

January 12, 2020

Lancaster Zoning Board of Appeals
701 Main Street
Lancaster, MA 01523

CC: Tony Zahariadis, Lancaster Building Commissioner
Michael Antonellis, Lancaster Planning Director

Subject: Appeal of Building Commissioner decision about structure housing a water booster station
on George Hill Road

Dear Board of Appeals,

We are appealing the decision made by the Lancaster Building Commissioner as documented in his letter of December 17, 2019 (attached). This decision was in reference to a letter submitted by Larry Shoer and twelve others dated December 12, 2019 (attached).

We appeal the determination that the water booster can be approved under the Flexible Development Special Permit signed by the Planning Board on January 11, 2016.

We appeal the determination that the water booster can be approved as an “accessory structure.”

Town of Lancaster Zoning Bylaw 220.8.4 specifically requires a Special Permit granted by the **Board of Appeals** before such a structure can be sited or constructed in a residential zone. In no way does a Flexible Development permit granted by the **Planning Board** relieve a developer of this requirement. It is our contention that a separate Special Permit from the **Board of Appeals** is required, and was never obtained, for the structure housing a water booster station. Furthermore, this structure was built without the required Building Permit. A Building Permit was only issued after the present construction was largely completed, after issues were called to the attention of the Building Commissioner, after there were multiple requests of the Building Commissioner to issue a Stop Work Order, and after the Building Commissioner called the lack of a Building Permit to the attention of the developer. Lacking both a Special Permit and a Building Permit during most of the construction, the only conclusion is that this construction was not lawful.

Construction of this structure in an established residential neighborhood represents a zoning variance and, as such, is specifically spelled out in the Lancaster Zoning Bylaws as requiring a Special Permit from the **Board of Appeals**. The Building Commissioner's contention that this is an “accessory use” or more accurately an “**accessory structure**” under 780 CMR IRC is incorrect. An “**Accessory Structure**” is defined as a structure that is an accessory to and incidental to that of the dwelling(s) and is located on the **same lot**. The structure housing a water booster station does not meet that definition.

We assert that the Flexible Development Special Permit does not allow siting of the structure housing the water booster station at its present location, as this would violate the intent of the Flexible Development Zoning Bylaw. Furthermore, this location would be inconsistent with information required for the Zoning Board of Appeals Special Permit application form, Section 6. (A), (B), and (C).

The Lancaster Flexible Development Zoning Bylaw states:

§220-15.A. Intent. The intent of these flexible development provisions is to allow greater flexibility and creativity in residential development in order to gain:

...

(c) *Protection of the character of the community through preserving open space within view from public roads, preservation of stone walls and other historic landscape features, preservation of scenic vistas, and through siting of dwellings at low visibility locations;*

(d) *Protection of street appearance and capacity by avoiding development close to such streets,* except in already compactly developed areas

The Zoning Board of Appeals Special Permit Application states:

...

6. Applicant alleges that each of the requirements for the grant of the Special Permit set forth in MGL c. 40A, § 9, and the Zoning Bylaw are met for the following reasons:

(A) **The proposed use is in harmony with the general purpose and intent of the Lancaster Zoning Bylaw,** for the following reasons: _____

(B) **The specific site is an appropriate location for the proposed use,** for the following reasons: _____

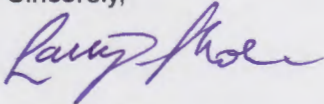
(C) **The proposed use as developed will not adversely affect the neighborhood,** for the following reasons: _____

It is our contention that the site of the structure housing the water booster station is inconsistent with the Flexible Development Zoning Bylaw and it should not be issued a Special Permit by the Zoning Board of Appeals at its present location.

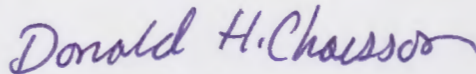
From the outset the developer has known of other options for bringing domestic water to the Flexible Development project. These options have been enumerated in public meetings. The Planning Board's endorsement of the Definitive Subdivision Flexible Development plan was contingent on the applicant providing a "30-foot wide Utility Easement...to the west of the development and to the Eagle Ridge property to allow the option to tie into the existing water high-level service area." Another option consists of relocating the existing structure housing a water booster station to a more appropriate setting not on land reserved for open space and conservation land, alongside a designated Scenic Roadway, in the middle of a long-established residential neighborhood, and built without either the required Special Permit or a Building Permit.

A Stop Work Order should be issued until siting of this structure is resolved.

Sincerely,



Larry Shoer
750 George Hill Road
Lancaster, MA 01523



Donald Chaisson
710 George Hill Road
Lancaster, MA 01523

Attachments:

1. Letter to the Building Commissioner from Larry Shoer and others (December 12, 2019) (included is the "Use Regulation Schedule" that stipulates where a Special Permit is required)
2. Letter to Larry Shoer and others from the Building Commissioner (December 17, 2020)

*Town of Lancaster
Building and Zoning Department*



December 17, 2019

Re: Sections 220-15A, and Section 220-15C and 220-15D Violations

Larry Shoer
750 George Hill Road
Lancaster, Ma. 01523

Dear Mr. Shoer, and all others residents listed in the complaint,

Let me start with, that it was nice to have a meeting with you in my office, and you are always welcome to come in and have any discussing with me that might affect you and your neighborhood. I share your concern that all Protective By-Laws and Codes be observed.

As the Building Commissioner and Zoning Enforcement Officer from this office I have completed a preliminary investigation and gathered documents in order to come to an understanding of the zoning and building complaint that are called out in your neighborhood complaint.

I have put together a packet that has relevant information which explains my decision in this matter.

1. The Poras Subdivision was approved by Special Permit by the Lancaster Planning Board.
2. The water booster as an accessory structure was approved as part of the Special Permit.
3. The water booster has a building permit.

Therefore with this information that I have gathered and to the best of my ability, it is my determination that no zoning/building violation exist.

If you are aggrieved by this decision you have a right to appeal my decision to the Lancaster Zoning Board of Appeals

If you should have any further questions regarding this matter you may contact me at 978-365-3326 (ext.) 1309.

Sincerely,



Tony Zahariadis
Building Commissioner
Zoning Enforcement Officer



TOWN OF LANCASTER
Office of Community Development & Planning

Tel: (978) 365-3326

Fax: (978) 368-4009

695 Main Street • Suite 4
Lancaster, MA 01523

LANCASTER PLANNING BOARD

CERTIFICATE OF APPROVAL – SPECIAL PERMIT APPLICATION

Subject: Special Permit application pursuant to Section 220-15 of the Lancaster Zoning Bylaw to allow a Flexible Development consisting of thirteen (13) building lots and one (1) open space parcel.

Applicant: Poras Realty Trust and Wienerwald II Realty Trust

Owner: Poras Realty Trust and Wienerwald II Realty Trust

Location: 122 Hilltop Road

Plan: A 17-page set of plans entitled "Definitive Subdivision Plan off Hilltop Road, Lancaster, Massachusetts" by Whitman & Bingham Associates, LLC, Plan No. 17-C-126, dated October 6, 2015.

Assessor's Reference: Map 36, Parcels 1, 1A

Statement of Facts

Background:

A Special Permit application was filed with the Community Development and Planning Office on October 5, 2015, in which the petitioner requested authorization to form a Flexible Development from two parcels consisting of 35.74 acres of land.

This new flexible development consists of thirteen (13) reduced-area building lots on 16.29 acres, and one (1) open space parcel on 19.45 acres. The location of this property is at 122 Hilltop Road, Lancaster, MA, in the Residential Zoning District.


The Planning Board held a public hearing on this petition to request a Special Permit on November 9, 2015, and continued to November 23, 2015, and December 14, 2015 on which date the hearing was closed. Notices of the hearing were published in the Item on October 23, 2015, and October 30, 2015, and parties in interest were notified as required by law.

7. Prior to the Planning Board's endorsement of Definitive Subdivision Approval on the Flexible Development plan, the Applicant shall provide to the Planning Board a 30-foot wide Utility Easement spanning one of the proposed lots and the open space parcel to the west of the development and to the Eagle Ridge property. This easement would allow the option to tie into the existing water high-level service area and municipal sewer through the Eagle Ridge development. This may provide more favorable options for domestic water use, fire protection, and wastewater disposal services to the proposed subdivision.

Signed by the Lancaster Planning Board on January 11, 2016.

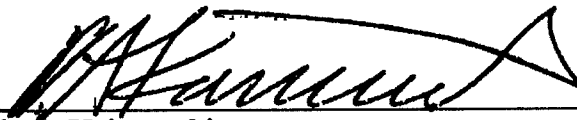


Jeanne Rich, *Chair*



Philip Lawler, *Vice-Chair*

Francis Sullivan, *Clerk*



Victor Koivumaki



Thomas Christopher

750 George Hill Road
Lancaster, MA 01523
December 12, 2019

Mr. Tony Zahariadis
Building Commissioner
Prescott Building
701 Main Street, Suite 4
Lancaster, MA 01523

Dear Mr. Zahariadis,

A group of Lancaster residents appeared before the Planning Board on November 25, 2019, and on December 9, 2019, to describe reasons why a large, metal, industrial-style structure, housing a water booster station, and placed on future conservation land, alongside a designated Scenic Roadway, and in the middle of a residential neighborhood should be relocated. The Planning Board received information from the residents, but indicated that the request should be made to the Lancaster Building Commissioner. This letter, signed by Lancaster residents, is that request. Please review the reasons listed below why we believe the structure housing a water booster station is in violation of Town of Lancaster Bylaws and should be moved from this location. If you do not agree with this conclusion, please provide a detailed response to each of the points of Consideration which follow.

Consideration 1

A "Definitive Subdivision Plan off Hilltop Road, Lancaster, Massachusetts" (Owner/Applicant Poras Realty Trust and Weinerwald II Realty Trust) was approved by the Planning Board as a "Flexible Development" Subdivision, whose construction is subject to the Lancaster Flexible Development Zoning Bylaws, to wit:

§220-15.A. Intent. The intent of these flexible development provisions is to allow greater flexibility and creativity in residential development in order to gain:

- ...
 - (c) *Protection of the character of the community through preserving open space within view from public roads, preservation of stone walls and other historic landscape features, preservation of scenic vistas, and through siting of dwellings at low-visibility locations;*
 - (d) *Protection of street appearance and capacity by avoiding development close to such streets, except in already compactly developed areas;*

On November 8, 2019, a large, metal, industrial-style structure housing a water booster station was placed on future conservation land, alongside a designated Scenic Roadway, and in the middle of a residential neighborhood [[Appendix 1](#)]. We were told that the permit that allowed this was the overall building permit for the Flexible Development Subdivision, as described in the submitted plan [[Appendix 2](#), Sheet 8 of 17 (Job Number: 13099, Plan Number: 31-D-21, Date: October 6, 2015, Revision Date: December 8, 2015)]. This plan only contains a small empty square with accompanying text which reads: "PROPOSED BOOSTER PUMP/LIFT STATION TO BE DESIGNED BY OTHERS. SUCH AS TOWLE-WHITNEY, MITCHEL, LEWIS AND STAVER, OR APPROVED EQUAL, PRIOR TO THE START OF CONSTRUCTION."

With only this small empty square and absolutely no information about building size, building material, exterior lighting, noise generation, electrical service requirements, emergency power, emergency power fuel tank, landscaping, paving, or any other information, what is presented is completely insufficient to be the basis for approval of the water booster station.

The definitive plan appears to be to scale (1" = 40'), which means the small square shown for this water booster station is approved at a size of four (4) feet by four (4) feet, representing a footprint of sixteen (16) square feet. The water booster station placed alongside George Hill Road is 12.5 feet wide, 18.3 feet long, and 10 feet high. This represents a footprint of 228 square feet, which is a building over 14 times the size of that shown on the plan. It is also obvious that at a height of 10 feet, the water booster station greatly exceeds any height that might have been anticipated from the plan.

If the water booster station is not sufficiently described in the Definitive Subdivision Plan, then it must be permitted separately. The water booster station is a private structure built on private land. The installation will service private houses now under construction by a private developer. As described in the Town of Lancaster Zoning Use Regulation Schedule § 220-8 (220 Attachment 1) [[Appendix 3](#)], such a structure is only permitted "If not regulated under Article XI" (it is not) "and provided by a public service corporation or governmental agencies" (it is **not and therefore not permitted**). Otherwise, this structure requires a Special Permit. As a consequence of requiring a Special Permit, a separate construction Permit will also be required. Neither a Special Permit nor a construction Permit has been issued for the water booster system. **The construction work to date has been done without permit and must be stopped. A Special Permit and construction Permit must be obtained.**

Consideration 2

Prominent in the Flexible Development Bylaw is the "[p]rotection of the character of the community through preserving open space within view from public roads, ...preservation of scenic vistas, and through siting of dwellings at low-visibility locations." It is hard to imagine something more inconsistent with the intent of this bylaw than a large, metal, industrial-style structure housing a water booster station placed on future conservation land, starkly visible along a considerable distance of a designated Scenic Roadway, and in the middle of a residential neighborhood. **We ask that this structure be relocated to a more appropriate setting because it is incompatible with Lancaster Flexible Development Zoning Bylaw §220-15.A. (c).**

Consideration 3

The Flexible Development Bylaw goes on further to promote the "[p]rotection of street appearance and capacity by avoiding development close to such streets." It is not essential that the structure housing a water booster station be placed in its present location. Said another way, there has been no technical information provided that a water booster station **must** be installed where it is presently located on future conservation land in order to provide water to the Flexible Development Subdivision under construction. **We ask that this structure be relocated to a more appropriate setting because it is incompatible with Lancaster Flexible Development Zoning Bylaw §220-15.A. (d).**

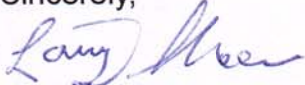
Consideration 4

At the Planning Board meeting on December 9, 2019, it was described that only input from two Town of Lancaster departments was considered during the planning of the water booster station. The Lancaster Fire Department provided information about the water requirements for fire hydrants located in the Flexible Development Subdivision and the Lancaster Department of Public Works Water Department provided information about connecting the water booster station to the public water system.

To the best of what we have been able to ascertain, there has been no consideration of Lancaster Flexible Development Zoning Bylaw §220-15.A. (c) and (d) in the planning of the water booster station. Since this project includes a 12.5 feet wide by 18.3 feet long by 10 feet high pre-fab, industrial-style metal building placed onto future conservation land; an HVAC package on the side of the building closest to the street, directly across from the nearest neighbor's bedroom window; seven light fixtures and an alarm system mounted around the sides of the structure; a free-standing generator to be placed nearby; and unspecified asphalt paving, curb cut, fencing, and landscaping that will be part of the project; there is an extensive amount of information that should be reviewed for this project, but has not. Added soil and grading around this structure has elevated the future conservation land and further blocked stormwater draining from it (a known, significant, and documented problem). There has been no discussion or information about how the equipment and its immediate surroundings will be maintained or the source of funds to do this. Abutters are concerned about potential noise that will be produced by the pumps, generator, and HVAC system. This water booster station was placed in the middle of a long-existing neighborhood for the sole benefit of a private developer's project over 800 feet away. **We ask that this structure be relocated to a more appropriate setting because it is incompatible with Lancaster Flexible Development Zoning Bylaw §220-15.A. (c) and (d) and that the many important and unresolved concerns be addressed as part of the required permitting process.**

We look forward to hearing your response to these concerns.

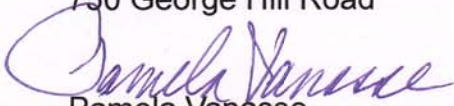
Sincerely,



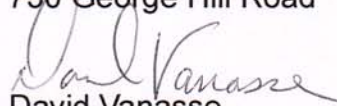
Larry Shoer
750 George Hill Road



Emily Rose
750 George Hill Road



Pamela Vanasse
793 George Hill Road



David Vanasse
793 George Hill Road

Ronald Gaulin
774 George Hill Road



Ruth Ghia
730 George Hill Road



Lynda Gaulin
774 George Hill Road



Ajay Ghia
730 George Hill Road



Donald H. Chaisson

Donald Chaisson
710 George Hill Road

Elzira Deoliveira

Elzira Deoliveira
712 George Hill Road

Michelle Sardella

Michelle Sardella
748 George Hill Road

Catherine Chaisson

Catherine Chaisson
710 George Hill Road

Jeremias Deoliveira

Jeremias Deoliveira
712 George Hill Road

cc: Michael Antonellis, Lancaster Planning Director
Philip Lawler, Chair, Lancaster Planning Board

Appendix 1

View of the Water Booster Station from All Abutter Driveways



From Eickhorst Driveway



From Gulliver & Mazzaferro Driveway



From Ghia Driveway



From Seidenberg & Sardella Driveway



From Rose & Shoer Driveway

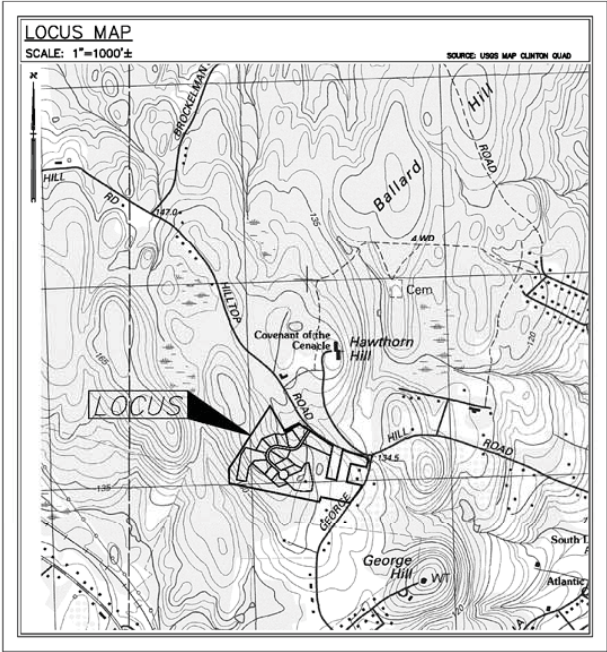


From Vanasse Driveway

Appendix 2

DEFINITIVE SUBDIVISION PLAN
OFF
HILLTOP ROAD
LANCASTER, MASSACHUSETTS

October 6, 2015

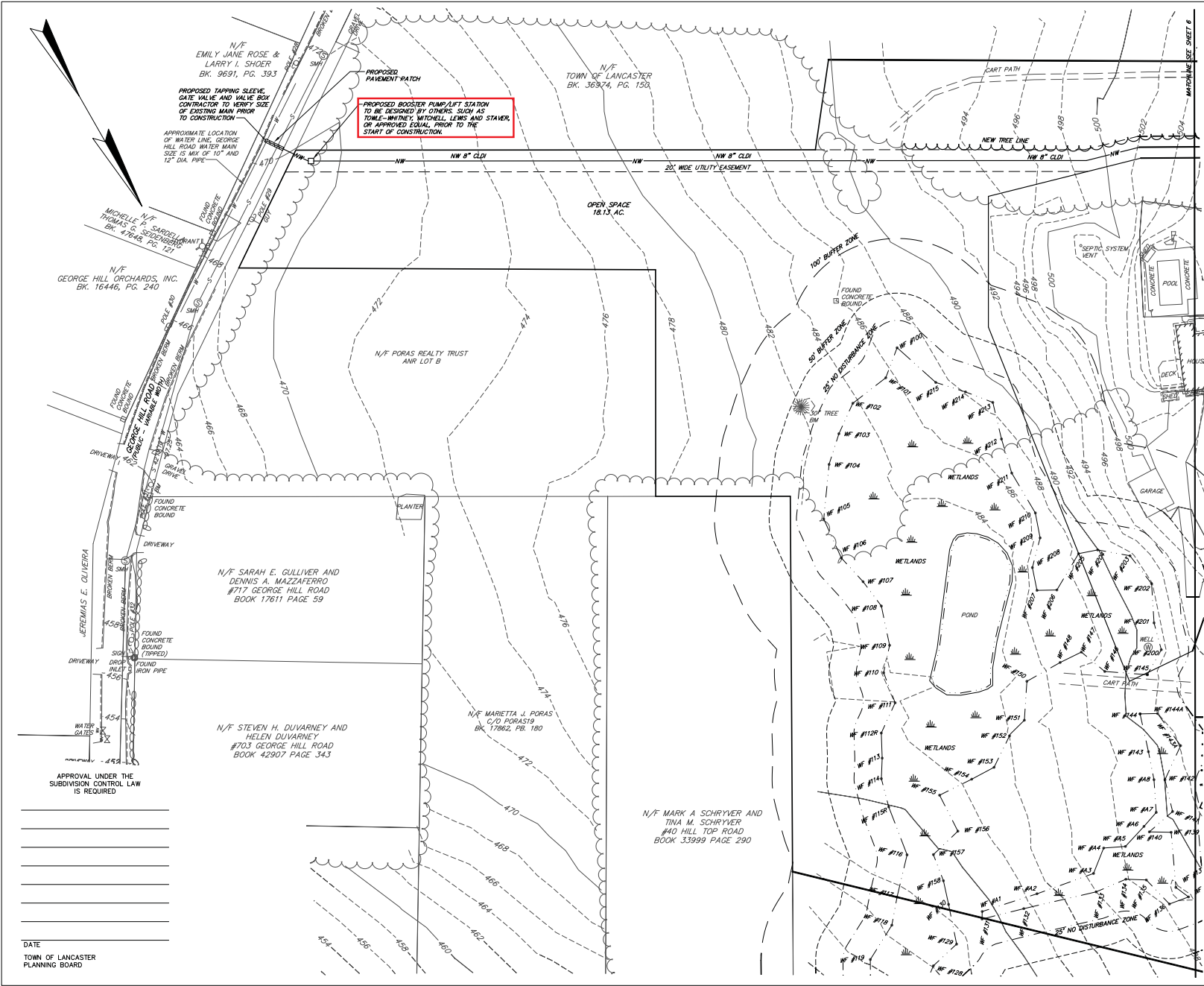


OWNER/APPLICANT
PORAS REALTY TRUST AND
WIENERWALD II REALTY TRUST
122 PARK AVENUE
NEWTON, MA 02458
TEL. (617) 590-1731

ENGINEER & SURVEYOR
WHITMAN & BINGHAM ASSOCIATES, LLC.
510 MECHANIC STREET
LEOMINSTER, MA 01453
TEL. (978) 537-5296
FAX (978) 537-1423

1	12/8/15	SHEETS 6 THRU 17
NO.	DATE	DESCRIPTION

PLAN INDEX	
SUBDIVISION PLAN OF LAND	1 - 4
EXISTING CONDITIONS/DEMOLITION PLAN	5
STORMWATER MANAGEMENT PLAN	6 - 8
STREET PLAN AND PROFILE	9 - 10
EROSION CONTROL PLAN	11 - 13
CONSTRUCTION NOTES	14
CONSTRUCTION DETAILS	15 - 17



WHITMAN & BINGHAM ASSOCIATES
REGISTERED ENGINEERS & LAND SURVEYORS
1000 WASHINGTON STREET
LANCASTER, MA 01901

**STORMWATER MANAGEMENT
GRADING AND UTILITIES PLAN**
OFF
HILLTOP ROAD
IN
LANCASTER, MA

PREPARED FOR:
PORAS REALTY TRUST
WENEFWALD III REALTY TRUST
121 PARK AVENUE
NEWTON, MA 02458

REVISIONS		NO.	DESCRIPTION	DATE	BY
1	PER ENGINEERING REVIEW COMMENTS			12/8/15	MFP

CHECKED BY:	BPM
DRAWN BY:	MFP
DATE:	10/6/15
SCALE:	1"=40'
SHEET NUMBER:	8 OF 17
JOB NUMBER:	13099
COMPS:	9657
PLAN NUMBER:	31-D-21
FIELD BOOK REF(S):	

Appendix 3

ZONING

220 Attachment 1

Town of Lancaster

Use Regulation Schedule

§ 220-8

KEY:

P = A use permitted as a matter of right in the district, subject to all applicable dimensional and special regulations.

SP = A use permitted only upon granting of a special permit by the Board of Appeals, subject to any additional limitations which may be required by the Board.

PB = A use permitted only upon granting of a special permit by the Planning Board, subject to any additional limitations which may be required by the Board.

N = A use prohibited in the district.

		Zoning Districts						Notes
Item	Use	R	NB	LI	LI2	GI	EZ	
§ 220-8.1. RESIDENTIAL USES.								
Principal uses								
A.	Single-family detached dwelling	P	P	N	N	N	N	One per lot.
B.	Two-family dwelling	P	N	N	N	N	N	Only by conversion of single-family dwelling existing 2-13-1950, without exterior building change except for required exits and ventilation, and the total habitable floor area of at least 1,536 square feet.
C.	Living facility for seniors	SP	SP	N	N	N	PB	See § 220-9A.
D.	Multifamily dwelling other than a living facility for seniors	SP	SP	N	N	N	N	Either as provided at § 220-9C or as provided at § 220-15D.
E.	Mobile home as principal use	N	N	N	N	N	N	
Accessory uses								
AA.	Rental of one or two rooms within a single-family detached dwelling, without housekeeping facilities	P	P	P	P	P	P	
AB.	Accessory apartment in a single-family dwelling with no change in the principal use of the premises	SP	SP	SP	SP	SP	SP	See § 220-9G.
BB.	Central dining, recreation and administrative facilities exclusively for the tenants of group facilities	P	P	P	P	P	P	

LANCASTER CODE

Item	Use	Zoning Districts						Notes
		R	NB	LI	LI2	GI	EZ	
D.	Other active outdoor recreation facilities in a predominantly natural setting	SP	SP	P	P	N	P	
E.	Commercial indoor amusement or recreation place or place of assembly	N	N	N	N	N	P	See disturbance standard of § 220-36A.
F.	Airport, air landing strip	N	N	SP	SP	SP	N	
G.	Drive-in movie theater	N	N	N	N	N	N	
H.	Health and fitness center	N	SP	P	P	N	P	
I.	Adult entertainment uses	N	N	N	— ¹	N	N	
Accessory uses								
AA.	Accessory structures customarily incidental and subordinate to permitted principal uses	SP	P	P	P	P	P	Such accessory uses as food service, lounges, repair or sale of sporting equipment, etc., to be intended primarily for the convenience of members or customers of the principal facility.
BB.	Structures accessory to the practice of a sport, such as ski tows or jumps, boat landings or bath houses	SP	N	N	N	N	N	
CC.	Summer schools as part of a seasonal camp, sport instruction	SP	N	N	N	N	P	
DD.	Dwellings for the owners and staff of uses permitted in § 220-8.3	P	P	P	P	P	P	
EE.	Day camp accessory to a permitted use	SP	SP	N	N	N	P	
§ 220-8.4. PUBLIC, HEALTH, EDUCATIONAL AND INSTITUTIONAL USES.								
Principal uses								
A.	Underground or overhead communications, gas, electrical, sewerage, drainage, water, traffic, fire, and police system services, appurtenant equipment, and installations	SP	SP	SP	SP	SP	PB	If personal wireless service facilities regulated under Article XI of Ch. 220.
		P	P	P	P	P	P	If not regulated under Article XI, and provided by a public service corporation or governmental agencies.

Article XI Personal Wireless Service Facility Regulations

¹ Editor's Note: As regulated under Article XII of Chapter 220, Zoning.

December 12, 2019

To the Lancaster Building Inspector:

Pursuant to 780 CMR 9th Edition of the State Building Code, specifically sections

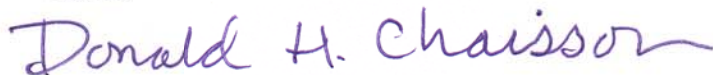
104.1, 104.3, 105, 105.3, 105.3.1, 109.4, 114.1, 114.2, 114.3, 114.4, 115, 115.2, 115.3, 115.1 We hereby notify the Town of Lancaster Building Inspector that a building has been unlawfully erected, without filing an application for a Building Permit and without receiving the required Building Permit on open space designated as conservation land across from 750 George Hill Road. This unlawful Structure has not been granted the required special permit required under Lancaster Zoning By-Laws 220-8.4.

We are requesting that The Building Inspector under his authority as Zoning Enforcement Official and Building Commissioner of the Town, issue a stop work order immediately and bring this matter to the Board of Appeals at the earliest possible time.

We remind the Building Inspector that pursuant to Town Bylaw, such a structure cannot be built in a Residential Zone without prior approval of the Board of Appeals and a Special Permit issued by said Board of Appeals, furthermore a Special Permit cannot be issued by the Board of Appeals without a Public Hearing, notice of which has been publicly advertised for general knowledge and specific notice of such sent to all inhabitants of the locus by certified mail return receipt requested.

As a requirement of 780 CMR, prior to issuing a Building Permit, the Code Enforcement Official must receive and examine a completed application for the work and as a requirement shall see that certain criteria listed in 780 CMR 105.3.1 Action on Applications are met, the first of these requirements is that the work is in accordance with Zoning. As it is illegal to build this structure in this location without a Special Permit and the work has not been granted a Special Permit and it is Illegal to build this structure in this location without a Building Permit and this work has no Building Permit and it is Illegal to grant a Building Permit to this work without approval of the Board of Appeals, it is apparent that this structure was unlawfully erected. Please take appropriate action on this matter at the earliest possible time.

Signed,



Donald Chaisson

Representing:

Concerned Residents of Lancaster Massachusetts.