

JOHNSON &
BORENSTEIN, LLC
ATTORNEYS AT LAW

12 Chestnut Street
Andover, MA 01810-3706
Tel: 978-475-4488
Fax: 978-475-6703
www.jbllclaw.com
don@jbllclaw.com



Mark B. Johnson (MA, NH, DC)
Donald F. Borenstein (MA, ME, NH)

Keri M. Armstrong (MA, NH)
John M. Donnelly, Jr. (MA, NH)
Gordon T. Glass (ME, MA)
Andrew T. Lechner (VT, MA, NH)

Of Counsel

Robert W. Lavoie (MA, NH)

Paralegals

Karen L. Bussell
Lianne Patenaude
Ellen M. Melvin
Tina M. Wilson

February 28, 2024

Via hand delivery

Salisbury Planning Board
Town Hall
5 Beech Road
Salisbury, MA 01952

Re: Definitive Subdivision Plan
Property- 159 Beach Road
Applicant- Larkin Real Estate Group, Inc.

Dear Salisbury Planning Board,

On behalf of the Applicant, I submit the following discussion of law for your consideration in connection with the above-reference definitive subdivision plan.

I. The filing of a preliminary subdivision plan, followed by a definitive subdivision plan, "freezes" the zoning in effect at the time of the filing of the preliminary plan.

"In other states, zoning freezes arise through a constitutional analysis of vested rights. *See generally* E. Ziegler, *Rathkopf's The Law of Zoning and Planning*, c. 70, Vested Rights and Estoppel Claims, at § 70:3 (West 4th ed. 2009 & Supp. 2016). The legislature in Massachusetts chose to provide a more predictable framework for landowners in the statutory protections of G.L. c. 40A, § 6. Given the rapidity with which a zoning amendment may be adopted that would otherwise prohibit a proposed use or structure that the local bylaw or ordinance previously allowed, a zoning freeze may be the only means for a landowner to retain previously acknowledged property rights and expectations.

Plan freezes are described in the fifth and sixth paragraphs of Section 6, which read as follows: 'If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice

IV. Where a plan is submitted in conformity with the published subdivision regulations, a planning board is obligated to approve it.

“The intent of §81M is clear: If a plan conforms with the board's rules and regulations and with all recommendations of the board of health, the planning board has no choice but to approve the definitive plan.” Mark Bobrowski, Handbook of Massachusetts Land Use and Planning Law §14.03 (Fifth Edition, 2023-3 Cum. Supp. 2022) *citing* Bd. of Selectmen of Ayer v. Planning Bd. of Ayer, 3 Mass. App. Ct. 545, 548 (1975).

V. A parcel of land with adequate frontage on an existing way may be shown on either an ANR or a definitive subdivision plan, and may trigger a full zoning freeze under G.L. c. 40A, s. 6, 5th para.

“... a parcel of land with adequate "frontage" on an existing way may be shown on either an ‘approval not required’ (ANR) plan or a plan for which approval under the Subdivision Control Law is required. Such a parcel can have the benefit of a full freeze under the fifth paragraph of Section 6 if shown on the subdivision plan, and is not necessarily relegated to the status of an ANR plan endorsed under Section 81P.” MCLE, Massachusetts Zoning Manual, s. 7.3.2(g) (2021) *citing* Landgraf Assocs., Inc. v. Bldg. Comm'r of Springfield, 4 Mass. App. Ct. 840 (1976), emphasis added.

For these reasons and those set forth in the Applicant’s definitive subdivision application package and as presented to the Planning Board at its hearing on this matter, it is respectfully requested that the Board approval the Applicant’s plan as submitted.

Very truly yours,

JOHNSON & BORENSTEIN, LLC

Donald F. Borenstein
Donald F. Borenstein

DFB~klb

Cc: Larkin Real Estate Group, Inc.

