

Lancaster Board of Appeals
April 23, 2020
Public Meeting Remarks by Larry Shoer

We are discussing a complicated matter. To help our discussion, I assembled relevant information and am sharing it with you. At the outset I want to clearly state that we are not opposed to the Hawthorne Lane Flexible Development subdivision. I commend the Planning Board for asking the developers to rework their original traditional development plan as a Flexible Development subdivision plan that was approved.

In the Lancaster Planning Board Certificate of Approval – Special Permit Application dated January 11, 2016, the board Findings included:

“The Flexible Development plan better protects neighboring properties from visual intrusion as compared with the conventional plan. The open space parcel separates the building lots from adjacent existing single-family house lots on Hilltop Road, George Hill Road, and on Nicholas Drive.”

The approval Conditions include:

Condition 5: “Prior to the Planning Board's endorsement of Definitive Subdivision Approval on the Flexible Development plan, and in the event the Open Space parcel is not conveyed to the Town or its Conservation Commission, **the Applicant shall provide to the Planning Board a proposed perpetual conservation or agricultural preservation restriction, of the types described in M.G.L. Chapter 184, Section 31 and Lancaster Zoning Bylaw Section 220-15**, running to and enforceable by the Town, with respect to the ownership, maintenance and use of the Open Space parcel. **Such proposed restriction shall provide that said parcel shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, passive recreation; and that said parcel shall not be used as the site of any buildings or other permanent structures**; except that the two (2) Drainage Easements on the Open Space parcel may be used for storm water management as represented on the Flexible Development plan. Any and all documents required for this condition shall be submitted to Town Counsel for review and approval prior to Planning Board endorsement.”

Condition 6: “Prior to the Planning Board's endorsement of Definitive Subdivision Approval on the Flexible Development plan, the Applicant shall make provision pursuant to Lancaster Zoning Bylaw Section 220-15 for the ownership and maintenance of the Open Space parcel either by the Town of Lancaster acting by and through its Board of Selectmen or Conservation Commission; or by a nonprofit organization, the principal purpose of which is the conservation of open space; or by a membership corporation, trust or association of lot owners within the development upon proper finding by the Planning Board and review and approval by Town Counsel of all documents creating and establishing same.”

Based on the Planning Board approval of the Flexible Development subdivision, our expectation was that the required open space would be maintained. On November 8, 2019, a large, metal, industrial-style structure housing a water booster station was placed on the

open space adjacent to George Hill Road, a designated Scenic Roadway. On November 14, 2019, a Stop Work order was requested from the Planning Department and Planning Board. A group of Lancaster residents appeared before the Planning Board on November 25, 2019, and on December 9, 2019, and described that the water booster station should be relocated. The Planning Board said the appeal should be made to the Lancaster Building Commissioner. Larry Shoer, Donald Chaisson, and eleven other abutters and neighbors of the water booster station submitted this request to the Building Commissioner in a letter dated December 12, 2019. It was during the course of researching this project that we received from the Planning Department the only engineering drawings we had seen of the water booster station and its associated components (drawing by Civil & Environmental Consultants, Inc., dated July 2, 2019). This date is noteworthy, because it is 3 ½ years after the Planning Board approval of the Flexible Development subdivision. The Building Commissioner determined in a letter dated December 17, 2019, that “no zoning/building violation exist” and declined to take action on our request. Specifically, the Building Commissioner stated as his reasons:

- (1) “The Poras Subdivision was approved by Special Permit by the Lancaster Planning Board.”
- (2) “The water booster as an accessory [sic] structure was approved as part of the Special Permit.”
- (3) “The water booster has a building permit.”

Larry Shoer and Donald Chaisson appealed the decision of the Building Commissioner to the Board of Appeals in a letter dated January 12, 2020. This appeal is the matter before the Board.

In response to the Building Commissioner:

- (1) In some quarters there was confusion about whether the water booster station was automatically approved under the umbrella of the Planning Board approval of the Flexible Development subdivision. At the Feb 27, 2020 Board of Appeals meeting, the Board requested the Planning Board provide clarification of Use Regulation Schedule Section 220-8.4.A and whether a water booster station requires a Special Permit issued by the Board of Appeals. At the Planning Board meeting on April 13, 2020, this was discussed and by a vote of 4 in favor and 1 opposed it was voted that *a Special Permit issued by the Board of Appeals is required.*
- (2) The Building Commissioner stated that the water booster station was approved as an accessory structure or as an accessory use. An accessory structure requires a principal structure **on the same parcel**, in this case the parcel identified as open space. Nowhere in the Town of Lancaster Use Regulation Schedule Section 220-8 is a standalone accessory structure allowed on a parcel. *There is no other structure on the open space parcel, so the water booster station cannot be an accessory structure.*
- (3) The building permit application was submitted after the building was in place and after our initial complaint was made to the Building Commissioner.

We have already cited the Lancaster Planning Board Certificate of Approval – Special Permit Application, dated January 11, 2016. Condition 5 required a “perpetual conservation or agricultural preservation restriction...such... that said parcel shall be retained in perpetuity for

one or more of the following uses: conservation, agriculture, passive recreation; and that **said parcel shall not be used as the site of any buildings or other permanent structures.**"

A water booster station on open space is prohibited by Conditions of the Flexible Development Certificate of Approval.

Condition 5 and Condition 6 both refer to Lancaster Zoning Bylaw Section 220-15, Flexible Development, and its detailed discussion of and requirements for open space, including: Section 220-15 C (3)

The open space shall be used for wildlife habitat and conservation and one or more of the following additional purposes: historic preservation, education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, visual amenity, and shall be served by suitable access for such purposes. The Planning Board may permit up to 5% of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths).

A water booster station on open space is prohibited by Lancaster Zoning Bylaw Section 220-15.

The Lancaster Planning Board Certificate of Approval – Special Permit Application requires the Applicant shall provide to the Planning Board a proposed perpetual conservation or agricultural preservation restriction, of the types described in Massachusetts General Law, Chapter 184, Section 31. **"Such proposed restriction shall provide that said parcel shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, passive recreation; and that said parcel shall not be used as the site of any buildings or other permanent structures."**

Additional Massachusetts General Laws apply to this subdivision. Chapter 40, Section 9, Special Permits, specifically describes "Cluster development... a residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and other groups within the development by intervening open land..." Where such open land "is not conveyed to the city or town, **a restriction enforceable by the city or town shall be recorded providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses** such as parking or roadway."

A water booster station on the open space parcel is prohibited by more than one Massachusetts General Law.

How is all this information to be interpreted?

The water booster station on George Hill Road is improperly sited.

1. The water booster station lacks a Special Permit issued by the Board of Appeals.
2. Abutters were not notified with accurate information about the water booster station complex, located on protected open space, alongside a designated Scenic Roadway, and in the middle of an established neighborhood.
3. A required public meeting for a Special Permit was not held, denying abutters and residents the opportunity to comment on this project.
4. The water booster station violates Flexible Development Certificate of Approval Condition 5 (January 11, 2016): Said open space "parcel shall not be used as the site of any buildings or other permanent structures."

5. The water booster station violates Flexible Development Certificate of Approval Condition 6 (January 11, 2016): The applicant failed to provide a proposed perpetual conservation or agricultural preservation restriction.
6. The water booster station violates Lancaster Zoning Bylaw Section 220-15, Flexible Development: "The open space shall be used for wildlife habitat and conservation and one or more of the following additional purposes: historic preservation, education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, visual amenity, and shall be served by suitable access for such purposes."
7. The water booster station violates Massachusetts General Law, Chapter 184, Section 31: "[S]aid parcel shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, passive recreation; and that said parcel shall not be used as the site of any buildings or other permanent structures."
8. The water booster station violates Massachusetts General Law, Chapter 40, Section 9, Special Permits: "[A] restriction enforceable by the city or town shall be recorded providing that such land shall be kept in an open or natural state and not be built for residential use **or developed for accessory uses** such as parking or roadway."

Although the Board of Appeals may consider a Special Permit, the present siting of the water booster station on George Hill Road violates 4, 5, 6, 7, and 8 (above). Further, Lancaster Planning Department instructions "Important Information on Special Permits" requires that "The special permits authorized in Article 3 of the zoning bylaw are limited to those specific uses that are so identified in the Use Regulation Schedule (Section 220-8), and **special permits cannot vary from the requirements of the bylaw.**" In other words, the Special Permit cannot be issued with the project in violation of 4, 5, 6, 7, and 8 (above).

As stated at the start of my comments, we are not opposed to the Hawthorne Lane Flexible Development subdivision. How then do we resolve this problem?

Several Lancaster residents have discussed options that can work to everyone's benefit and we wish to share this information with you. This can also solve a known deficiency with the public water supply to Eagle Ridge and the same deficiency which is now designed into the Hawthorne Lane subdivision project. Both locations contain permanent dead-end water mains. Lancaster Subdivision Rules and Regulations Bylaw Section 301-12 Utilities. B. Water (4) states:

Permanent dead-end water mains shall not normally be allowed. Easements shall be provided where necessary to allow for extension or looping of mains through subsequent development.

The existing water booster station on George Hill Road could be relocated to a location shown on the attached and annotated maps. By maintaining existing underground piping in place, the new water booster station location would eliminate the dead-ends in both the Eagle Ridge and Hawthorne Hill Flexible Development subdivisions. Further, the fact that there is a hydrant in close proximity to the suggested new location implies that there are better water volume and/or pressure conditions than exist where the water booster station is presently located. The lift requirements in this new location are 20 feet less than those in the present location. That means the present water booster station should be more than adequate to function in the new proposed location. The water booster station would be located on a

parcel that is not open space, not able to be developed for a residence, and in a low visibility and more easily landscaped location. And finally, the water booster station can be moved fully constructed. Since the roads and water infrastructure in Eagle Ridge are owned by the Town of Lancaster, this may be a relatively straightforward project to implement.

We ask for your consideration in this matter and are hopeful that the problems we describe can be worked out to everyone's benefit, while further work is suspended on the water booster station at its present location.

Attachments:

- Civil & Environmental Consultants, Inc. drawing (July 2, 2019)
- Important Information on Special Permits
- Water booster station present and proposed locations (with elevations)
- Water booster station proposed location (satellite image)



N/E
DAILY JUNE ROSE &
LARRY L. SIDER
ENC. 0601, PG. 353

APPROXIMATE LOCATION OF
WATER LINE: GEORGE HILL
ROAD WATER MAIN SIZE IS A
MIX OF 10" AND 12" DIA. PIPE.

TAPPING SLEEVES, GATE VALVE
AND VALVE BOX (BY OTHERS)
SEE NOTE 1.

GEORGE HILL ROAD
(PUBLIC - VARIABLE WIDTH)

N/E
TOWN OF LANCASTER
ENC. 32074, PG. 120

Emergency generator
w/concrete pad

Propane
tank

Asphalt
paved
driveway

Chain link
fence (8 ft)

NOTES

- EXISTING SITE INFORMATION / TOPOGRAPHIC SURVEY WAS PREPARED BY WHITMAN AND BIRNBAUM ASSOCIATES, INC. AND IS BASED ON A PLAN ENTITLED "EXISTING CONDITIONS/SECTION PLAN" DATED OCTOBER 14, 2015 AND PROVIDED TO CDD IN ELECTRONIC FORMAT. CDD IS NOT RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF THE INFORMATION SHOWN.
- PROPOSED IMPROVEMENTS TO BE CONSTRUCTED BY OTHERS ARE BASED ON DESIGN PLANS PREPARED BY WHITMAN AND BIRNBAUM ASSOCIATES, INC. AND IS BASED ON A PLAN ENTITLED "DEFINITIVE SECTION PLAN OFF HILLTOP ROAD, LANCASTER, MASSACHUSETTS" DATED OCTOBER 14, 2015 AS REVISED AND PROVIDED TO CDD IN ELECTRONIC FORMAT. CDD IS NOT RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF THE INFORMATION SHOWN.
- EXISTING CONDITIONS AS SHOWN ON THESE PLANS ARE GENERAL AND ILLUSTRATIVE IN NATURE. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO EXAMINE THE SITE AND BE FAMILIAR WITH EXISTING CONDITIONS PRIOR TO BEGINNING WORK ON THIS PROJECT. IF CONDITIONS DIFFER FROM THOSE SHOWN, THE CONTRACTOR SHALL NOTIFY THE OWNER IMMEDIATELY.
- PROPOSED ELECTRIC AND TELECOMMUNICATIONS CONNECTIONS TO BE COORDINATED WITH PRIVATE UTILITY PROVIDERS.

LEGEND

- SITE BOUNDARY
- PROPOSED TIE LINE
- EXISTING TIE LINE
- PROPOSED CHAIN LINK FENCE
- PROPOSED BUILDING
- PROPOSED BUILDING ENTRANCE
- EXISTING SANITARY SEWER FORCEMAIN
- SANITARY SEWER FORCEMAIN (BY OTHERS)
- IMPROVED WATER (BY OTHERS)
- PROPOSED WATER
- PROPOSED WATER VALVE AND TEE
- PROPOSED UNDERGROUND ELECTRIC
- PROPOSED UNDERGROUND ELECTRIC AND TELECOMMUNICATIONS
- EXISTING MAJOR CONDUIT
- EXISTING MINOR CONDUIT
- PROPOSED FILTER ROCK
- PROPOSED FIRE HYDRANT
- PROPOSED ASPHALT ACCESS DRIVE

SCALE IN FEET
0 5 10



NO.	DATE	REVISION

C&E
Civil & Environmental Consultants, Inc.
31 Ladlow Road - Raynham, MA 02767
PH: 774.591.5175 • FAX: 774.591.2668
www.candec.com

**HILLTOP ROAD SUBDIVISION
BOOSTER PUMP STATION DESIGN
LANCASTER, MASSACHUSETTS**

BOOSTER STATION SITE PLAN	
DATE	7/20/2018 (Revised BY)
SCALE	AS SHOWN (CHECK BY)
PROJECT NO.	152422
PROJECT BY	

C500

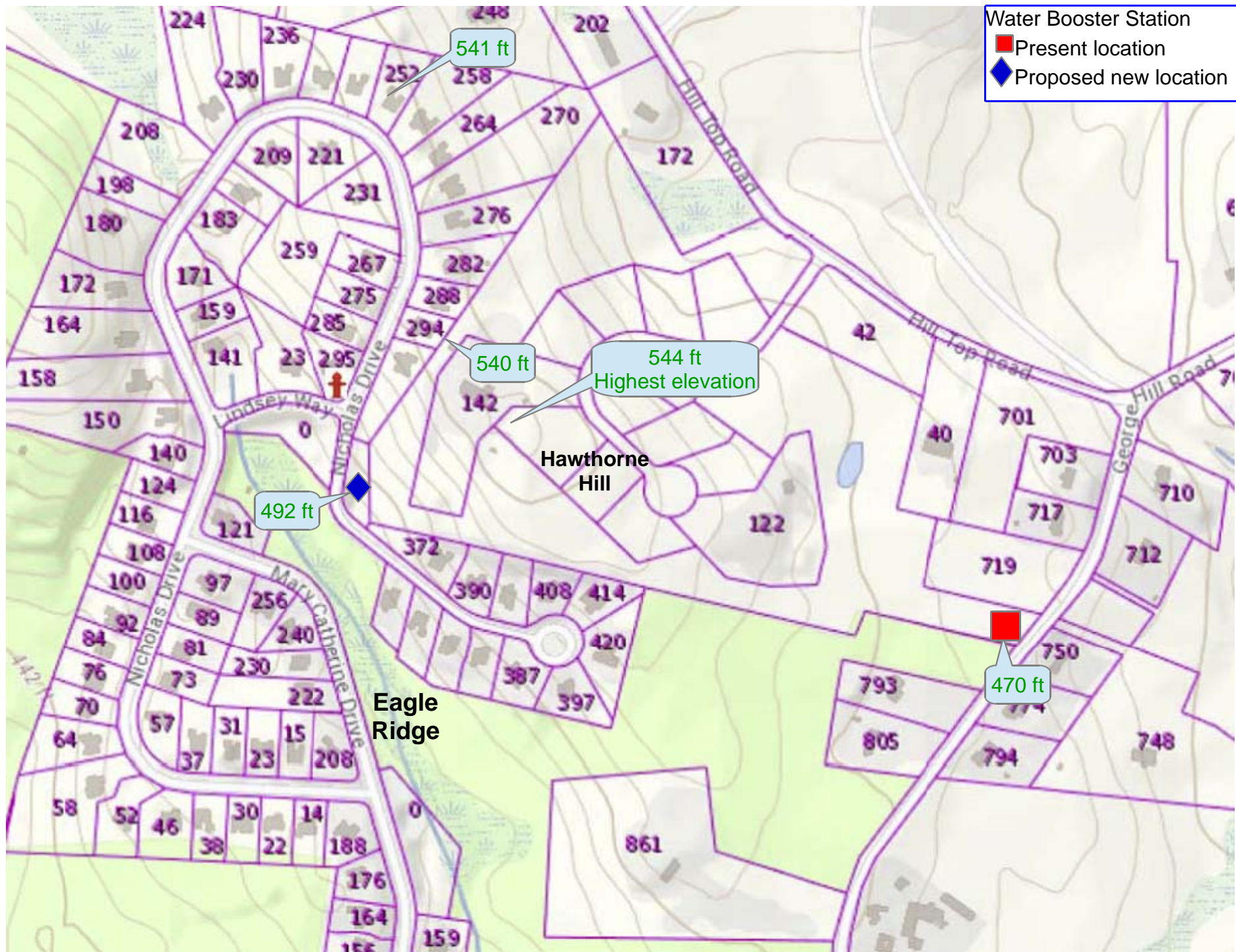
IMPORTANT INFORMATION ON SPECIAL PERMITS

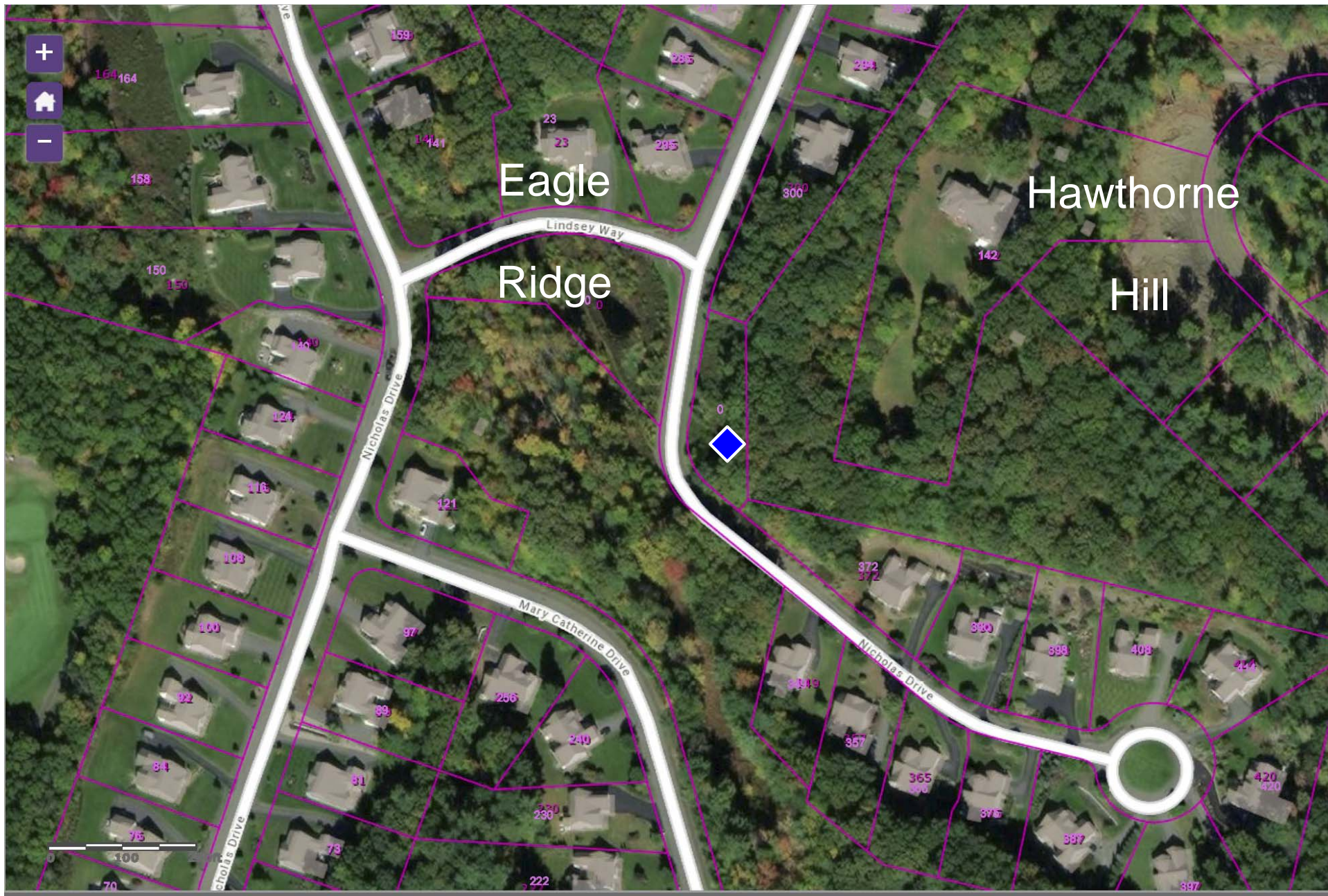
A special permit is generally a permit from a Town Board which allows the use of land or buildings for a specifically identified purpose upon satisfaction of provisions set forth in the zoning bylaw. With respect to the Use Regulations set forth in Article 3 of the Lancaster Zoning Bylaw, the authority for granting special permits is, in most cases, assigned to the Board of Appeals (designated by "SP") and, in other cases, to the Planning Board (designated by "PB"). You must initially determine the appropriate Board with which to file your special permit application and the application and materials filed with it must comply with the rules of that Board.

The special permits authorized in Article 3 of the zoning bylaw are limited to those specific uses that are so identified in the Use Regulation Schedule (Section 220-8), and special permits cannot vary from the requirements of the bylaw. For example, the Board of Appeals may grant a special permit which allows poultry to be kept on a residential parcel of less than 5 acres (Section 220-8.2(B)); provided that "no building housing poultry shall be within 150 feet of a property line". This requirement would prevent the Board from granting a special permit if the proposed building housing poultry was only 130 feet from a property line. The standards for special permits are consequently quite different than the standards applicable to variances.


Special permits may be issued "only for uses which are in harmony with the general purpose and intent of the bylaw and shall also be subject to the general or specific provisions set forth in the bylaw", as noted in the above example. The permit granting authority may also impose additional conditions, safeguards and limitations on time or use. Such additional conditions must be within the applicant's power to perform, however. Examples of permissible conditions include conditions relating to the design and siting of structures, and a limitation on the transferability of a special permit. A special permit may run with the land or may be limited to a particular applicant. A special permit may also be limited in duration.

As long as the above requirements are satisfied, the standards applicable to a special permit granting authority in evaluating a special permit application are more lenient than the standards applicable to variances. However, special permits and variances are certainly not interchangeable forms of zoning relief.





Water Booster Station

 Proposed new location