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Southborough Board of Selectmen
Southborough Town House
Southborough, MA 01772

Southborough Zoning Board of Appeals
9 Cordaville Road
Southborough, MA 01772

Southborough Planning Board
Southborough Town House
Southborough, MA 01772

Southborough Board of Health
9 Cordaville Road
Southborough, MA 01772

Re: 35 Presidential Drive, Commercial Grade "Sports Barn" Under Construction

Dear Board Members:

The purpose of this letter is to call your attention to a massive Sports Barn is that is currently being constructed behind the existing residence at 35 Presidential Drive, owned by Jeff Jiang (hereafter, "the Site"). This firm represents Laura Scott of 37 Presidential Drive, a direct abutter to the Site. The Sports Barn as proposed has a foot-print that appears to be larger than the footprint of the residence, and will house a basket-ball court, a multi-person locker room, a multi-person *guest* locker room, a "lounge," bathroom facilities, mechanical facilities, storage space, and pool equipment facilities, and will have *seven* parking spaces. This steel framed, 35-foot from grade, commercial size facility was purportedly authorized only by the building inspector's issuance of a building permit for a residential "addition" to the house. After review of the project file, the Southborough Zoning By Law (hereafter, "ZBL"), and Massachusetts law, it is our opinion that the building permit was issued in error and should be immediately revoked. At a minimum, a stop work order should issue immediately so the Town can finally refer this matter to its legal counsel to assess the legality of continued construction and whether other Board should be reviewing this proposal.

Note that the Sports Barn was originally proposed as a stand-alone accessory building. See Plans, attached. The plans were however revised in March to include a connection between the Sports Barn and the three-vehicle garage. Specifically an entry door in the third garage bay was

added, a plan revision that was clearly designed to circumvent the restrictions applicable to accessory buildings.¹

Note also that, in order to preserve privacy on these long and narrow lots, the original developer off-set the locations of the abutting homes. Because of this, the Jiang residence is sited on the front portion of its lot, while our clients' residence is sited on the rear portion of its abutting lot. As a result, the Sports Barn is being erected right next to our clients' home. While they used to have a view of the natural wooded area in the Jiang's back yard, now the Sports Barn looms right outside their second-floor master bedroom windows (see photos). Additionally, because of the relative grades of the lots, our clients' lot sits approximately 10 feet lower than the Jiang's, so the Sports Barn looms about *45 feet* above our clients' property. No homeowner in Southborough could reasonably contemplate that Town officials would allow a building of this size and grade to be constructed in their neighbor's back yard.

When the prior owners informed our clients that they had found a buyer for their home who wanted to build a "Sports Barn" in the backyard, our clients were concerned but reasonably expected that Town officials would not permit anything out of the ordinary to be constructed. Over the winter, when Mr. Jiang's contractor began clear cutting the rear of the property, their concern grew as they began to understand the scope of the proposal. When the contractor contacted our clients about tree removal one their property line, they asked how anything like a "Sports Barn" could be approved in a residential district. The contractor stated that he knew the building inspector and would whatever she required to get it approved. This raises the possibility that a preexisting relationship with the building inspector influenced her to accommodate this preposterous proposal without consultation with counsel--or any serious review of the ZBL.

In early April, the building inspector simply issued the building permit for the "addition." Construction began immediately.² Ms. Scott also immediately contacted the Building Department about contesting the permit. But rather than simply providing her with the relevant document, she was directed to file public records requests and wait for responses in order to assemble the necessary documents. By late April, she had filed her appeal. Despite the continuing construction the ZBA did not even hear the appeal until July 21, 2021, *almost three*

¹ In addition to other requirements, the maximum allowed height of accessory buildings is 17 feet, which would comfortably accommodate an indoor basketball court according to standards published by indoor basketball manufacturers. Apparently not satisfied with that reasonable height, and with no consideration for abutters, Mr. Jiang and or his agents asserted this is an addition, not an accessory building. Thus, the proposed height is more than twice that allowed for an accessory building--35 feet above grade.

² Heavy equipment was brought on site and substantial earth removal activities took place--including weeks of jack hammering that made it impossible for abutters to inhabit their homes. More recently, the steel frame of the massive structure was erected. To date, no town official has shown any concern for the abutters. During the unbearable weeks of drilling and rock crushing on the Site, the building inspector was completely indifferent to the disturbance or the property damage that the blasting was causing; she told abutters to contact their insurance companies. The Town Administrator told them to call the police and file a noise complaint.

full months later. Thus she has spent the summer watching as a commercial grade building has been constructed right next to her home.³

Mr. Jiang asserts that the structure is a mere “addition” to the residence, and the use is allowed as accessory to the residential use, just like a swimming pool or a basket-ball hoop. Prior to the ZBA hearing, we submitted a letter to the ZBA setting forth the law regarding accessory uses. In a nutshell, this *use*--whether the Sports Barn is attached to the residence or is free standing—is not a permitted accessory use. Massachusetts law is very clear on this point. “An accessory use is a ‘use which is clearly incidental to *and customarily found with* and located on the same zoning lot[] as the principal use to which it is related. Bobrowski, Handbook of Massachusetts Land Use and Planning Law, § 12.01 (4th ed., 2018) (footnote and citations omitted) (emphasis added). The Massachusetts courts have addressed this issue as follows. “When the question arises as to uses which in general tend to become deleterious to a neighborhood of homes . . . [the] test . . . must be *whether the use is one that is so necessary in connection with a one family detached house or so commonly to be expected with such a house that it cannot be supposed the [zoning by law] was intended to prevent it.*” Town of Harvard v. Maxant, 360 Mass. 432, 437-38 (1971). In this case, a Sports Barn is neither “necessary in connection” with the single-family house nor “commonly to be expected.” Compare Simmons v. Zoning Board of Appeals of Newburyport, 60 Mass. App. Ct. 5 (2003) (Citing undisputed evidence in the record that such a use was common in the area, the Court affirmed the Town’s determination that a stable and horses were an allowed accessory use). No customary and necessary accessory recreational use requires two locker rooms and seven additional parking spaces.

It is worth noting that Mr. Jiang’s children attend The Fay School. Clearly this Sports Barn—with two locker rooms and extensive parking--is intended not for use by family and friends, but as a practice location for school sports teams. This is of special concern because the Jiang residence shares a common driveway with our clients. We are aware of no other sport or entertainment facilities of this size and scale--with seven proposed parking spaces and home and guest locker rooms.⁴ Again, without the plan revisions which “attach” the Sports Barn to the side of the garage--and the re-labeling of it as an “addition” to the residence, this structure could not have been permitted without a variance. Note that the entry door into the garage was the *third* means of entry into the Sports Barn; two larger and more convenient entrances already existed which clearly are the primary, unobstructed entrances. The door between the Sports Barn

³ The Planning Board has not reviewed these plans. Neither has the Board of Health. The house was built as a five bedroom residence almost 30 years ago. The prior owners finished the basement, adding a sixth bedroom, a full kitchen, a walk-in wine-cellar, a full bathroom, and a game/entertainment room. No modifications were made to the septic system for the additional bedroom. With the proposed addition of a “lounge,” two multi-purpose locker rooms, and additional bathroom facilities, the Board of Health should review the septic system for compliance with current law.

⁴ At the ZBA hearing, Mr. Jiang’s attorney represented to the Board that there is a similar facility at 13 Presidential Drive. In reality, that house is a single structure that, at one time, had a basketball hoop in an *existing* family room. It is in no way comparable.

and the garage is positioned such that anyone using it would have to awkwardly navigate around a vehicle parked in the third bay.

During the hearing, it was brought to the ZBA's attention that the seven additional parking spaces will be accomplished via an expansion of the driveway. When questioned about this, Mr. Jiang's attorney actually stated that they should "never should have depicted" the additional parking spaces in the plans. That statement shows clearly that the proponent of this project and his agents have no intention of being forthcoming, and it also calls into question the veracity of any of their representations. Yet this admission by counsel did not stop a single ZBA member from quickly moving to close the hearing.

During their deliberations, ZBA members recognized both that the Sports Barn was "out of scale with the house," and that allowing it would set a "terrible precedent" in Southborough. A member then stated, however, that it was not the Board's role to "second guess" the building inspector. Thereafter every member voted to reject Ms. Scott's appeal.

Obviously it is *exactly* the ZBA's role to "second-guess" the building inspector, but no member of the Board corrected this stunning misunderstanding of the Board's legal responsibility. The fact that ZBA members are so ill informed about their duties shows that the Town has provided little or no training or guidance on the authority and responsibility of the ZBA. As the appointing authority of the ZBA, the Board of Selectmen should be extremely concerned with the liability introduced by leaving important decisions in the hands of ZBA members who are apparently so unfamiliar with laws pertaining their authority that they simply approved—without even seeking advice from Town Counsel—this commercial size and grade building on residentially zoned land. No decision has yet been filed with the Town Clerk.

Each morning, our clients wake up to see the looming façade of this commercial grade building. There is no possibility that the value of their home has not been seriously and permanently negatively impacted. The same is true of the quality of their life and their mental health. There has been, to date, a complete failure by Town officials to reasonably protect the rights and interests of these Town residents and tax-payers. In fact, as one ZBA member aptly acknowledged during the hearing, they were allowing Mr. Jiang to "run a mac truck through the zoning by law."

Please consider this letter a request for assistance of the Town. We are asking that the Town halt all construction activities while this matter is referred to counsel for legal review. We also request that the Planning Board and the Board of Health determine what review if any is necessary. We certainly hope that Town officials step in and maintain the status quo to prevent further harm to our clients so they do not have to pursue any and all avenues available to respond to the negligence and recklessness that led to the approval of this commercial building.

Very truly yours,



Ginny S. Kremer, Esq.

Cc: Building Inspector
Town Administrator

Encl.