



To: Zoning Board of Appeals
From: Ralph Vitacco, Director of Planning & Economic Development
Subject: Application for Comprehensive Permit Village Green
Date: July 5, 2024

On June 14, 2024, NSG Village Green-1, LLC (“Applicant”) applied for a Comprehensive Permit under MGL Chapter 40B for the purpose of developing 144 units of affordable rental housing including ancillary infrastructure including a 4.8 MW energy system, a Controlled Environment Agricultural (CEA) building, wastewater and stormwater systems to be known as Village Green.

The application accurately identifies Sandwich’s Subsidized Housing Inventory (SHI) as 4.26% as confirmed by the Massachusetts Executive Office of Housing and Livable Communities (EOHLC). The applicants also point out Sandwich’s commitment to affordable housing as expressed in the Town’s Housing Production Plan and Local Comprehensive Plan. Given the complexities of the application, the Town submitted a request to MHP for Chapter 40B Technical Review Assistance. MHP assigned Judi Barrett of Barrett Planning Group LLC to work with the Town and the developers in an effort to craft a Comprehensive Permit that provides a design that compliments the surrounding neighborhood, respects the locations natural resources and does not place an undo strain on existing infrastructure.

In August 2022, NSG Village Green-1, LLC received a Project Eligibility Letter (PEL) from MassHousing for the development of no more than one hundred forty-four (144) rental units under the terms of the New England Fund Program, of which not less than thirty-eight (38) of such units shall be restricted as affordable for low or moderate income persons or families as required under the terms of the Comprehensive Permit Guidelines. The PEL did not include the proposed ancillary infrastructures identified in the application.

The Board may request the applicants pay for peer review for the solar and wastewater components of the application.

As the Board progresses through the Comprehensive Permit process, it may be beneficial to review the concerns forwarded to MassHousing in response to the PEL application:

Regional Impact of Project

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To further, emphasize the regional impact of the proposed development and future expansion of the site it is necessary to consider total flow for the entire site area of 64 acres for wastewater and associated environmentally sensitive receptors. Currently the site does not have wastewater treatment, there is no wastewater design before the Massachusetts Department of Environmental Protection and there is no sewer available.

Based on the DEP Title V Design Flow, the project, which proposes 144 units with 180 bedrooms, calculates to 19,800 gallons per day just for this one portion of development on the property. The proposal exceeds the DEP 10,000 gallons per day limit thus requiring a Groundwater Discharge permit. The entire site area's total proposed flow needs to be taken into consideration to provide full comments.

The following considerations need to be evaluated in order to proceed with a comprehensive review of the proposal for the project application.

The total site area is not within a Zone II, but based on the groundwater contours, the down gradient wells in Mashpee are receptors to the groundwater discharge. An evaluation of the groundwater flow, travel time and draw rates of the down gradient public supply wells need to be evaluated.

The entire site area is within the northern watershed for Peters Pond. Peters Pond is an environmentally sensitive receptor. The pond, which has been classified as a Class A fishery, has been experiencing declining biological health as is indicated by the cyanobacteria bloom activity. An evaluation of the ponds health and the impact of additional nutrients is necessary to determine the level of wastewater treatment necessary for the proposed development.

The total site area is within the northern watershed for Popponesset Bay in Mashpee. Popponesset Bay is an impaired estuary with a Total Maximum Daily Load (TMDL) of nitrogen established through the DEP Massachusetts Estuaries Program. The Town of Sandwich has a Memorandum of Understanding (MOU) with Mashpee signed in November 2017, which identifies the percentage of Sandwich's nitrogen input to the impaired watershed, which needs to be removed. The proposed development needs to be a No Net Nitrogen development in order to adhere to the MOU signed with Mashpee. The applicant needs to outline how the No Net Nitrogen required will be achieved.

With Contaminants of Emerging Concern, the applicant needs to provide an evaluation of standard wastewater treatment versus treatment for contaminants of emerging concern. Recent studies have indicated that typical wastewater treatment that does not address contaminants of emerging concerns actually concentrates PFAS and PFOS in the wastewater treatment effluent discharged into the ground.

The 64-acre site requires an approved Groundwater Discharge Permit from the Massachusetts Department of Environmental Protection to receive permitting.

Traffic

The projects primary point of entrance and egress is Route 130. Route 130 is a primary North South corridor connecting Sandwich with Mashpee, Falmouth and Route 28. Route 130 is also a primary thoroughfare to Route 6, which connects vehicles to down Cape, and off Cape.

Route 130 experiences high traffic volumes, particularly in the busy summer season, and safety impacts from the added traffic at the site drive are a concern. As part of permitting, the Applicant will be asked to provide a traffic study. Based on experience from previous proposals for this location, it is likely that safety modifications to Route 130 will be required. This may include construction of a turning lane within Route 130. This segment of Route 130 is a designated scenic road under Section 15C of MGL Ch.40, and any widening or other work impacting scenic road trees would require due process in that regard. This was an issue with previous proposals for this location. It is not clear that these elements have been accounted for in the application.

It is anticipated that as part of the permitting process, the Applicant will be asked to clarify site access and how it relates to non-residential development on adjacent parcels. The application site plan shows a driveway extending from Route 130 onto the site. The site driveway includes access road stubs directed toward adjacent non-residential property to the north and east. Access to multiple properties may require layout of street right-of-way in accordance with the Town of Sandwich Planning Board's Subdivision Rules and Regulations. It is also anticipated that the Applicant will be asked to demonstrate that the proposed site drive will be suitable and will provide safe access for the aggregate traffic conditions. It is not clear from the application materials how this would be addressed. It is noted that the application includes draft subdivision plans from previous development efforts that did not advance. While those plans may have had some merit for the scope of the former project at that time, the Applicant will be asked to detail roadway, drainage, and other infrastructure improvements necessary to safely accommodate the current proposal including road connections to adjacent lots.

The Applicant has requested the following waivers:

ZONING BYLAW

1. Sections 2200 and 4180 et seq. Prohibition of "Power Generation, Electrical" in R-2 zoning district and Special Permit under s. 4180 et seq. for "Solar Photovoltaic Installation, Large-Scale Ground Mounted."
2. Sections 1380 and 5000 et seq. All special permit requirements for wastewater treatment and effluent discharge. The site is not located in a water re-charge district and the wastewater facility infrastructure is subject to state DEP regulation.
3. Section 4610 Prohibition against locating a multi-family development on a Scenic Road.
4. Section 4610 Requirement for the Applicant to show that danger of pollution to ground and surface water is no greater than danger from single-family houses at same location. Prevention of water pollution will be the responsibility of DEP.

5. Section 4621 Requirement to supply design plans, test results and certifications for on-site disposal facilities. Wastewater facility infrastructure is subject to state DEP regulation.
6. Section 4630 Requirement for Planning Board certification of compliance with Planning Board Rules and Regulations for all improvements.
7. Section 4640 Requirements for per-unit density on the development site, boundary setbacks and vegetation within setbacks.
8. Section 4650 Requirements pertaining to more than one access to the site.
9. Section 4660 Separate notification requirements.
10. Section 4670 Requirement for covenant with the Planning Board regarding roadways and parking.

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11. Section 3.A.2.m. Requirement to locate septic systems on adjacent properties.
12. Section 3.A.2.k. Requirement for plan scale of 1" = 40'

COMPREHENSIVE PERMIT SUBMISSION RULES OF THE SANDWICH BOARD OF APPEALS

13. Section 2.02. The filing fee of \$5,340.00 is not reasonable where filing for a Special Permit for 144 units rather than a Comprehensive Permit for the same number of units requires a filing fee of \$150.00 and the process of reviewing both applications is substantially the same.
14. Section 5.0(A). Reference to 760 CMR 31.01(2) a-f is not an outdated reference and this regulation is no longer in effect.
15. Section 5.0(D). Waiver requested from so much of this section that calls for disclosure of the site acquisition price. That figure is part of the Applicant's pro forma. Financial information such as a pro forma is not applicable as it is in conflict with 760 CMR 56.05(6) which states that the "Board may request to review the pro forma or other financial statements for a Project only after" certain preconditions have been met. The preconditions stated therein have not been met.

16. Applicant requests waiver of all Building Department and Building Permit fees applicable to subsidized or affordable units for this proposal.
17. Any other local requirements not more specifically listed in order that the submitted development plans can be constructed as presented and approved.
18. If, in the course of hearings on this proposal, it is determined that other local bylaws or regulations are applicable to the proposal and add cost to the development, Applicant reserves the right to amend this Request for Waivers from Local Regulations.

The waivers appear to be similar to waivers that have been requested by previous Comprehensive Permit applicants who have been before the Board with the exception of the waivers for Solar Photovoltaic Installation, Large-Scale Ground Mounted, installation of a wastewater treatment facility, and the requirement to produce a pro forma. As stated previously, MassHousing did not comment on the solar component or the wastewater treatment facility in their PEL approval. The Board may request the applicant to provide further information on both subjects to determine if the waiver requests are applicable.

In their PEL application, NSG Village Green-1, LLC provided a preliminary pro forma to MassHousing. The Pro forma did not include the proposed ancillary structures.

The applicants site 760 CMR 56.05 (6) which is provided in full below:

(6) Review of Financial Statements.

- a) A Board may request to review the pro forma or other financial statements for a Project only after the following preconditions have been met:
 1. other consultant review has been completed;
 2. the Applicant has had an opportunity to modify its original proposal to address issues raised;
 3. the Board has had an opportunity to propose conditions to mitigate the Project's impacts and to consider requested Waivers; and
 4. the Applicant has indicated that it does not agree to the proposed condition(s) or Waiver denial(s) because they would render the Project uneconomic. A Board may not conduct review of a pro forma in order to see whether a Project would still be economic if the number of dwelling units were reduced, unless such reduction is justified by a valid health, safety, environmental, design, open space, planning, or other local concern that directly results from the size of a project on a particular site, consistent with 760 CMR 56.07(3).

If the Applicant does not agree to some or all of the proposed permit conditions or Waiver denials because they would render the Project Uneconomic, the Board may ask the Applicant to submit its pro forma, in form satisfactory to the Subsidizing Agency, and revised as necessary to reflect the additional cost of meeting these conditions and/or denials. The revised pro forma may be subjected to the same consultant review as any other technical information submitted to the Board, in accordance with 760 CMR 56.05(5) and the Board's rules. The Board may then use this information to decide whether to adopt or modify its

originally proposed conditions and/or denials. Pro forma review should conform to recognized real estate and affordable housing industry standards, consistent with the policies of the Subsidizing Agency and guidelines adopted by the Department.

- b) Related financial issues, including related-party transactions, the estimated sales price or rental rates of market-rate units, and land acquisition costs, shall be addressed in accordance with the Department's guidelines. Disagreements between the Applicant and the Board's consultant should be resolved in accordance with the Department's guidelines. The Subsidizing Agency has the sole responsibility to establish and enforce reasonable profit and distribution limitations on the Applicant, as set forth in 760 CMR 56.04(8).

The applicant will need to articulate to the satisfaction of the Board their justification for the Board to grant this waiver. The Board will need to determine the financial relationship between the housing development and the ancillary structures to properly condition the Comprehensive Permit. The Board may request peer review of the pro forma.

Each successful Comprehensive Permit helps the Town of Sandwich towards its affordable housing goals. It is incumbent upon the Town and developers to work cooperatively together to meet that end.

Submitted for your consideration.