

March 1, 2023

John Couture, Building Commissioner  
Building and Zoning Department  
Town of Sutton  
4 Uxbridge Road  
Sutton, MA 01590

Jennifer Hager, Planning & Economic Development Director  
Planning Board  
Town of Sutton  
4 Uxbridge Road  
Sutton, MA 01590

RE: 15 Pleasant Valley Road, Sutton, Massachusetts

Dear John and Jennifer:

You have each raised an issue relative to compliance of the Plan presently before both the Zoning Board of Appeals and the Planning Board presented by Torrington Property, LLC as it relates to frontage. We have investigated the matter and conclude that the existing lot complies with the required frontage in accordance with the Town of Sutton Zoning Bylaw and Massachusetts law for the following reasons.

**1. THAT PORTION OF THE LOT ABUTTING PROVIDENCE/WORCESTER TURNPIKE EXCEEDS 200 FEET IN LENGTH.**

The definition within the Sutton Zoning Bylaw defines lot frontage as the horizontal distance continuously measured along the front lot line between the points of intersection of the side lot lines. Although a literal interpretation of this definition could lead to a conclusion that this lot no longer possesses the adequate uninterrupted frontage required per the Bylaw due to the lot's unique shape, created solely by a public taking this case differentiates itself in two ways. First, the strict application of the Bylaw regarding the requirement of the horizontal distance to be measured continuously would require a lot to have a perfectly straight lot line along the front of the lot to comply with the zoning requirement. In theory, any lot with a curve naturally following the adjacent sidewalk or roadway or slight deviation along the front of the lot would not be able to comply with this strict interpretation of the Bylaw because it would not be continuously horizontal. Therefore, some rationale application of the term horizontal is required.

Second, it is a clear requirement that Zoning Bylaws, similar to any other regulatory or statutory provision, must be applied in a reasonable fashion in light of all circumstances to achieve a logical and consistent result. In the present case, while the lot frontage for this lot may not be a perfect horizontal distance, the definition is clear that it is measured along the front lot line between the points of intersection of side lot lines (emphasis added). The definition of "front lot line" is clear that that measurement is taken along the totality of "the property line dividing a lot from a street". While certainly an unusual circumstance not anticipated by the plain language of

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the Bylaw, the creation of the “notch” by the MassDOT taking does not alter the fact that the front lot line is a length greater than 200 feet being the property line dividing the lot from Providence and Worcester Turnpike. A reasonable interpretation of frontage would be that the entire length, regardless of its meandering path, along Route 146 constitutes frontage.

**2. SITE DIMENSIONAL REQUIREMENTS ARE GOVERNED BY SECTION V(D)/146 OVERLAY DISTRICT BYLAW.**

In accordance with the provisions of Section V(D)(2) of the Sutton Zoning Bylaw the property constitutes part of the Route 146 Overlay District. The proposed development of a medical clinic is subject to the provisions of the Route 146 Overlay District in that said District “applies to and development proposing a new building or redevelopment or addition containing 1,000 or more square feet of floor area...”.

Section V(D)(4)(c)(11)(b) of the Zoning Bylaw states: “in lieu of minimum lot size and frontage requirements the FAR and open space requirements specify the above shall govern the overall project development intensity (emphasis added)”. The development as submitted comports with Section V(D)(4)(c)(9)(c) as the site is intended to be provided with connections to public treatment works for sewage and therefore, the floor area ratio is far below the required .75. While the proposed site does not comport to the requirements of Section V(D)(4)(b), the inability of the site to meet the requirements derives from the modest size of the lot (1.311 acres) in relation to its location in the Route 146 Corridor and the configuration of the lot having frontage along two separate ways. As such, the plan is appropriate for consideration of a waiver of the Overlay District requirements as authorized by the Planning Board pursuant to Section 5(D)(3)(B) of the Zoning Bylaw. Should such a waiver be granted, the site would by definition be in compliance with the frontage requirements of Route 146 Overlay District.

**3. THE SITE IS GRANDFATHERED DUE TO PUBLIC TAKING.**

The property in question was originally created pursuant to a plan dated February 22, 1973 and recorded at the Worcester District Registry of Deeds in Book 379 Plan 24, a copy of which is attached. At that time, the distance from the easterly property line to the final Massachusetts Highway Boundary (thereby depicting the extent of the Route 146 (1938) state layout) totaled 222.4 feet. As such, not only did the site meet the frontage requirements existing as of 1973, it continued to meet those requirements until the 2013 widening of Route 146 and the takings applicable thereto which caused the frontage to be configured in its highly unusual and unique configuration, thereby arguably reducing the required frontage. It would be inappropriate to conclude that a conforming lot was rendered not only non-conforming but potentially non-buildable due to an independent taking by a governmental authority wholly unrelated to the use of the lot nor related to zoning changes. Such lots are often deemed to be “grandfathered” due to the nature that the non-conformity was created. Particularly as it relates to frontage, such a finding would be appropriate.

The authority of zoning regulations to control or determine required frontage is based upon those provisions of the statute which allows adoption of Zoning Bylaws to “lessen congestion in the streets...to provide adequate light and air; to prevent overcrowding of land, to avoid undue concentration of



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population". This provision of the Acts of 1975 has been previously cited by courts in supporting the particular definition and requirement of frontage.

However, the ability of a Town to regulate must be tied to a particular purpose authorized by the enabling language. In the present matter, the case of McNeil vs. Town of Avon, 386 Mass. 389(1982) is instructional. There the Plaintiff challenged the Town's requirements of frontage which the land owner's lot did not comply, alleging that as applying to its land, the regulation was arbitrary and unconstitutional. While the Supreme Judicial Court upheld the frontage requirement, the Court did state that a frontage requirement is valid "unless it is shown that, as applied, it has no substantial relation to public health, safety, general welfare or results in the deprivation of practical uses of the property to which it is applied to constitute a taking without compensation" (emphasis added).

Under the circumstances as presented under 15 Pleasant Valley Road, an interpretation that the means and manner of the 2013 taking by the Massachusetts Department of Transportation rendered the lot without adequate frontage so as to make it a non-buildable lot neither achieves any relationship tied to public health or safety and constitutes an unjust taking.

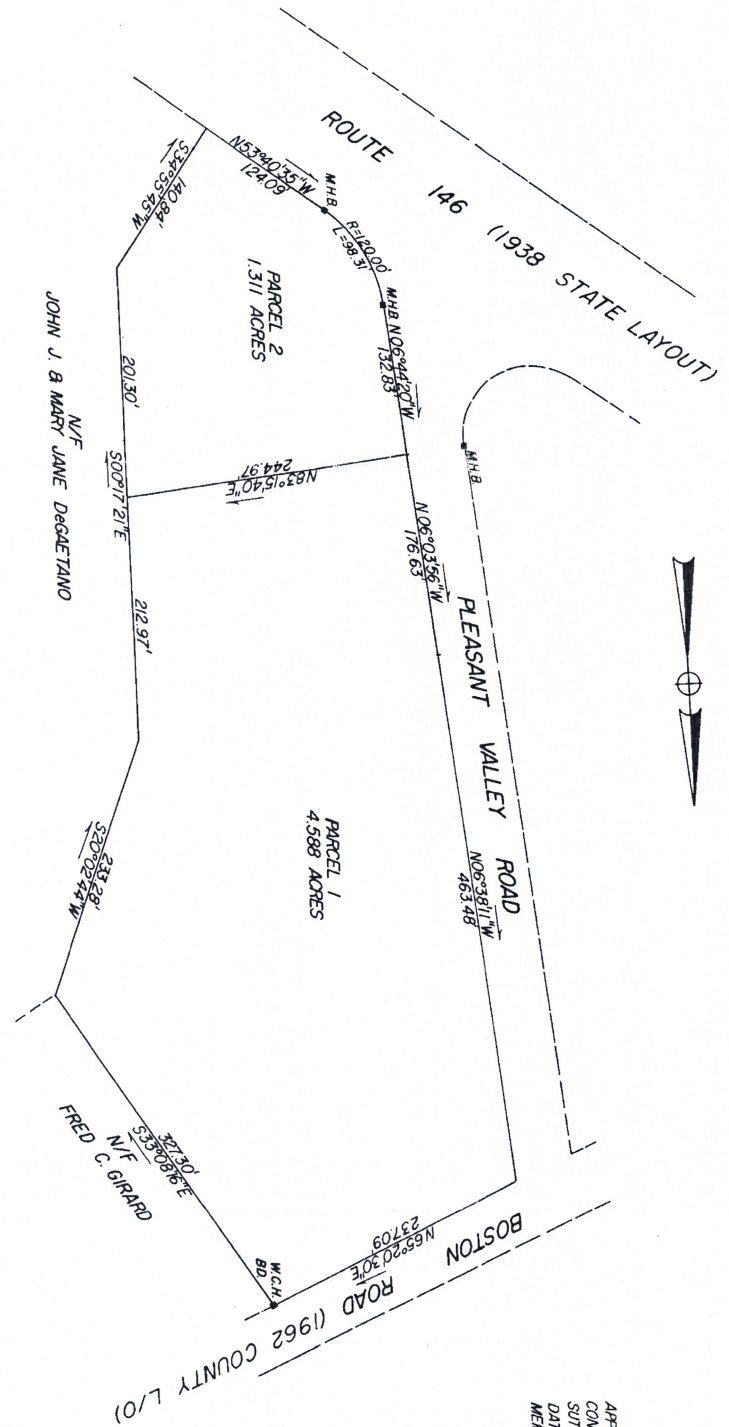
As I indicated, I would like to set up a time to meet with you both to discuss this matter. Kindly advise as to your availability.

Very truly yours,



**Mark L. Donahue**  
Fletcher Tilton PC  
The Guaranty Building  
370 Main Street, 11<sup>th</sup> Floor  
Worcester, MA 01608  
Tel: 508.459.8029  
Email: [mdonahue@fletchertilton.com](mailto:mdonahue@fletchertilton.com)

MLD/mmp  
Enclosure



PROPERTY LINE BETWEEN FRED C. GIRARD AND  
FRANK W. GIRARD AS PER AGREEMENT DEC. 9, 1964.  
PARCELS 1 AND 2 BEING A PORTION OF LAND  
CONVEYED TO FRANK W. GIRARD IN A DEED  
RECORDED IN THE WORCESTER DISTRICT REGISTRY  
OF DEEDS IN BOOK 3050, PAGE 27.

WORCESTER DISTRICT REGISTRY  
OF DEEDS WORCESTER, MA  
PLAN BOOK 379 PLAN 24  
RECORDED APRIL 5 1973  
Sheet 1 of 1  
Attest: *Anthony J. Fitch*  
Register



PLAN OF LAND IN: SUTTON, MASS.  
OWNED BY: FRANK W. GIRARD  
PREPARED BY: MOORE SURVEY & MAPPING CORP.  
OF: SHREWSBURY, MASS.  
DATE: 22 FEBRUARY 1973  
SCALE: 1"=80'

APPROVAL UNDER THE SUBDIVISION  
CONTROL LAW NOT REQUIRED  
SUTTON PLANNING BOARD  
DATE: 3-5-73  
MEMBERS: *Stacy's* *Edward M.*