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By Electronic Mail

Toni Mooradd, Chair
Ipswich Planning Board
Town Hall
Ipswich, MA 01938

Re: 55 Waldingfield Road – 250-Foot Setback and the Secretary of the Interior’s Standards for Rehabilitation (36 C.F.R. § 68)

Dear Chair Mooradd and Members of the Board:

The Friends of Waldingfield appreciate that the Board appears to have recognized that its previously-proposed justification for allowing new construction in the 250-foot setback — simply waiving the express GEPD prohibition on such construction — lacked a legal basis. This position was abandoned in the Board’s August 8, 2022 revised draft.

Yet rather than simply concede what is obvious on the face of the Bylaw — that newly-constructed buildings are forbidden within the 250-foot setback — the revised draft now posits a *new* justification for allowing this prohibited construction. The Board now contends that it “does not consider the rehabilitation and expansion of a single family home and barn to qualify as newly constructed buildings in a GEPD” and that the Board “supports rehabilitation and expansion of these buildings as consistent with the purpose of the GEPD bylaw.”

Unfortunately, this new “rehabilitation” justification is equally as legally vulnerable as the now-abandoned “waiver” justification, for an even more obvious reason: What Ora proposes is not rehabilitation under the plain language of the GEPD Bylaw. As a legal matter, rehabilitation (and renovation) both mean something else entirely.

In Section IX.H.3.ii of the GEPD Bylaw, Town Meeting expressly instructed the Planning Board to apply the “Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings” when reviewing “buildings which have been, or are proposed to be, rehabilitated or renovated.” (emphasis supplied).

The Secretary’s Standards are federal regulations — codified at 36 C.F.R. § 68. They are the nationally-accepted standards for how historic buildings like those at 55 Waldingfield are to be maintained and repaired. Indeed, there are even specific standards for Rehabilitation

(36 C.F.R. § 68.3(b)),¹ distinct from those standards for Preservation (§ 68.3(a)), Restoration (§ 68.3(c)), and Reconstruction (§ 68.3(d)). Town Meeting expressly chose “Rehabilitation” as the applicable legal standard here.

Even a cursory review of the Rehabilitation Standards makes clear that what Ora proposes does not remotely adhere to them. To wit:

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.
 - *Far from “minimal change,” Ora’s revised Phase 1B plan (August 5, 2022) proposes extensive changes to the Farm House: demolishing all the portions shown in gray, including the entire rear ell, the right side addition, the front left corner, and the left side semi-circle. This violates the Standards.*
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.
 - *Ora’s proposal is to significantly alter the features and spaces that characterize the existing Farm House, demolishing the entire rear ell, the right side addition, the front left corner, and the left side semi-circle. This violates the Standards.*
3. Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
 - *Ora openly admits that it will violate this Standard: Its June 3, 2022 Project Summary declares that when finished, “[t]he completed structure will be designed to recall the original Samuel Appleton Homestead which once stood in this area.” Yet what the Historical Commission declared historically significant on December 13, 2021 is the existing farmhouse building, as it currently stands. Ora proposes to eliminate that historic structure, and create instead a modern-day facsimile of a 1794 farmhouse. This violates the Standards.*
9. New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be . . . compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
 - *Ora’s June 3, 2022 Project Summary makes clear that the Farm House addition will not be compatible with the size, scale, and proportion and massing in a way*

¹ The Secretary’s Standards for Rehabilitation are available at <https://www.nps.gov/tps/standards/four-treatments/treatment-rehabilitation.htm>.

that “protect[s] the integrity of the property.” Phase 1B nearly triples the size of the existing 5,000 square foot Farm House by proposing to add a new 11,000 square foot addition. This violates the Standards.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

- *Ora’s August 5 plan proposes demolition of the entire rear of the existing Farm House, in order to construct a new 11,000 square foot addition. After such demolition, it will be physically impossible for the new addition to be “removed in future” without impairing the “essential form and integrity” of the historic Farm House. This violates the Standards.*

The legal point is simple. Even if Ora were allowed to build in the setback — which it is not — the legal justification cannot be because it is a “rehabilitation,” since what Ora proposes is *not* a “rehabilitation” under the GEPD Bylaw. It is simply new construction, which the GEPD Bylaw prohibits.

A permit granting authority “is entitled to interpret its authorizing legislation, but not to ignore it when the meaning of the enactment is plain.” *Ling Yi Liu v. Cambridge Board of Zoning Appeal*, 23 LCR 272, 275 (Mass. Land Ct. 2015).

The Friends strongly urge the Board to consult with Town Counsel before justifying impermissible new construction in the setback on the basis it constitutes a “rehabilitation,” given that what Ora proposes fails to comply with the controlling legal standards for “rehabilitation” that Town Meeting required the Planning Board to apply.

Please do not hesitate to contact me or my colleague Doug McGarrah if you should have any questions.

Sincerely,



Thaddeus Heuer

Cc (by email): Ethan Parsons, Director of Planning and Development
Andrea Bates, Assistant Town Planner
Mary Gallivan, Interim Town Manager
Tammy Jones, Chair, Select Board