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Memorandum

To: Emily Jacobs, Members of the Town of Long Island Planning Board and Town of Long Island Board of Selectmen

Cc:

From: Robert J. Crawford

Date: October 10, 2007

Re: Land Use Ordinances – Mr. Wary

Selectman and Planning Board members:

Emily Jacobs forwarded to my attention proposed changes or "clarifications" to the Land Use Ordinance offered by Mr. Wary, set forth in blue italics below. The proposed changes suggested seek to amend the provision of the Land Use Ordinance related to the recent amendments that allow development of multi-family residences and accessory dwelling units in the Island Business or IB Zone as conditional uses. The Planning Board has informally reviewed the proposed revisions and Emily asked me to comment on them.

The Planning Board is apparently also considering whether it makes sense to strike Section 6.1(B). Section 6.1(B) directs "Nothing within this section shall be construed to permit an increase in the number of dwelling units in a building". As I understand it, the Planning Board is concerned that having this provision remain in the Ordinance may be inconsistent with the recent amendments authorizing the development of Accessory Dwelling Units and Multi-family Dwellings as were the subject of the recent amendments to the Land Use Ordinance adopted in May of 2007. I will also address my concerns about this proposal as well.

Mr. Wary's proposed amendments and rationale:

Clarification of Multi-family Dwellings in the Business Zone, Land Use Ordinance 3.9C.(12) 3.9E.(1)

In order for Land Use Ordinance 3.9C.(11), 3.9C. (12) and 3.9E. (1) to be consistent with the other ordinances in Town of Long Island Chapter 14 Land Use Ordinances the following clarification is needed.

6.1B. should be replaced as follows;
"Nothing in this section shall be construed to permit an increase in the number of dwellings units in a building in residential zones (IR-1) and (IR-2). An increase in the number of Accessory Dwelling Units or Multi-family Dwellings in the business zone (I-B) can be permitted per 3.9C. (11), 3.9C. (12) and 3.9E. (1). The 10,000 square foot requirement for each bedroom is excepted per 3.9E. (1) provided the number of bedrooms in the Dwelling Units or Multi-family Dwelling Units can be sustained by the wastewater treatment system serving the existing nonconforming structure."

Comments on Mr. Wary's proposed changes:

My recollection is that during the Planning Board discussions that led to proposing the authorizations required for development of multi-family and accessory dwelling units the thinking was twofold. First, to ensure that there is a thorough review of the site characteristics and to avoid potential negative impacts from such new development, that an additional layer of regulation and review should be considered. The conditional use process was deemed to be an appropriate mechanism to accomplish this. Second, there was concern that lot density and other related impacts should be limited so as not to create conditions where properties or neighborhoods were overburdened from such developments. To address this the standards governing minimum lot size were set for multi-family use such that the minimum base lot area required would be the 60,000 ft2, the same amount as the minimum for all permitted uses, and to avoid overburdening sites, for each bedroom in a multi-family development 10,000 ft2 in lot area would be required. Sections 3.9 C. and E. of the Land Use Ordinance were amended accordingly.

No amendments were, however, proposed for Article 6, the article which governs nonconforming lots and uses. Section 6.1 B. directs that nothing in Article 6 is to be construed to permit an increase in the number of dwelling units in a building. As it stands, I think this provision and restriction would not allow an owner of a nonconforming lot of record to pursue the development of, for example, of either an accessory unit to an existing single family residence or a multi-family residence unless the lot area requirements for the zone under section 3.9 were satisfied for the proposed use. This construction would honor the concern of ensuring that the density of development should be limited to the lot size criteria in the IB Zone and that lots not be overburdened with development by adding accessory units or by allowing conversions or new multi-family

units.

I think that Mr. Wary's proposed terms are an attempt to change this result. Mr. Wary's proposed amendment would also change the standard related to the density of multi-family dwellings in cases where the property is serviced by a wastewater system capable of servicing the proposed development. My understanding is that Mr. Wary's property is currently serviced by an overboard discharge system with additional capacity. While this may be the case, my recollection is that the Planning Board's bases for the recommended lot size criteria were established not only to be consistent with the minimum state standards which focus on a the minimum lot size capable of supporting a subsurface waste disposal system but also were drawn to govern density of development on any lot and to limit overburdening concerns. Changing the criteria as proposed would allow for increased density of development.

Comments on the Planning Board's proposed striking of Section 6.1(B):

I have several concerns regarding the Planning Board's proposed striking of Section 6.1(B). First, I think striking part B. would open the opportunity for owners of nonconforming lots to pursue allowed or conditional uses including accessory units and multi-family dwellings irrespective of density or overburdening effects that such activities might create. Note that Section 6.5(C)(2) allows development on lots of 20,000 square feet and subpart 2 only requires that building setbacks be complied with and excepts the lot from conforming to minimum lot size or frontage requirements. I am not sure that in advancing the opportunity for accessory units and multi-family dwellings this result was intended. Part B of section 6.1 as it stands acts to prohibit the creation of accessory living units and multi-family dwellings in such cases where the lot size is less than the requirements set out in the space and bulk or dimensional criteria for each zone.

If the intent is to allow the development of accessory dwelling units on undersized nonconforming lots this can be addressed by limiting the language of section 6.1(B). The language of part B could be amended as "Nothing in this section shall be construed to permit an increase in the number of dwelling units in a building. Accessory dwelling units, however, are not subject to the immediately preceding limitation".

Additional Comments regarding the authorization of multi-family dwellings:

In its review and approval of the ordinance amendments authorizing multi-family dwellings the DEP has indicated that as a condition of its approval that proposed multi-family dwelling would have

to conform to the minimum shore frontage requirements under Section 4.17(M) of the Ordinance for each dwelling unit proposed. Section 4.17(M)(2), the section governing shorefront, currently reads:

> "2. Minimum shore frontage:
> i. Residential Development adjacent to tidal areas: one hundred and fifty (150) feet".

To codify the DEP requirements I think the standard should be amended as follows:

> "2. Minimum shore frontage:
> i. Residential Development adjacent to tidal areas: one hundred and fifty (150) feet <u>for each residential unit</u>".

Hopefully these points will assist the Planning Board and Selectmen in considering the issues brought forward regarding administration of multi-family and accessory dwellings. Please let me know any questions or concerns.