

# Law Office of Jonathan M. Polloni, Esq.

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December 20, 2021

**Via Certified Mail, Return Receipt Requested  
and email by Town of Plymouth web portal**

Mr. Nicholas Mayo  
Director of Inspectional Services  
Building Department  
Town of Plymouth  
26 Court Street  
Plymouth MA 02360

Re: Demand for Enforcement of the Zoning Bylaw at 10 Collins Avenue,  
Spencer Plymouth Realty LLC, owner

Dear Mr. Mayo,

This office represents Save the Pine Barrens, Inc. (“STPB”), an aggrieved party seeking enforcement under §202-12(C) of the Plymouth Zoning Bylaw (the “Bylaw”) relating to property owned by Spencer Plymouth Realty LLC (“SPR LLC”), located at 10 Collins Avenue in Plymouth, MA (the “Project” or “Project Site”).

STPB is a non-profit Massachusetts corporation whose mission is to protect, preserve and steward the globally rare Atlantic Pine Barrens ecosystem that encompasses the Project Site. STPB members also live, work and recreate in the area impacted by the Project and suffer harm from SPR LLC’s damage to this ecosystem, water systems and biodiversity and other interests protected by the Bylaw.

Specifically, on September 28, 2021 you issued Zoning Permit Z2011372 for this Project without the required review by the Planning Board. You lacked the authority to issue the Permit. SPR LLC then proceeded to immediately violate the unlawful permit by conducting unauthorized earth removal activities on the site.

Planning Board review is required pursuant to §203-15 of the Bylaw. This review is intended to ensure compliance with the Planning Board’s design standards including the Natural Features Conservation section of the Bylaw.

At a minimum, Planning Board review would ascertain compliance with the following design standards:

1. determine maximum depth of excavation
2. ensure a revegetation plan
3. require excavation abutting an R-20 SL to include 100-foot vegetated buffer, unless varied by special permit

The Bylaw defines Light Industrial as an allowed right, so long as “fully enclosed within Building with maximum 0.25 FAR.”

Planning Board review is required of all “Development Plans and other plans for all Building and Zoning Permit applications and plans filed with the Building Commissioner, except as noted below, for the purpose of assuring that the proposal complies with the Planning Board Design Guidelines.”

The only exceptions from Planning Board review are: 1) where a required Special Permit or Variance has already been obtained; 2) a proposed Single- or Two-Family Dwelling, including new construction, alteration and addition; or 3) Signs. The Project does not fall within any of these three exceptions. Therefore, Planning Board review was required prior your issuance of the Zoning Permit to clear the lot.

Furthermore, the Planning Board reviews an application for compliance with the Zoning Bylaw. This is compounded by §203-2<sup>1</sup>. This section specifically empowers the Planning Board to review applications for earth removal. The Planning Board is to consider whether a special permit is required and advise the Building Commissioner of their opinion. Earth removal is also subject to an earth removal permit from the Zoning Board of Appeals.

The minimum safeguards and conditions applicable to 203-15 review are described in 203-2(C)(4), as follows:

- i. Except for earth removal related to one and two-family dwellings, the maximum depth of the excavation shall be no closer than ten feet above the highest historical groundwater level, except for excavations associated with cranberry cultivation for the purposes of constructing cranberry bogs, irrigation ponds, tailwater ponds, flowage canals, and other like facilities typically associated with cranberry cultivation which may be closer to the water table.
- ii. A revegetation plan prepared by a professional Landscape Architect or an equivalent qualified professional shall be submitted to and approved by the permit granting authority (the Building Commissioner for Zoning Permits in Section 3 and the Zoning Board of Appeals for Special Permits in Section 4). The plan shall

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<sup>1</sup> “All earth removal operations included in Section 3 of this section are subject to Site Plan Review per Section 203-15.” §203-2(C)(4).

include Native Vegetation (trees, shrubs and grasses) planted at a density similar to the surrounding areas.

iii. Overburden shall be stripped with topsoil and subsoil stored separately on site, and seeded to prevent erosion for use in the restoration of the site.

iv. A minimum of six inches of topsoil shall be placed on areas designated to be restored to a natural state (side slopes, open space and areas that are not to be otherwise improved). This minimum depth of topsoil shall be increased to 12 inches in the Aquifer Protection District Zone II.

v. All areas of excavation and access ways to earth removal operations shall be clearly marked with legally posted no trespassing signs. Areas of steep slope or grade, as judged by the permit granting authority (the Building Commissioner for Zoning Permits in Section 3 and the Zoning Board of Appeals for Special Permits in Section 4), shall additionally be fenced and clearly marked "DANGER- KEEP OUT every 150 feet.

vi. Excavation or depositing of excavated material shall not be made within 50 feet of any lot line and no excavation depth of greater than 15 feet shall be made within 100 feet of any lot line. For excavation sites in or directly abutting the RR, R40, R25, R-20SL and R-20MF, excavation shall not occur within 200 feet of the project's property lines which shall include a 100 foot vegetated natural buffer. The Board of Appeals may reduce these requirements by Special Permit..."

§240-2(C)(4).

Your issuance of the Zoning Permit and the work done by SPR LLC has negated the ability of the Planning Board to undertake the review required by § 205-13. It is now impossible for the Project to comply with the above design standards due to the fact that trees, topsoil, vegetation and earth have been removed from the site and the topography has been altered.

STPB requests that you issue an immediate cease and desist until appropriate enforcement has been taken including but not limited to:

- a. SPR LLC to provide documentation of the number of trees removed during site clearing;
- b. SPR LLC to provide documentation of the alteration of topography, volume of earth removed, depth of excavation; and
- c. SPR LLC to undertake mitigation, including but not limited to establishing 100 ft buffer zone to R-20 SL.

Nick Mayo, Building Commissioner

December 20, 2021

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In addition, you should find that SPR LLC has violated the Bylaw § 240-2(C)(12) prohibition on segmenting a project to avoid application of the Bylaw.<sup>2</sup> SPR LLC submitted the Zoning Permit application before it owned the property, and the Application concerned lots that were never included in the design plans submitted to your office by the prior owner. This segmentation and obfuscation of ownership and design plans avoided the required revegetation planning and buffer zone protection that would otherwise have occurred and, in fact, are required under the Bylaw.

Furthermore, SPR LLC's plans for developing a manufacturing complex do not discuss its future solar installation which would be limited to 44,985 square feet in order to comply with the .25 FAR limitation. No information is provided on the solar installation, lot coverage calculations, or accessory structures. This prevents adequate review to ensure the proposed solar installation is accessory and incidental to the principal use of light industrial manufacturing.

There is an ongoing pattern of deception by SPR LLC. The Project is clearly being segmented to avoid application of the Bylaw. Also, the initial application to clear cut the lot was made by SPR LLC prior to purchasing the lot, and without approval from the then owner, Industrial Trust. In spite of being directed to not excavate without further permitting, SPR LLC went ahead and began excavation work in violation of the Zoning Permit. This pattern of fraud must be considered and the Bylaw enforced.

As the zoning enforcement officer, you are required to make a determination of the allegations contained herein within 14 days. Bylaw, §202-12.

Please feel free to contact me regarding any of the above.

Sincerely,



Jonathan M. Polloni  
JMP/

Cc: Client

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<sup>2</sup> "Segmentation. If the Building Commissioner determines that an earth removal operation has been impermissibly segmented to avoid the provisions set forth in this section, he may deny a Zoning Permit or take other appropriate steps to enforce this bylaw."