale v. Planning Bd. of Rockland*, 423 Mass. 690, 699-700 (1996); *Orion Realty Co. v. Zoning Bd. of Appeals of Attleboro*, 68 Mass. App. Ct. 1104 (2007) (Rule 1:28) (exception applies only “where denying access would bar all lawful use of the land in the second zoning district”). Thus, in *Lapenas v. Zoning Bd. of Appeals of Brockton*, 352 Mass. 530 (1967), the plaintiff owned a parcel primarily in Abington, but with a 15-20’ strip in Brockton. Access to the parcel could be obtained only through the strip in Brockton, which abutted a public way. The part of the parcel in Abington allowed only business use, while the strip in Brockton allowed only residential use. *Id.* at 531. It was therefore impossible for the property owner to make any use of the parcel if both Brockton’s and Abington’s zoning was enforced. In those narrow circumstances, the property owner was entitled to a variance from the Brockton restriction. *Id.* at 533. Here, by contrast, prohibiting the access road from crossing the residentially-zoned parcel in Winchester would not prevent any of the developers from using the Property; it merely would require them to find a different emergency access route.

The emergency access route is therefore prohibited by Winchester zoning.

Sincerely,

/s/ Art Kreiger

Arthur P. Kreiger

cc: Client
Joseph Tarby, Murtha Cullina LLP