

# TOWN OF STONEHAM

35 CENTRAL STREET  
STONEHAM, MASSACHUSETTS 02180  
TEL: (781) 279-2680 • FAX: (781) 279-2681

## SELECT BOARD

September 18, 2023

### VIA EMAIL & CERTIFIED MAIL

Ms. Kat Miller  
Planning and Program Specialist  
Comprehensive Permit Program  
Massachusetts Housing Finance Agency  
One Beacon Street  
Boston, Massachusetts 02108

RE: **RESPONSE OF THE TOWN OF STONEHAM**  
**To Proposed 40B – The Residences at Spot Pond**  
**MH ID No. 1196**

Dear Ms. Miller:

Thank you for the opportunity to comment on the Comprehensive Permit Site Plan Application submitted by Fellsway Development LLC (Fellsway) describing the proposed Residences at Spot Pond dated June 30, 2023 (the “Proposed Project”) at 5 Woodland Road, Stoneham, Massachusetts (the “Subject Parcel”) on the vacant site of the former Boston Regional Medical Center within Middlesex Fells Reservation and for MassHousing for granting the Town an extension of time to continue discussions with the representatives from The Guitierrez Company (“Gutierrez”) on behalf of Fellsway concerning the Proposed Project.

Our understanding of the Proposed Project is that Fellsway, if they are able to obtain a Project Eligibility Letter from MassHousing relating to the Proposed Project at the Subject Property, plans to apply to the Town of Stoneham Zoning Board of Appeals (“Board of Appeals”) for a Comprehensive Permit to construct 378 multi-family residential units in two four and five story buildings on a site with approximately 10.2 acres of land, more or less. Building A is proposed to consist of a 4 and 5 story garden-style apartment building and is approximately 60 feet tall<sup>1</sup> and Building B is a proposed to consist of a 5 story garden style building and is approximately 66.5’ feet tall<sup>2</sup>. The project will consist of 5% studio apartments, 45% one- bedroom apartments, 40% two-bedroom apartments and 10% three-bedroom apartments. 25% of the proposed units or 95 of the units are proposed to perpetually restricted as affordable units to households earning not more than 80% of the area median income. There are proposed a total of 751 parking spaces inclusive of 385 proposed new surface parking spaces (inclusive of 16 accessible spaces and 3 parallel spaces), 60 existing deeded spaces at the existing Life Care Center (to remain), 82 surfaced spaces at an off-site southerly grassed area (adjacent to another Fellsway residential development), 170 spaces below Building B, and 54 garage stall spaces. Our understanding is that in addition to the units, the site will be improved with a leasing office, kitchen/lounge,

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<sup>1</sup> This is stated to 49.2’ from average grade.

<sup>2</sup> This is stated to be 55.3’ from average grade.

package receiving room, fitness center, and media/game room areas, stone patio areas, a garden, outdoor seating areas and an outdoor pool area.

The site as MassHousing is aware from its August site visit represents only a portion of the property located at 5 Woodland Road and is located in the Middlesex Fells Reservation. The Middlesex Fells Reservation is a public recreation area covering more than 2,200 acres (890 ha) in Malden, Medford, Melrose, Stoneham, and Winchester, Massachusetts. The reservation surrounds two MWRA water resource areas in, Spot Pond and the Fells Reservoir, and the three active reservoirs (North, Middle, and South) that are part of the water supply system for the town of Winchester. Spot Pond and the Fells Reservoir are part of the Wachusett water system, one of six primary water systems that feed metropolitan Boston's waterworks. The reservation is currently managed by the Massachusetts Department of Conservation and Recreation and is part of the Metropolitan Park System of Greater Boston. The Friends of The Fells, a non-profit organization, whose mission is to promote the conservation, appreciation and sustainable enjoyment of the Middlesex Fells Reservation, also actively advocates for the reservation by developing initiatives to protect and enhance the ecology of the Fells, organizing programs and events where the public can learn about, enjoy and care for the Fells, and supporting DCR in its overall management of the Fells.

The Subject Property itself is shown on the Town of Stoneham Assessor's Map including in the application package as Figure 1.2 and is identified as Parcel 27-0-3A although the Fellsway is understood also to control a northerly Parcel 27-0-3E2 and portions of 27-0-3D. The land is situated in the Town of Stoneham's Medical/Office/Residential Zoning District, and through amendments to Chapter 15 of the Town Code (Zoning Bylaw) §4.15 and §5.2.1 made by the Town of Stoneham to enable prior development on other portions of the site in 2011, the developers, including Fellsway, were allowed by right to develop 261 garden style apartment buildings and 2,500 s.f. of retail space on Lot L (Langwood Commons/Alta Clara Apartments) and 49 residential townhouse units on Fellsway's Lot K.

In connection with the development of Lots L and K (abutting parcels), the developers of the original site, including Fellsway, executed a Development Agreement and Mitigation Covenant with the Town of Stoneham providing for certain mitigation as well as providing certain financial incentives and restrictive covenants relating to future uses of those two parcels and in the case of Fellsway the Subject Parcel to gain local support for zoning changes and the overall development. We have attached the last amended versions including a Further Amended and Restated Development Agreement dated May 2, 2011 (Exhibit A) and Further Amended and Restated Mitigation Covenant dated May 2, 2011 (Exhibit B). Given the nature and scope of what Stoneham was being asked to change and approve, relevant to MassHousing should be advised that Fellsway and the other developers covenant and agreement not to develop additional residential units and to affirmatively redevelop the existing hospital site with by right uses including commercial, office and/or research and development uses. Specifically, Fellsway offered and Stoneham accepted in exchange for its support of the proposed development, including plans for the remainder of the site,<sup>3</sup> a perpetual restriction against Fellsway proposing any further residential projects on Lot F-3 (the current proposed site).

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<sup>3</sup> On May 5, 2022 site plan approval was given by Stoneham to a proposed life science facility and on April 8, 2022 a special permit was approved by Stoneham for the same use.

Specifically, in condition 14 of the amended Development Agreement (Exhibit A), Fellsway (as the sole owner of Lots F-3 and M-2) agreed to execute a separate written agreement with the Town evidencing an irrevocable waiver of any right to file or seek a comprehensive permit pursuant to M.G.L. Ch. 40B or any successor affordable housing statute for all or any portion of said Lots F-3 and M-2 for recording and to be marginally referenced in all deeds.

After the expiration of all appeals for the development contemplated by the amended Development Agreement and Mitigation Covenants, Fellsway and the Town executed an Irrevocable Waiver Agreement on January 12, 2017 which was then recorded at the Middlesex County Registry of Deeds, a copy of which is attached as Exhibit C.

In summary, in order for Fellsway to proceed at all with a proposed residential development or low and moderate-income housing project on the Subject Property, Stoneham must agree to terminate the restriction that precludes the filing of the Proposed Project.

Pursuant to 760 CMR 56.04(4)(b) and 56.04(4)(g), Fellsway, in seeking Project Eligibility must propose a conceptual project design that is generally appropriate for the site taking into account factors including the proposed use and conceptual site plan, integration into existing development patterns as well as possess sufficient site control to demonstrate an ability to permit the proposed project.

On behalf of the Town of Stoneham Select Board, we would urge MassHousing to deny Fellsway a Project Eligibility Letter since the conceptual project design as best evidenced by the express agreements made by Fellsway and the other developers with the Town of Stoneham last amended in 2011 expressly conclude that the remainder of the property is not appropriate for additional residential development. Moreover, just last year, in 2022, Fellsway sought and obtained approvals for a use that the Town of Stoneham concurred was appropriate for the site and when it provided a special permit and site plan approval for a new life science facility on the Subject Property. Most importantly, Fellsway, granted in favor of Stoneham, in exchange for substantial concessions, zoning changes and support of prior development, an enforceable restrictive covenant specifically affecting the Subject Property in which Fellsway covenanted and agreed never to file for or seek a comprehensive permit in accordance with M.G.L. 40B on the Subject Property.

In addition to the foregoing, it is plainly evident that the Proposed Project involves the proposed construction of 378 housing units and would be considered a Large Project pursuant to 760 CMR 56.03(6) as the Town of Stoneham has 7,500 or more housing units as of the last census data. A project of this size thus qualifies for "safe harbor" protection for any more than 300 units and the Select Board would urge MassHousing to deny any conceptual project that is greater than permitted under the regulations.

If MassHousing were to issue a Project Eligibility Letter for the Proposed Project in light of the undisputed existence and uncontroverted terms of the covenant and restriction granted to the Town of Stoneham prohibiting the filing for or seeking an approval of such a project, Fellsway would be in breach of this covenant and agreement, and force the Town of Stoneham to bring an action seeking to void any such approvals for lack of site control and restraining any further filings or submissions towards any 40B project.

For these reasons, the Stoneham Select Board is opposed to the Proposed Project and requests that MassHousing decline to issue a Project Eligibility Letter.

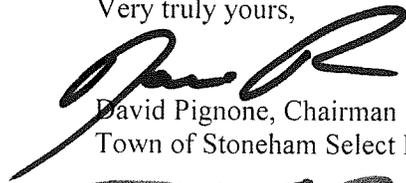
To the extent that MassHousing intends to consider a Project Eligibility Letter, we have enclosed the Town Comment letters which we believe have a bearing on the issues under 760 CMR 56.04(4) and our view that the conceptual project design is not generally appropriate for the site taking into account factors including the proposed use and conceptual site plan, integration into existing development patterns as well as possess sufficient site control to demonstrate an ability to permit the proposed project.

Thank you again for the opportunity to comment.

We look forward to hearing from you on this issue.

Should you have any further questions or concerns, please do not hesitate to contact my office

Very truly yours,



David Pignone, Chairman  
Town of Stoneham Select Board



Dennis Sheehan, Town Administrator  
Town of Stoneham

Enclosed: Town Comments.