

RESPONSES TO QUESTIONS CONCERNING THE ROCKY MAPLE SUBDIVISION

BE RE, LLC, on behalf of itself and the owner/applicant Brett Meredith, is pleased to offer the following answers to questions posed by Assistant Town Planner Aaron Shaheen concerning the Rocky Maple subdivision plan currently before the Wareham Planning Board.

1. Does the subdivision and road as designed require any waivers?

The subdivision and road as designed do not require any waivers from the Wareham Planning Board's Rules & Regulations Governing the Subdivision of Land (the "Rules").¹ The applicant requested a single waiver from the Rules, from the requirement to provide plans of the entire property at a scale of one (1) inch equals 40 feet (1"=40'). See Rules, Section IV.B. That section also provides that plans may be provided at "such other scale as the Board may accept to show details clearly and adequately." If the Planning Board would prefer, plans at 40 scale can be provided.

2. Is it the intent of the applicant to build the subdivision road as shown on the plan?

There is no intent to build the subdivision road shown on the plans.

3. If you proposed another use for the property would you still want to build the road as designed?

Neither BE RE, LLC nor the owner has any current plans to use the property for another use and, so, are not able to answer this hypothetical question.

We note that Rocky Maple Lane has been designed as a "residential minor" street, *i.e.*, one whose sole function is to provide access to not more than nine dwelling units or single-family lots. Construction of the subdivision road for non-residential purposes would require Planning Board approval under Sections V.C.1, V.C.3(c) & VI.C.2.

4. Standard Conditions of the Planning Board require completion of the subdivision road and infrastructure within 2 years of the approval and in the event of failure to achieve this schedule, the subdivision is automatically rescinded. Could you follow this requirement?

There is no intent to build the subdivision road shown on the plan. In any event, the eight-year zoning freeze created by approval of the definitive subdivision plan will remain in place even if the subdivision plan approval is rescinded, automatically or otherwise. *Heritage Park Dev. Corp v. Southbridge*, 424 Mass. 71 (1997) (automatic rescission provision in subdivision

¹ The staff memorandum dated February 17, 2022 states that the subdivision plan requires a waiver from Section VI.C, requiring 5' shoulders where sidewalks are installed. We believe this is in error. Section VI.C requires a 3' shoulder on each side of the subdivision roadway, and a 5' shoulder where substantial fills are made, and a highway guard is required. The second sentence of this section could be interpreted as requiring a 5' shoulder beyond a sidewalk, but that interpretation is contradicted by the illustration at the end of the Rules that shows sidewalks on both sides of a "collector street" without shoulders beyond. Section VI.G states that "Sidewalks shall be separated from the roadway edge by a border of no less than three (3) feet to increase pedestrian safety." This is what the subdivision plan shows.

approval did not deprive applicant of benefits of eight-year statutory freeze). We would not object to the inclusion of this condition in the covenant.

5. A Covenant is required as the agreement associated with each subdivision approval. Have you reviewed the town's draft covenant and do you agree to its terms? [Ask if you need another copy]

We have reviewed the covenant. We do not agree with proposed covenant language that would limit the uses of the land shown on the plan to the current agricultural use and the approved solar project. The eight-year plan freeze applies to the land shown on the plan, leaving the landowner free to develop that land in any manner allowed under the frozen zoning, even if the future development no longer relies on the proposed subdivision. *Massachusetts Broken Stone Co. v. Weston*, 430 Mass. 637 (2000) (developer could change from multi-lot office park shown on subdivision plan to single large office building). Also, as proposed, this covenant could be read as preventing BE RE, LLC from making any changes to its approved solar project without first obtaining a modification of the definitive subdivision plan and a certificate of approval from the Planning Board, or as preventing the landowner from cultivating additional crops on upland areas, adding a farm stand, etc.

We would agree to a narrower covenant precluding residential use of the property without the Planning Board's detailed review of the subdivision plan. Proposed language to that effect has been provided.

6. Would you put up a bond for construction?

No. Section 81U of the Subdivision Control Law allows the applicant to choose from one or a combination of four methods of ensuring that subdivision ways are constructed and that municipal services are installed before any of the lot are conveyed. As there is no intent to construct the subdivision road or install municipal services, the applicant has no interest in posting a bond for that construction.

7. Will you leave the subdivision in place if you propose another use for the property?

Neither BE RE, LLC nor the owner has any intent to use the property for another use and, so, are not able to answer this hypothetical question.

8. If you propose another use, will it conform to the lot lines shown on the plan; e.g., lot coverage and setbacks?

Neither BE RE, LLC nor the owner has any intent to use the property for another use and, so, are not able to answer this hypothetical question.

Any future use would need to conform to the applicable zoning, e.g., lot coverage and setbacks, but that compliance could be with respect to the entire property rather than the subdivision lots. *See Massachusetts Broken Stone Co. v. Weston*, 430 Mass. 637 (2000).