

COMMONWEALTH OF MASSACHUSETTS  
HOUSING APPEALS COMMITTEE

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SHINGLEMILL, LLC,	)
	)
Appellant,	)
	)
vs.	)
	)
TOWN OF ROCKLAND ZONING	)
BOARD OF APPEALS, by its Members,	)
ROBERT C. ROSA, III, GREGORY	)
TANSEY, and ROBERT BAKER (SR.),	)
	)
Appellees.	)

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**APPELLANT SHINGLEMILL, LLC’S INITIAL PLEADING  
CONCERNING APPEAL OF THE TOWN OF ROCKLAND ZONING BOARD OF  
APPEALS’S GRANT OF COMPREHENSIVE PERMIT WITH CONDITIONS**

NOW COMES the Appellant, Shinglemill, LLC (“Shinglemill”), and hereby submits this Initial Pleading in support of its appeal of the Town of Rockland Zoning Board of Appeals’s (the “ZBA”) grant of a Comprehensive Permit with conditions, filed with the Town Clerk of the Town of Rockland, Massachusetts, on October 12, 2023 (the “ZBA Decision”)<sup>1</sup>, which render the project Uneconomic, as defined by 760 CMR 56.02. Further, the conditions and requirements imposed by the ZBA Decision do not set forth “a valid health, safety, environmental, design, open space, or other Local Concern<sup>[2]</sup> which supports such condition”, nor do they outweigh the Housing Need as set forth in 760 CMR 56.00, et seq.

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<sup>1</sup> A copy of the ZBA Decision is attached hereto as **Exhibit A**.

<sup>2</sup> “Local Concern” is defined in 760 CMR 56.02 as “the need to protect the health or safety of the occupants of a proposed Project or of the residents of the municipality, to protect the natural

Shinglemill is a Massachusetts limited liability company with an address of 4 First Street, Bridgewater, MA 02324, and is represented in this matter by Tanya D. Trevisan, Esq., who is an attorney in the law firm of Mirrione, Shaughnessy & Uitti, LLC, which has an address of 2 Batterymarch Park, Suite 202, Quincy, MA 02169.

**Prior Proceedings Before the ZBA**

1. On or about March 5, 2020, Shinglemill filed an Application for Comprehensive Permit with the ZBA pursuant to M.G.L. c. 40B, §§ 20-23 (the “Application”).<sup>3</sup> A copy of the Application is attached hereto as **Exhibit B**.

2. As per the Application, the location of the property to be developed measures approximately 29.4 acres of land as shown on the Rockland Assessors’ Maps as Parcel Nos. 9-13-0 (75-79 Pond Street) and 10-68-0 (portion of 152 Wilson Street), in Rockland, MA 02370 (the “Site”). (See **Exhibit A**: ZBA Decision at p. 1).

3. On or about August 29, 2023, a deed which records Shinglemill having purchased from Boyd Fulton certain property, known and numbered as 73 Colby Street, Rockland, MA (shown on the Rockland Assessors’ Maps as Parcel 10-67-0), was filed with the Plymouth County Registry of Deeds in book 58226, Page 200, thereby adding to the Site approximately 4,000 square feet. (See **Exhibit A**: ZBA Decision at p. 1, n. 1.)

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environment, to promote better site and building design in relation to the surroundings and municipal and regional planning, or to preserve Open Spaces.

<sup>3</sup> Because the ZBA does not have a formal application for comprehensive permits relating to G.L. c. 40B, Shinglewood filed with the ZBA the same application packet that it had submitted to MassHousing.

4. As per the Application, Shinglemill originally<sup>4</sup> proposed to construct on the Site 236 residential apartment units in two, five-story buildings, one building with 109 units and the other with 127 units, with an associated 3,129 square foot clubhouse building, all of which were to be accessed off of a newly-constructed 750-foot driveway, off of Pond Street, with 296 surface parking spaces, eight of which were identified as handicap-accessible spaces (the “Original Project”). (See **Exhibit A**: ZBA Decision at p. 2).

5. In or about January 2022, in response to comments made during the public hearings of the ZBA regarding the Original Project, Shinglemill filed with the ZBA revised sets of plans which reduced the scope of the Original Project (the “Revised Project”) as follows:

- a. Reduction of the total residential apartment count from 236 to 199;
- b. Reduction of the number of residential apartments in one building (referred to in the ZBA Decision as “the ‘L’ Building”) from 109 units to 99 units;
- c. Reduction of the number of residential apartments in the other building (referred to in the ZBA Decision as “the ‘Bar’ building”) from 127 units to 100 units; and
- d. Elimination of the clubhouse.

6. In addition, the Revised Project includes a “Parking Expansion Concept Plan,” dated May 25, 2023, prepared for Shinglemill by its civil engineering consultant, Coneco, which includes a “Proposed Concept Plan” and three additional concept plans (hereinafter collectively referred to as the “Proposed Parking Plan”) for 299 surface parking spaces, seven (7) of which are handicap-accessible. The Proposed Parking Plan also would allow for the construction of up

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<sup>4</sup> As further outlined below, in response to comments raised during the public hearing process, Shinglemill filed with the ZBA a revised set of plans, which reduced the scope of the proposed project.

to fifty (50) additional parking spaces, if required by the ZBA. The ratio of parking spaces to residential units would yield 1.5 parking spaces per residential unit (1.5:1).

7. On October 12, 2023, the ZBA Decision granting the Application with certain conditions and requirements was recorded with the Town Clerk of the Town of Rockland. (*See **Exhibit A.***)

8. As outlined in the ZBA Decision, the proceedings before the ZBA on the Application were as follows: “The Board’s public hearing on the Application opened on April 7, 2020 and further public hearings were held on June 10, 2020, July 21, 2020, September 15, 2020, October 27, 2020, December 15, 2020, February 2, 2021, March 2, 2021, April 6, 2021, June 1, 2021, August 17, 2021, September 21, 2021, October 19, 2021, January 18, 2022, March 1, 2022, May 17, 2022, August 2, 2022, October 4, 2022, November 15, 2022, February 21, 2023, April 4, 2023, April 18, 2023, May 2, 2023, June 6, 2023, [and] August 15, 2023.” (*See **Exhibit A:** ZBA Decision at p. 3.*)

**Shinglemill’s Objections to ZBA’s Conditions and Requirements**

9. The ZBA has imposed upon Shinglemill certain conditions and requirements as outlined below, each of which: a) render the project Uneconomic, as defined in 760 CMR 56.02; b) do not set forth a valid health, safety, environmental, design, open space, or other Local Concern which supports such condition; and/or c) do not outweigh the local Housing Need, as set forth in 760 CMR 56.00, et seq.

10. Condition A.4. of the ZBA Decision provides, in relevant part, as follows:

The Board will allow 70% of the parking spaces to be reduced size and that the remaining 30% of the parking spaces be full sized, will require that the proper number of handicapped spaces be provided as per building code, and will allow a parking ratio of 2.0 spaces per unit. This will require a revision to the proposed parking plans. All surface parking associated with the Revised Project shall be

screened from view by a dense vegetated buffer to all residential abutters to lessen off-site migration and shall be illuminated with lighting fixtures that are equipped with baffles that prevent any off-site migration of light.

(See **Exhibit A**: ZBA Decision at pp. 17-18.)

11. Shinglemill disagrees with the ZBA's imposition of Condition A.4., as the ZBA's Decision fails to provide any rationale for Condition 4.A., and it is not supported by the record before the ZBA. As such, Condition A.4. does not set forth "a valid health, safety, environmental, design, open space, or other Local Concern which supports such condition", and does not outweigh the Housing Need, as set forth in 760 CMR 56.00, et seq.

12. Condition A.4. would require the preparation and resubmission of a parking plan, as well as: a) an increase in the required number of off-street parking spaces per residential unit from 1.5 to 2.0; b) construction of larger-than-proposed parking spaces for thirty percent (30%) of the parking spaces; c) the installation of a dense vegetative buffer; and d) the installation of baffle-equipped light fixtures in the parking area. These requirements are improper, costly, and would render the project Uneconomic, as defined in 760 CMR 56.02, as Shinglemill's profit on the project will fall below 10% of total development costs.

13. Submission Requirement C.C.1.b.3. of the ZBA Decision requires Shinglemill to provide to the Building Commissioner and the ZBA "[d]ocumentation, including a mounding analysis if applicable, showing the Revised Project stormwater management system complies with the Commonwealth of Massachusetts Department of Environmental Protection [(the "MassDEP")] Stormwater Management Regulations." (See **Exhibit A**: ZBA Decision at p. 23.)

14. Shinglemill opposes the ZBA's imposition of Submission Requirement C.C.1.b.3., because the requirement to perform a mounding analysis here is improper, costly, and

would render the project Uneconomic, as defined in 760 CMR 56.02, as Shinglemill's profit on the project will fall below 10% of total development costs.

15. Notwithstanding the aforesaid, Shinglemill further contests Submission Requirement C.C.1.b.3. because the ZBA fails to provide any rationale for this requirement and because the ZBA lacks either jurisdiction or the authority to regulate stormwater management systems, which regulation falls under the purview of the MassDEP and the Town of Rockland Conservation Commission.

16. Submission Requirement C.C.1.b.8. of the ZBA Decision requires Shinglemill to upgrade the existing culverts beneath the entrance causeway to meet the MassDEP "Stream Crossing Standards and an additional culvert meeting the same Stream Crossing Standards . . . for the Zone A tributary to the Hingham Street reservoir." (See **Exhibit A**: ZBA Decision at p. 24.)

17. Shinglemill disagrees with the requirement as outlined in Submission Requirement C.C.1.b.8. of the ZBA Decision, as it is not supported by the record before the ZBA, does not set forth "a valid health, safety, environmental, design, open space, or other Local Concern which supports such condition", and does not outweigh the Housing Need, as set forth in 760 CMR 56.00, et seq.

18. Moreover, Submission Requirement C.C.1.b.8. of the ZBA Decision would require Shinglemill: a ) to install a new culvert where a culvert does not currently exist; and b) to replace culverts with enlarged culverts that meets the Massachusetts Stream Crossing Standards, which requirement is not only improper, but is costly and would render project Uneconomic, as defined in 760 CMR 56.02.

19. Additionally, the ZBA not only fails to provide any rationale for Submission Requirement C.C.1.b.8., but the ZBA lacks either jurisdiction or the authority to regulate the removal, replacement, and installation of culverts.

20. Submission Requirement C.C.2.e. of the ZBA Decision provides as follows:

When able to connect, either pay to the Town the required sewer connection fees and Infiltration/Inflow (“I/I”) mitigation fees in accordance with the then current Sewer Department fee schedule, which is currently calculated at a ratio of 11:1 based on Title 5 daily sewer flows (110 gallons per day per bedroom) and a rate of \$6.61 per gallon of flow or implement to completion the required I/I mitigation, at the discretion of the Sewer Commission . [sic] If requested by the Sewer Commission, the Applicant shall provide to the Commission’s satisfaction a combination of I/I removal and monetary fees in accordance with applicable Sewer Commission policy or regulations.

(See **Exhibit A**: ZBA Decision at p. 29.)

21. The so-called “mitigation fees” and other fees listed in Submission Requirement C.C.2.e. of the ZBA Decision are vague, excessive, and overly burdensome on Shinglemill, and the ZBA provides no rationale for these fees. Moreover, the requirement is outside of the ZBA’s jurisdiction and falls squarely in the purview of the Rockland Sewer Commission, to which Shinglemill will apply for all requisite sewer-related permits.

22. Condition E.3. of the ZBA Decision provides, in relevant part, as follows:

. . . [T]he Project may not proceed until and unless there is an alternative source of domestic drinking water supply satisfactory to the ARJWW ([the Abington-Rockland Joint Water Works]). . . [C]ertain conditions including the performance of a hydrologic study/modelling of the proposed development to demonstrate the fate and transport of contaminants from the proposed development do not pose a threat to the public water supply, and also, certain groundwater modelling and firm yield estimator calculations demonstrating no negative impacts or reductions in the safe yield of the Hingham Street Reservoir.

(See **Exhibit A**: ZBA Decision at p. 35-36.)

23. Shinglemill disagrees with the ZBA's imposition of Condition E.3., as the ZBA lacks jurisdiction and/or authority under the Town of Rockland Bylaws, as to the subject matter contained in Condition E.3., as said subject matter falls under the jurisdiction and purview of the ARJWW.

24. Shinglemill further disagrees with the ZBA's imposition of Condition E.3. because compliance therewith would be unduly burdensome to Shinglemill. The costs associated with groundwater modelling and yield calculations relating to the public water supply and the Hingham Street Reservoir are of such significance that the project would be rendered Uneconomic, as defined in 760 CMR 56.02, as Shinglemill's profit on the project will fall below 10% of total development costs.

25. Condition E.4. of the ZBA Decision provides, in relevant part, as follows:

[T]he Board will require the Applicant's Revised Project to be placed on the Rockland Sewer Commission's current waitlist for sewer capacity which was implemented as a part of the moratorium in that position that it would be in as of the date of the issuance of this Comprehensive Permit and require the Applicant to supply at its cost and expense a study with an engineering firm that is reasonably acceptable to the Rockland Sewer Commission, that is sufficiently skilled and experienced with municipal sewer systems and with the demonstrated ability to complete a new Sewer System Evaluation Survey of the Rockland Sewer System to identify and recommend specific pipe segments and service connections for rehabilitation sufficient to provide that quantity of so-called Infiltration and Inflow (I/I) permitted by the ACO<sup>5</sup> in order to allow a new connection into the existing sewer system. The Applicant will also be required to either pay for the entire cost of the implementation of the specified improvements to reach the required I/I reduction (see prior condition) by a contractor approved by the

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<sup>5</sup> The ZBA Decision identifies "ACO" as an "Environmental Protection Agency (EPA) Administrative Consent Order ('ACO') issued on September 29, 2006 which said [sic] EPA Administrative Consent Order (ACO) to the Town in response to violations of Total Suspended Solids (TSS) and flow limitations in Part I.A.1 of the Town's NPDES permit" (See **Exhibit A**: ZBA Decision at p. 36.)



Sewer Commission which said approval shall not be unreasonably withheld or implement under the supervision of the Rockland Sewer Commission at the Applicant's cost at the discretion of the Rockland Sewer Commission. Only through the reduction of I/I can the existing system accept a new sewer connection.

(See **Exhibit A**: ZBA Decision at p. 38.)

26. Condition E.4 of the ZBA Decision further requires Shinglemill to utilize a parcel of land that is nether owned nor controlled by Shinglemill, if it becomes available, to provide an alternate sewer line for the Revised Project. (See **Exhibit A**: ZBA Decision at p. 39.)

27. Shinglemill disagrees with the ZBA's imposition of Condition E.4., as the ZBA lacks jurisdiction and/or authority under the Town of Rockland By-Law, as to the subject matter contained in Condition E.4., as said subject matter falls under the jurisdiction and purview of the Town of Rockland Sewer Commission.

28. Shinglemill further disagrees with the ZBA's imposition of Condition E.4., as the ZBA Decision not only fails to provide any rationale for Condition E.4, but compliance therewith would be unduly burdensome to Shinglemill and would require Shinglemill to incur over \$1.7 Million in what the ZBA considers "mitigation" costs. These costs are of such significance that the project would be rendered Uneconomic, as defined in 760 CMR 56.02, as Shinglemill's profit on the project will fall below 10% of total development costs.

29. Condition I.6. requires "[o]n-site lighting to be compliant with the standards of the International Dark-Sky Association (or equivalent standards) . . . set on a timer or a motion sensor where possible to prevent unnecessary light spillover." (See **Exhibit A**: ZBA Decision at p. 46.) The vast majority of the exterior lights would not be seen by neighbors, which renders the requirement of this widespread and expensive lighting system improper and further contributes to making the project Uneconomic, as defined in 760 CMR 56.02.

30. Exhibit B, which is appended to the ZBA Decision at pp. 50-55 and entitled “Shinglemill – List of Requested Exceptions, Decision Waivers, and Permits” (hereinafter collectively referred to as the “ZBA Decision Waiver”), indicates at Waiver # 1 that the ZBA, while granting a partial waiver to § 407-5 of the Wetlands Protection By-Law, will require Shinglemill to “access [the] roadway and the intrusion at the NW corner of the L Building and Easterly portion of the parking lot” and “mitigate the impacts to the local and state wetland resource areas on a 1-1 basis in a plan to be approved by the Town’s peer review engineer.” (See **Exhibit A**: ZBA Decision at p. 50.)

31. Shinglemill contests the requirements as stated in Waiver # 1, as the ZBA has failed to justify this requirement. Waiver # 1 does not set forth “a valid health, safety, environmental, design, open space, or other Local Concern which supports such condition”, does not outweigh the Housing Need as set forth in 760 CMR 56.00, et seq., and further contributes to making the project Uneconomic, as defined in 760 CMR 56.02.

32. In ZBA Decision Waiver # 5, the ZBA grants a partial waiver to Zoning By-law § 415-22, regarding “Building and lot Regulations A. Parking/access and egress requirements (1),” but requires Shinglemill to construct the parking lot so that “70% of the parking spaces may be 9’ x 18’ and the remaining 30% shall be full sized parking spaces.” (See **Exhibit A**: ZBA Decision at p. 51.)

33. Shinglemill contests Waiver # 5, as the ZBA fails to provide any rationale for its decision to require the increase in parking area; moreover, it is not supported by the record and would be cost prohibitive for Shinglemill. Further, Waiver # 5 does not set forth “a valid health, safety, environmental, design, open space, or other Local Concern which supports such

condition”, does not outweigh the Housing Need as set forth in 760 CMR 56.00, et seq., and further contributes to making the project Uneconomic, as defined in 760 CMR 56.02.

34. In ZBA Decision Waiver #'s 8 and 10, Shinglemill sought a waiver from the off-street parking requirements in §§ 415-22 and 415-35 of the Zoning By-Law, which requires 3.0 off-street parking spaces per multi-family residence. The ZBA granted a partial waiver, requiring Shinglemill to construct the parking lot so that “70% of the parking spaces may be 9' x 18' and the remaining 30% shall be full sized parking spaces” and requiring that Shinglemill “shall maintain an average parking ratio of 2.0 spaces per unit.” (See **Exhibit A**: ZBA Decision at p. 52.)

35. The Revised Project is designed with a 1.5 parking ratio, i.e., 1.5 parking spaces per multi-family residence. (See **Exhibit A**: ZBA Decision at p. 52.)

36. Shinglemill contests Waiver # 8 and Waiver # 10, as the ZBA fails to provide any rationale for either its decision to require the increase in parking area or its decision to require an average parking ratio of 2.0 spaces per residential unit; moreover, the ZBA's decision regarding these waivers is not supported by the record and would be cost prohibitive for Shinglemill. Further, the ZBA's decisions regarding Waiver # 8 and Waiver # 10 do not set forth “a valid health, safety, environmental, design, open space, or other Local Concern which supports such condition”, do not outweigh the Housing Need as set forth in 760 CMR 56.00, et seq., and further contribute to making the project Uneconomic, as defined in 760 CMR 56.02.

37. ZBA Decision Waiver # 14 requires that the roadway entrance to the Site “shall be allowed 50' at 1% grade.” The roadway currently has a slope of three percent (3%). (See **Exhibit A**: ZBA Decision at p. 53.)

38. Shinglemill disagrees with the requirement as stated in ZBA Decision Waiver # 14, as it mandates the regrading of fifty feet (50') of the 100' roadway on the Site from its current slope of three percent (3%) to one percent (1%). The ZBA fails to provide any rationale for its decision to require the regrading of the roadway; moreover, it is not supported by the record and would be cost prohibitive for Shinglemill. As such, Waiver # 14 does not set forth "a valid health, safety, environmental, design, open space, or other Local Concern which supports such condition", does not outweigh the Housing Need as set forth in 760 CMR 56.00, et seq., and further contributes to making the project Uneconomic, as defined in 760 CMR 56.02.

39. ZBA Decision Waivers, # 15, states that, with regard to drain pipes, Shinglemill "may go to 2 feet with flowable fill in any areas less than 2.5'." (See **Exhibit A**: ZBA Decision at p. 53.)

40. Shinglemill objects to the ZBA restricting Shinglemill's use of a 2' cover only "with flowable fill in areas less than 2.5'," as the ZBA fails to provide any rationale for its decision, and it further contributes to making the project Uneconomic, as defined in 760 CMR 56.02.

### **Relief Sought by Shinglemill**

WHEREFORE, Shinglemill respectfully requests the following relief:

- a. Eliminating from the ZBA Decision Conditions A.4, E.3., E.4, and I.6.; and
- b. Eliminating from the ZBA Decision Submission Requirements C.C.1.b.3., C.C.1.b.8, and C.C.2.e;
- c. Eliminating from the ZBA Decision the restrictions and requirements identified in ZBA Decision Waiver #'s 1, 5, 8 & 10, 14, and 15; and
- d. Any and all other relief that this Honorable Committee deems proper and just.

Respectfully submitted,

By the Appellant, Shinglemill, LLC, by and through  
its attorneys,

*/s/ Tanya D. Trevisan*

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Dated:           October 25, 2023