

Middlesex South Registry of Deeds

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Middlesex South Registry of Deeds
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Cambridge, MA 02141
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www.middlesexsouthregistry.com

TOWN OF CONCORD

BOARD OF APPEALS

TOWN HOUSE

Please take notice that in the matter of the APPLICATION OF VOA CONCORD ASSISTED LIVING, INC. under Sections 4.3.6, 7.2, 7.3, 11.6, and 11.8 of the Zoning Bylaw for a Special Permit and Site Plan Review to construct an 11,873 sq. ft. addition and site improvements in the Flood Plain and Wetlands Conservancy District at 68 Commonwealth Avenue (Parcel #2198), Concord, Massachusetts, the Board of Appeals has this day rendered a decision GRANTING said application, and the record therein has this day been filed with the Town Clerk, Town House, Concord, Massachusetts. Appeals, if any, shall be made pursuant to Section 17 of the Zoning Act, Chapter 40A of the Massachusetts General Laws, and shall be filed within 20 days after the date of this notice.


Heather Carey, Administrative Assistant
On behalf of the Zoning Board of Appeals

12/26/18
DATE

TOWN OF CONCORD

BOARD OF APPEALS

DECISION of the Zoning Board of Appeals (the Board) on the APPLICATION OF VOA CONCORD ASSISTED LIVING, INC. under Sections 4.3.6, 7.2, 7.3, 11.6, and 11.8 of the Zoning Bylaw for a Special Permit and Site Plan Review to construct an 11,873 sq. ft. addition and site improvements in the Flood Plain and Wetlands Conservancy District at 68 Commonwealth Avenue (Parcel #2198).

This decision is in response to an application filed on October 1, 2018. After causing notice of the time and place of the public hearing and of the subject matter thereof to be published in *The Concord Journal* on November 1, 2018 and November 8, 2018, posted and mailed to the Applicant, abutters and other parties of interest as required by law, the public hearing was opened on November 15, 2018 and continued to December 13, 2018.

After due consideration of the application, the record, a presentation by the Applicant, public comment, favorable recommendation from the Planning Board, and based upon review of the issues set forth herein, the Board voted 3 to 0 (Brady, Freeland, Akehurst-Moore) to **GRANT** approval of the Special Permit with conditions based on the following findings:

The Applicant, VOA Concord Assisted Living, Inc. has submitted an application for a Special Permit with Site Plan Review to construct an 11,873 sq. ft. addition and site improvements in the Flood Plain and Wetlands Conservancy District. The project includes the following site improvements:

- The complete interior renovation of the existing facility with the conversion of 6 existing units to common/program areas.
- A 2,537 sq. ft. addition of a third level to part of the existing facility
- A new 9,300 sq. ft. 3-story wing addition for a net increase of 16 units for a total of 94 units with an increase in the number of beds from 83 to 102
- Expansion of the parking by 19 spaces for a total of 58 spaces
- Improvement and expansion of the parking area on the north side of the facility to increase the number of parking spaces from 39 to 58 with a portion of the parking expansion to be permeable pavement
- Relocation and expansion to the building's fire access road which will be composed stone dust and mostly grass pavers and will be wider than the existing width along the new length
- Extension of the existing 4-foot-wide stone dust path along the river
- Reconfiguration of the existing stormwater detention basin to mitigate for displacement of flood storage. Since the original development of the site the FEMA flood plain mapping has changed on the site. The existing stormwater basin is now within the flood plain area. A portion of the basin will need to be filled to expand the parking area. The

displaced flood storage volume in the basin will be replicated in a proposed pipe storage system below the parking lot that is hydraulically connected to the open basin volume. The "compensatory" volume at the lower stages near the bottom of the basin exceed the existing volumes at those elevations.

The proposed improvements will require the addition of 3 employees. The Applicant anticipates an increase in Concord Fire Department ambulance trips to the facility by approximately 23 percent.

The Community Safety Officer, Building Commissioner, CMLP, Public Health Director, Town Engineer, Water-Sewer Engineer and Town Planner do not have any issues or concerns with the proposed project and recommend standard conditions of approval.

In a memo dated October 30, 2018, the Fire Department has concerns with the increase in calls to the facility and the potential impact to the West Concord station. The Fire Department recommends that the Applicant develop an Emergency Response and Evacuation Plan, installation of a Fire Department service connection, development of a plan to keep the stone dust path and the rear access clean and free of debris and snow year round and the implementation of policies, procedures and programs for the training of staff on fall prevention and lift-assist and the implementation of a monitoring system of hallways and other common areas for residents at risk, as well as, to increase building security.

The Natural Resources Commission issued an Order of Conditions on November 19, 2018.

In reaching its decision, the Board reviewed the application, supporting material, plans, and the Planning Board's recommendation dated December 13, 2018.

4.3.6 Assisted living residence: A structure, or structures, used to provide assistance with the activities of daily living in a residential setting for people who require such services. Assistance with activities of daily living means the provision of physical support, aid or assistance with bathing, dressing/grooming, ambulating, eating, or other similar tasks. An assisted living residence may have central dining facilities, lounges, meeting rooms, laundry rooms, greenhouses, exercise rooms and recreational areas, libraries, offices, medical facilities for diagnosis and out-patient services for residents only and such other common areas or facilities or accessory uses for the residents may be desired. An assisted living residence is a facility that is eligible for certification as an assisted living residence by the Executive Office of Elder Affairs pursuant to M.G.L. Chapter 19D and shall conform to the following:

The existing assisted living facility is certified by the Executive Office of Elder Affairs pursuant to M.G.L. Chapter 19D.

4.3.6.1 A unit as defined by M.G.L. Chapter 19D shall be a "dwelling unit" as defined by this Bylaw.

The project will result in a net increase of 16 units for a total of 94 units with an increase in the number of beds from 83 to 102.

4.3.6.2 There shall be retained in perpetuity for conservation or passive recreation use an area of common open space equal to at least thirty percent (30%) of the lot area.

The existing conservation restriction over 5 acres, which is over 30% of the lot area and is retained in perpetuity for conservation and passive recreation use.

4.3.6.3 A minimum of twenty percent (20%) of the total number of assisted living units shall be a mix of affordable units for persons who qualify as low, moderate or upper- moderate income and assets. In determining the number of affordable units required, a fractional unit of 0.5 or more shall be considered a whole unit. The minimum percentage of affordable assisted living units shall be maintained as affordable units for the duration of the use of the property under this Section 4.3.6.

The existing facility has a total of 78 units with 16 affordable units. The Applicant is proposing to increase this to 94 units, which requires an additional 3 affordable units. The Applicant has stated that the three additional affordable units will be offered with one at each of the affordable limits; up to 60% Area Medium Income (AMI), 60% to 80% AMI, and 80% to 100% AMI.

4.3.6.4 To the extent determined to be feasible by the Board (taking into consideration legal and economic constraints, including limitations imposed by financing sources) said affordable assisted living units required in subsection 4.3.6.3 shall be made available to eligible Concord residents, and persons related to such residents by consanguinity or affinity, prior to offering such units to other eligible persons

The Applicant has stated that they will continue to take into consideration the requirement that the affordable units be made available to eligible Concord residents, and persons related to such residents by consanguinity or affinity, prior to offering such units to other eligible persons.

7.2 Floodplain Conservancy District

7.2.6.1 Any person who desires to use land within the Flood Plain Conservancy District for a use permitted subject to review by the Board shall submit a written application for a special permit to the Board, with copies to the Planning Board and Natural Resources Commission. Each such application shall be accompanied by the following submissions:

(a) A written statement detailing the proposed work, the history of flooding at the subject premises and the calculations of the volume of water which will be displaced prepared by a registered professional engineer or a registered land surveyor;

The Engineering Division has reviewed the application material detailing the proposed work, the history of flooding at the subject premises and the calculations of the volume of water which will be displaced prepared by a registered professional engineer and finds it meets this requirement.

(b) Development plans, including specific topographic details within the flood plain area, meeting, to the extent applicable, the requirements set forth for a definitive plan in the Subdivision Rules and Regulations of the Planning Board; and

The Applicant has provided the required information meeting this requirement.

(c) In the case of any proposed alteration or relocation of a watercourse, the following agencies shall also be notified:

The Applicant is not proposing any alteration or relocation of a watercourse.

(d) Such additional information as the Board may require.

The Engineering Division does not believe any additional information is required.

7.2.6.2 The Planning Board and Natural Resources Commission shall submit to the Board written recommendations including at least:

(a) An evaluation of the proposed use, including its probable effect or impact upon the Town's water supply, the quality of water in the area, the natural flow pattern of watercourses, nearby or pertinent floodwater storage areas or other areas subject to seasonal or periodic flooding and the general health, safety and welfare of the inhabitants of the Town; and

The proposed work within the floodplain will have no effect or impact upon the Town's water supply, quality of water in the area or the natural flow pattern of watercourses. The Engineering Division has evaluated the proposed project, the impacts to the floodplain and the proposed compensatory flood storage and determined there will not be a significant impact on nearby or pertinent floodwater storage area or areas subject to seasonal or periodic flooding.

(b) A recommendation as to whether the special permit should be granted and whether any restrictions should be imposed upon the proposed use as a condition of such permit.

The Planning Board recommends that the Special Permit be granted based upon the reviews by Town staff and recommended conditions.

7.2.6.3 *If a special permit is granted, the Board shall impose such conditions and safeguards as public safety, welfare and convenience may require. The Board shall give due consideration to the reports of the Planning Board and Natural Resources Commission and, where the decision of the Board differs from the recommendations of either, the reasons therefor shall be stated in writing.*

The Planning Board believes the Zoning Board of Appeals should impose the conditions recommended by Town staff.

11.6 – Special Permit:

The Board considered impacts on economic and community needs; traffic flow and safety concerns, including parking and loading; adequacy of utilities and other public services; impacts on neighborhood character; impacts on the natural environment; and fiscal impacts, including impacts on Town services, the tax base and employment. The Board determined that any negative impacts are negligible and finds that any adverse effects of the 11,876 sq. ft. addition and site improvements will not outweigh its beneficial impacts to the public interest, the Town

and the neighborhood, in view of the characteristics of the site and the proposal in relation to that site.

11.8 Site Plan Review

11.8.6 Decision: Where a special permit from the Board is required or a variance from the Bylaw is requested in connection with any action subject to Site Plan Review, a site plan decision shall be made by the Board. In such case the Planning Board shall submit a report to the Board concerning the matters described in subsection 11.8.5 prior to any public hearing. In considering a site plan, the Board shall insure a reasonable use of the site consistent with the uses permitted in the district in which the site is located. The Board shall give due consideration to the report of the Planning Board and where the decision of the Board differs from the recommendations of the Planning Board the reasons therefore shall be stated in writing.

- a) Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers, and preservation of views, light and air;*

The Engineering Division has evaluated the proposed project, the impacts to the floodplain, the proposed compensatory flood storage and the stormwater drainage and determined there will not be a significant impact on nearby or pertinent floodwater storage area or areas subject to seasonal or periodic flooding and adequate provisions have been made for surface water drainage. The Landscape Plan incorporates additional screening of the proposed parking lot expansion from the adjacent property. The proposed addition will not significantly impact views, light and air of adjoining premises.

- b) Convenience and safety of vehicular and pedestrian movement within the site, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;*

The proposed project incorporates pedestrian pathways around the site and from the parking lot expansion. These pathways will be required to be in compliance with ADA requirements. The proposed project does not alter the existing location of driveway openings and all vehicles entering the Site will need to travel through the commuter rail parking lot.

- c) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;*

The existing facility has adequate methods of disposal of refuse and can accommodate the proposed addition.

- d) Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;*

The proposed layout of the expanded parking lot is adequate in relation to the overall layout of the Site. The Building Commissioner has found that adequate parking is being provided for the proposed addition. The proposed project does not impact the existing adequate loading facility located on the south side of the building.

e) Adequacy of the method of exterior lighting for convenience, safety and security within the site and for protection of neighboring properties, roadways and the night sky;

The Applicant has provided cut-sheets for the proposed building and site light to ensure they are dark sky compliant and light does not extend onto the adjacent property.

f) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this Bylaw; and,

The Site has been developed in a manner that compliments the open space and natural landscape. The Applicant is proposing to extend an existing walking path along the Nashoba Brook, which will connect to the adjacent Bruce Freeman Rail Trail and enhance this community asset.

g) Impact on the Town's resources including the effect on the Town's water supply and distribution system, sewage collection and treatment, fire protection, and streets.

The Town's water supply is sufficient for the proposed project and the Water/Sewer Division has recommended standard conditions of approval. The Applicant will need to submit an appeal to the Public Works Commission for the increase in sewage flow over 1,000 gpd. The Fire Department has concerns with the increase in calls to the facility and the potential impact to the West Concord station. The Fire Department recommends that the Applicant develop an Emergency Response and Evacuation Plan, installation of a Fire Department service connection, development of a plan to keep the stone dust path and the rear access clean and free of debris and snow year round and the implementation of policies, procedures and programs for the training of staff on fall prevention and lift-assist and the implementation of a monitoring system of hallways and other common areas for residents at risk, as well as, to increase building security.

h) Incorporation of sustainability and resiliency principles into the site design that result in a plan that is responsive to the environment and actively contributes to the development of a more sustainable community.

The Applicant notes that the Site includes a conservation restriction of 5.81 acres, which amounts to approximately 64% of the total lot area to be retained in perpetuity. The project includes the expansion of the existing walking pathway on the Site as well as the addition of stairs to allow safe recreational access to the Assabet River. These alterations will safely connect the existing pathway to the Bruce Freeman Rail Trail and promote a healthier way of living for citizens of Concord. In addition, all proposed lighting will be LED, and the Applicant will retrofit all existing site lighting with LED bulbs/fixtures.

The Board of Appeals grants the Special Permit and Site Plan Review subject to the following conditions:

1. Approval is based on the following plans and materials prepared for VOA Concord Assisted Living Addition:

Meridian Associates, 69 Milk St., Westborough, MA 01581

- a. Cover Sheet revised November 15, 2018

- b. C-1: Record Conditions Plan revised November 15, 2018
- c. C-2: Overall Site Plan revised November 15, 2018
- d. C-3: Layout & Materials Plan revised November 15, 2018
- e. C-4: Grading, Drainage and Utilities Plan revised November 15, 2018
- f. C-5: Landscape Plan revised November 15, 2018
- g. C-6 to 8: Site Details revised November 15, 2018
- h. C-4: Grading, Drainage and Utilities Plan revised November 15, 2018

Group One Partners, 21 W. 3rd St. Boston, MA 02127

- i. A1.00, A1.01 & A1.02: Overall Ground Floor Plan, Second Floor Plan and Third Floor Plan dated August 15, 2018
- j. A2.00 & A2.01: Exterior Elevation dated August 15, 2018

Rejuvenation Carson Shepherd's Hook LED Building & Post Light, Matte Black

2. **Prior to the commencement of any construction site work**, the Applicant shall submit to the Town Planner four copies of a Construction Sequencing and Safety Plan for the Site for review and approval by Town Departments. The plan shall include the location of construction material delivery and laydown areas, location of construction employee parking areas, locations where construction vehicles will enter and exit the site, and safety protection measures employed to protect the movement of pedestrians and vehicles within the Site and along the adjacent public ways. The plan shall be developed for all phases required during construction.
3. **Prior to the commencement of any construction site work**, the Applicant shall:
 - a. Install the tree protection measures, erosion and sedimentation controls and all safety measure.
 - b. Coordinate with the Town Planner a pre-construction meeting with Town staff to review proposed work and safety protocols.
 - c. Provide a construction and inspection schedule two weeks before the pre-construction meeting.
4. **Prior to the commencement of any construction site work**, the Applicant shall receive an Order of Conditions, or Superseding Order of Conditions, issued under the Wetlands Protection Act and be subject to any conditions placed on the project and provide a copy of a recorded Order of Conditions, or Superseding Order of Conditions, to the Building Commissioner.
5. **Prior to commencement of any construction site work**, the Applicant shall submit to the Concord Board of Health a Request for Title 5 Building Review (Form S) to identify any potential increase in wastewater flow and associated Sewer Improvement Fee. Based on existing wastewater capacity constraints, flow increases over 1,000 gallons per day will be administratively denied by the Water/Sewer Superintendent. An appeal may

be made to the Public Works Commission seeking relief for an increase in flow over 1,000 gallons per day.

6. **Prior to commencement of any construction site work**, the Applicant shall meet with the Water/Sewer Division to review the proposed scope of work and sufficiently demonstrate that:
 - a. Water service infrastructure is, or can be, designed and constructed in accordance with the Water/Sewer Division's design and construction standards, and
 - b. water demands can be minimized via demand management tools that may be codified in a water use impact report (conservation plan) and Water Customer Data Sheet.
7. **Prior to issuance of a Building Permit**, the Applicant shall submit to the Water/Sewer Division for review and approval, an application for the proposed change in use of the water and sewer utilities. The application shall include the following:
 - a. The approved Title 5 Building Review (Form S) and associated Finding - demonstrating right to connect to the municipal sewer system, and receipt of payment of any Sewer Improvement Fee,
 - b. An approved water use impact report and conservation plan which will determine sizing of the water meter and water system connection fee,
 - c. A plumbing plan shall be provided including:
 - i. Meter bypass detail (with allowance for Water/Sewer Division issued security lock),
 - ii. Design Data Sheets for all required cross-connection control devices. The devices shall not be installed without approval from the Water/Sewer Division.
8. **Prior to the issuance of a Building Permit**, the Applicant shall receive approval from the Health Division for any changes to the food service facility.
9. **Prior to the issuance of a Building Permit**, the Applicant shall submit to the Fire Department for review and approval revised plans that incorporate adequate fire service connections.
10. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall submit an As-Built Certified Plot Plan to the Building Inspections Division demonstrating that the structure meets the requirements of the Zoning Bylaw and Massachusetts Building Code. All setback measurements shall be taken from the lot lines to the closest point of the structure, including overhangs.
11. **Prior to issuance of any Certificate of Occupancy**, the Applicant shall enter into a Water and Sewer Service Connection Agreement with Concord Public Works for the purpose of clarifying the terms of service including ownership, operations, inspection, maintenance and future replacement provisions for related infrastructure. The agreement shall be signed by the owner, executed by the Director and recorded by the applicant.

12. **Prior to issuance of any Certificate of Occupancy**, the Applicant shall submit to the Water/Sewer Division a full size record drawing (Arch D), created in accordance with Division standards, for review prior to finalizing the drawing. Once the draft is approved, the Applicant shall submit to the Water/Sewer Division a full-size (Arch D) hard copy of the final record drawing along with electronic copies in the form of CAD and pdf files.
13. **Prior to issuance of any Certificate of Occupancy**, the Applicant shall furnish to the Water/Sewer Division Water Demand Minimization Affidavit(s) to demonstrate work was performed in accordance with the approved demand mitigation measures.
14. **Prior to the issuance of any Certificate of Occupancy**, CMLP will require a suitable utility easement for the proposed underground electric distribution system including Town fiber communication system where located outside of the Town Right-of-Way. The easement shall be reviewed and approved by CMLP prior to recording. All easements shall be recorded with the Middlesex South Registry of Deeds by the applicant and shall provide copies of the recorded documents to CMLP and the Town Planner. It should be noted that the individual underground electric services are owned and maintained by the property owner(s) and will require approval from the Town of Concord Electrical Inspector.
15. **Prior to the issuance of any Certificate of Occupancy**, the Applicant shall submit to the Fire Department for review and approval a plan for ensuring the stone dust path around the building and the rear access is clean and free of debris and snow year round.
16. **Prior to the issuance of any Certificate of Occupancy**, the Applicant shall coordinate with the Fire Department the development of an Emergency Response and Evacuation Plan and the implementation of policies, procedures and programs for the training of staff on fall prevention and lift-assist and the implementation of a monitoring system for building security and of hallways and other common areas for residents at risk.
17. **Prior to issuance of a Certificate of Occupancy**, the Applicant shall submit to Engineering, CMLP, Natural Resources and the Town Planner an As-Built Plan stamped by a professional engineer verifying the floodplain compensatory storage and showing all the constructed site improvements including utilities and all drainage system components such as but not limited to: pipe sizes, slopes and inverts, detention volumes and structures, roof leader locations, perforated pipe/sub drain information, etc. To ease review, a written narrative certified by a Professional Engineer shall be submitted with the As-Built Plan outlining all variations between the permitted plan and as-built conditions. One hard copy and one electronic copy, in the form of both CAD and PDF Files, shall be provided.
18. **Prior to the issuance of any Certificate of Occupancy**, the Town Planner shall verify that all plantings shown on the approved Landscape Plan have been installed. Any proposed minor modification or substitutions shall be reviewed and approved by the Town Planner prior to installation. If the Applicant provides documentation to the Town Planner that it would be detrimental to complete weather dependent aspects of the landscaping, the Town Planner may require a performance guarantee to ensure

compliance. In such case, the Applicant shall submit to the Town Planner for review and approval a performance guarantee covering the cost of the landscaping and installation and a temporary certificate of occupancy shall be issued until all landscaping work is completed.

19. **One year following the issuance of the Certificate of Occupancy**, the Applicant shall submit a report to the Town Planner noting viability of the required landscaping. Any landscaping found to be dead or dying shall be replaced. Any minor modification or substitutions shall be reviewed and approved by the Town Planner prior to installation.
20. **Three years following the issuance of the Certificate of Occupancy**, the Applicant shall submit a report to the Town Planner noting viability of the established landscaping. Any landscaping found to be dead or dying shall be replaced. Any minor modification or substitutions shall be reviewed and approved by the Town Planner prior to installation.
21. **At all times**, the Applicant shall ensure that construction activity is in compliance with the Town's Construction Noise Bylaw
22. **This Special Permit shall lapse within two (2) years**, which shall not include such time required to pursue or await the determination of an appeal, from the date of grant thereof, if a substantial use has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.
23. **Violation of any of the conditions of the Special Permit shall be grounds for revocation of the Decision**, or any building or occupancy permit granted hereunder. If at any time the structure is not in compliance with the Decision and any permit issued by the Town, the Building Commissioner may order that the project be stopped until the non-compliance is corrected.
24. **By acceptance of this Special Permit**, the Applicant acknowledges the binding effect of the conditions of the Decision. The Applicant shall record with the Middlesex South Registry of Deeds the Special Permit and provide a copy of the recorded decision to the Building Inspections Division.

**TOWN OF CONCORD
BOARD OF APPEALS**

THE BOARD OF APPEALS CERTIFIES as follows:

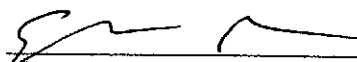
Name and Address of Owner: VOA Concord Assisted Living, Inc.
441 Centre Street
Jamaica Plain, MA 02130

Name and Address of Applicant: VOA Concord Assisted Living, Inc.
441 Centre Street
Jamaica Plain, MA 02130

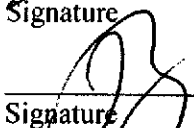
Property Identification: 68 Commonwealth Avenue
Concord, MA 01742
Parcel ID: 2198
D29597/ 233

This application filed on October 1, 2018 and all subsequent proceedings comply with the requirements of General Laws, Chapter 40A.

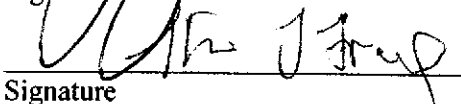
An appeal from this decision shall be made pursuant to General Laws, Chapter 40A, Section 17, and shall be filed within twenty (20) days after the date of filing such decision or notice thereof in the office of the Town Clerk.


 Signature

Elizabeth Archambault-Moore
 Print


 Signature

John D Barry
 Print


 Signature


Stuart T Freedman
 Print

I, Kaari Tari, Town Clerk for the Town of Concord, hereby certify that this is a true copy of the Board of Appeals Decision.


 Kaari Tari, Town Clerk

DEC 26 2018
 Date

I, Kaari Tari, Town Clerk for the Town of Concord, hereby certify that twenty (20) days have elapsed since the filing of this decision and no appeal has been filed, or, if filed, has been dismissed or denied.


 Kaari Tari, Town Clerk

JAN 16 2019
 Date