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116 LOCKSLEY ROAD
LYNNFIELD, MA 01940

August 6, 2018

Mr. Brian R. Charville
Chairman
Lynnfield Planning Board
55 Summer Street
Lynnfield, MA 01940

Re: 160 Moulton Drive Lynnfield, MA

RECEIVED
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Dear Chairman Charville and Members of the Planning Board; LYNNFIELD PLANNING BOARD

Before you tonight you have an application seeking site plan approval for the above location. Your decision on whether or not to recommend this project is an important decision for all of the residents of Lynnfield.

I recognize that the applicant is seeking site plan approval under Sections 5.0 and 10.6 of the Lynnfield zoning by-laws. And I recognize that the Authority Having Jurisdiction in this matter is the Zoning Board of Appeals. However, your elected board is charged with the responsibility of overseeing our Zoning By-Laws and in your own mission statement, you state:

"This Board acts on behalf of the townspeople as stewards of the Lynnfield Zoning Bylaws and the Rules and Regulations of the Planning Board Governing the Subdivision of Land in Lynnfield."

When we talk about being "stewards" of the by-laws, language becomes very important. And the actual meaning of words included in the by-laws becomes critical to the discussion. But in addition to the specific language, I think the Planning Board needs to ask themselves what the intent of the authors of those by-laws was and how this Board as stewards, can protect the townspeople from violations of those laws and/or projects that will violate the spirit of the law.

And I would respectfully suggest that this project violates both the written language of the law and the spirit of the law.

I spent 12 years as a member of the Board of Selectmen in Lynnfield and we worried every day about the impact of Chapter 40B in the Town. And while I realize that this project is not being submitted under 40B, this board needs to carefully consider this project in light of Chapter 40B. First, it is exactly the type of project that we feared here in Lynnfield. We feared that a developer would buy two or three houses resulting in the ownership of a couple of acres and then stuff a 30 unit apartment building on that site under the auspices of 40B. The reason that this is important is because as town officials, we were so concerned regarding this likelihood that we aggressively negotiated with developers to fulfill our 40B requirement to ensure that

our neighborhoods were protected from the possible intrusion and imposition of a project just like this one. And again, while I recognize that this unit is not being proposed under Chapter 40B, what we have here is a very creative use of the "grandfathering" provisions of our by-laws to try to accomplish the same type of "spot zoning" allowed under 40B and that is to force a 32 unit apartment complex onto less than two acres of property using some creative legal maneuvering.

Second, we all know that Lynnfield currently has no exposure under 40B and we fully expect that this will continue during the calculations that will be done in 2020. However, this board needs to carefully consider this project in light of our 40B allocation because the addition of 32 new residences that do not qualify as affordable under 40B will impact the dynamics of that calculation in 2020. Because these units will not qualify under 40B as affordable housing, they add additional housing units which need to be offset when our fulfillment of the 40B requirements is recalculated in 2020, just a couple of years away.

I think it is important to understand the history of this property. During your previous meeting, Mr. Regnante pointed out that it goes back to way before the implementation of the Zoning by-laws and he is absolutely correct. It goes back to the days when it was the Suntaug Inn. Stagecoaches would stop there during their travels on the Boston Turnpike so travelers could stay overnight in a first class inn. And truthfully, if it was currently an Inn and there was some traffic in and out of the Inn, I think the neighbors would be just fine with that. Instead, over the years, boards like this one and the Zoning Board of Appeals have allowed the expansion of that property and the change of use of that property under the "grandfathering" provision of our zoning laws. The result is we now have a 270 seat restaurant in that location and the proponents are seeking to expand that use. I would respectfully suggest to you that the grandfathered use is an Inn, not a 270 seat restaurant and we need to keep that in mind.

Article 5.2 of the zoning by-laws is very clear and includes the following language:

*"change a non-conforming use in accordance with this section **ONLY** if it determines that such change or extension **SHALL** not be substantially more detrimental than the **EXISTING** nonconforming use to the neighborhood."*

Article 5.2.1 delineates permissible changes:

"Permissible Changes – The following types of changes to nonconforming structures may be considered by the Zoning Board of Appeals.

- 1) Change or substantial extension of the use*
- 2) Change from one nonconforming use to another, less detrimental, nonconforming use."*

I would respectfully suggest that the by-laws themselves create two very separate standards for this specific type of application, the first being that it cannot be substantially more detrimental to the neighborhood and the second being that it must be less detrimental to the

neighborhood. And I would respectfully suggest to this Board that this project for a number of reasons that I will delineate fails to meet the standard set by either of these requirements.

Let's start by asking, how do you define neighborhood? Merriam Webster defines neighborhood as:

Neighborhood – "a place or region near: vicinity" and as an example they suggested: "traveled to a place somewhere in the neighborhood of that city."

I would respectfully suggest that the neighborhood includes all of South Lynnfield particularly if we consider factors like Our Lady of Assumption being a neighborhood church, the Huckleberry Hill School being the neighborhood school, traffic congestion in South Lynnfield being a neighborhood problem, etc.

And I hope that the Board will consider the impact of this project the entire neighborhood.

Mr. Regnante in the first meeting made a wonderful presentation regarding the traffic impact study that they did. I can only describe that study as a joke. And they had the temerity to write it up as an official report and submit it to the Planning Board and the Board of Appeals as a formal document. Having someone stand on the corner of Moulton Drive and Summer St. and at the corner of Moulton Drive and Route 1 for an hour in the morning (8 – 9) and an hour in the afternoon (5 – 6) on a single day in the middle of the summer (July 11th), certainly does not constitute any realistic approach to understanding the dynamics of the traffic in that neighborhood. A realistic study would be to measure traffic flow over a period of time when the street was in heavy use such as the spring when baseball season is active and cars are coming and going to the ballpark. Add to that the fact that a large portion of Lynnfield is on vacation and out of town over the 4th of July and ensuing week and you couldn't pick a better time with less traffic to conduct your study. I would respectfully suggest to this Board that a real measurement of traffic flow in this area, during a normal week or month of the baseball season would show that any additional traffic flow in and out of this proposed apartment building would be substantially more detrimental to the neighborhood, but in any explanation, it would certainly not be less detrimental as required by 5.2.1.

The only reason this proposal is appealing at all is because the Yee's have taken all the money they can get out of that property while running a terrible restaurant and not reinvesting any money into improving the facility. Allowing relief here is clearly a reward and only serves as encouragement to other property owners in Lynnfield to allow their property to deteriorate over the years so that neighbors are willing to accept any solution to refurbish the property. And I think that type of attitude is substantially more detrimental to the neighborhood and more detrimental to all of Lynnfield. And approval of this type of project only serves to encourage or legitimize that attitude and reward bad behavior.

Mr. Regnante's statement at the last meeting that this area is zoned RA and this is a residential project is an interesting play on words. Make no mistake about this, while people may be living

here as they do in a residential neighborhood, this is a commercial building where the Palumbo family would like to run their business. The "residents" in this building will be transitional, temporary and everything that you don't want in your neighborhood. And I think that criteria alone makes this project more detrimental to the neighborhood, but in any explanation, it would certainly not be less detrimental as required by 5.2.1.

The proponents have advised that they intend to operate a luxury or high end apartment complex with rents of \$2,400 and \$3,000. This is an interesting description. As I reviewed their plans the apartment complex is made up of units that are 738 SF, 1097 SF and 1341 SF. I would ask the board to use your common sense here and ask yourself, who is going to pay \$2,400 for a 738 SF apartment that has no view (remember they are keeping the trees intact), backs up to a little league field where there are games every spring and summer night under the lights and all weekend long with a PA system announcing the game and a limited amount of green space in the area of the apartments. And further ask yourself who will pay \$ 3,000 for 1,341 SF under the same circumstances. And I remind you that once it is built, we have no control over who resides there. If they don't rent as high end apartments, nothing keeps the proponents from reducing the rent so they are attractive to Section 8 housing. I would respectfully suggest that the lack of control over this building and who lives there *defines* substantially more detrimental to the neighborhood.

Mr. Regnante delineated the calls for service made from the Bali Hai and the neighbors to the Lynnfield Police Department and would have you believe that the location is a major crime problem or a nuisance in the neighborhood. I acknowledge that from time to time there has been a minimal amount of police activity (substantially reduced in recent years) at that location but I would respectfully suggest that the calls for service at the Lynnfield Commons apartments far exceed (even on a proportional basis) the calls for service at this location. From a law enforcement perspective, the apartment complexes in Lynnfield represent one of the most frequent consumers of police services. And I think it is fair to infer that an apartment complex of any type in this location will mean an increased number of calls for service in exactly the same manner that the other apartment complexes have resulted in new calls for service. Apartment complexes feature cars that are parked overnight and are perfect targets for break-ins. They feature a wide variety of residential problems such as break-ins, theft from storage units, alcohol and drug fueled parties, drug trafficking and a wide variety of other issues because people are living in close proximity 24 hours a day, 7 days a week. Any inference that this will solve or reduce the police calls needs to be thoroughly analyzed and backed up by statistics.

Parking at the restaurant occurs during the hours that the restaurant is open for business, currently it is a maximum of 11 or 12 hours a day. Parking at an apartment complex occurs 24 hours a day. Neighbors will be subject to car alarms being activated and the resulting horn honk at all times of the day and night. In addition, there are always a number of alarm activations on parked cars which are accidental and or caused by surreptitious activity. In addition, the parking lots will need to be plowed and that will happen in the early hours of the morning when most neighbors are sleeping so the tenants can get out to work in the morning.

The backup beeper of the plow vehicles will certainly be disruptive to the neighborhood and there is no way to plow this parking lot without backing up and backup beepers are required by law on that type of commercial truck. Clearly, this is substantially more detrimental to the neighborhood, but in any explanation, it would certainly not be less detrimental as required by 5.2.1.

The addition of 32 new housing units in Lynnfield will certainly result in a number of new students in the local neighborhood schools. As you are all probably aware our public school system is at or near capacity. In fact, last year the Superintendent ended the PREDS program at the schools due to a lack of space and the Board of Selectmen recently appointed a School Space needs Committee to study the current situation and space needs of the system. By their own analysis, this proposed apartment building will mean the addition of nine students to the school system. Since there are no students coming from the current use, I would respectfully suggest that the addition of any number of students from this location is substantially more detrimental to the neighborhood and in particular to our neighborhood schools, but in any explanation, it would certainly not be less detrimental as required by 5.2.1.

Last week we heard a great deal of detail about the 16 space parking lot for baseball and "overflow" parking. We saw a drawing that showed a chain separating that parking lot from the main parking lot and they explained that they would drop the chain in the winter for snow removal and they would drop the chain when they needed the space for "overflow" parking.

Really? Is someone going to stand there and monitor when the overflow parking is needed? Again, I ask that the board employ your common sense. How long do you think it will be before the chain is gone and apartment residents and guests are parking in that lot. When do you think the lot will be most needed as "overflow" parking? I would suggest on a Friday or Saturday night when someone in the complex or multiple people in the complex are having a party. Now the chain is down, people are in the lot and come Saturday or Sunday morning baseball parents arrive and 16 spaces are no longer available because overnight guests at the complex have taken those spaces. And if we block that lot so it cannot be parked in, the overflow parkers will drive into the Newhall Park parking lot and park their cars there creating an even bigger parking problem than we currently have at Newhall for baseball.

In addition, with an entrance to the parking lot on Oak St. and the chains down, we will create a new exit for the apartments with traffic going and coming by way of Oak St. Currently, there is no egress from Oak St. into the Bali Hai property. I would respectfully suggest that the possibility of overflow parking at Newhall or the use of Oak St. as a means of egress far exceeds the requirement of being substantially more detrimental than the existing nonconforming use to the neighborhood. And there can be no question that this is another reason why this proposal could certainly not be classified as "another, less detrimental, nonconforming use."

And town officials like Mr. Markey come in to recommend approval of the project because it will include one unit of veterans housing. I think that is wonderful but it isn't a reason to ignore what is happening here. Clearly, this approach on veterans housing was made in an effort to

garner support from a variety of town officials. It is the same reason they have approached Lynnfield Little League about helping them with parking.

This Board needs to carefully examine this proposal and ask yourselves, is this the type of zoning we want to allow here in Lynnfield. Since the law speaks so specifically to the "neighborhood", this board should place serious weight on what the neighborhood residents want and whether the neighborhood residents feel that this project is substantially more detrimental to the neighborhood.

Finally, let's talk about the proposed building itself. The existing Bali Hai building is a single story building with rough dimensions of 115' x 70' which creates a footprint of approximately 8,050 square feet.

The proposed building is a three story building with rough dimensions of 184' x 90' which creates a footprint of approximately 16,560 square feet. This means that in the square footage of the building footprint alone, this building is twice as large as the existing structure. The proponents on their drawings suggest the building is 14,000 square feet but I would respectfully suggest that this number represents the usable square feet and not the actual dimensions of the building.

But let's take this out another step, the proposed building is three stories tall which means the proponents are asking to build a new building that has 49,680 square feet; or if you want to use their numbers, it has 42,000 square feet of usable space. This is six or seven times larger than the existing structure and I would respectfully suggest that this far exceeds the requirement of being substantially more detrimental than the existing nonconforming use to the neighborhood. And there can be no question that it certainly could not be classified as "another, less detrimental, nonconforming use."

I want to thank the Board for your attention tonight. There are a lot of neighbors that are concerned about the impact that this project will have on our little neighborhood. I hope that you will think about what you would want in your neighborhood and ask yourself as stewards for the people of Lynnfield if this is the type of proposal that is in the best interests of the town or the neighborhood.

And after you give these facts serious consideration, I strongly encourage you to "not recommend" this project.

Respectfully yours,



Arthur J. Bourque III